

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59299; File No. SR-NYSE-2009-06)

January 27, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Temporarily Lower its Average Global Market Capitalization Continued Listing Standard

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 22, 2009, New York Stock Exchange, LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to lower temporarily from \$25 million to \$15 million the average market capitalization required of listed companies under Section 802.01B of the Exchange’s Listed Company Manual (the “Manual”). This temporary reduction will apply through April 22, 2009. The text of the proposed rule change is available on the Exchange’s Website

(<http://www.nyse.com>), at the Exchange’s Office of the Secretary and at the Commission’s

Public Reference room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 802.01B of the Manual provides that the Exchange will promptly delist any company (including limited partnerships and real estate investment trusts (“REITs”)) if it is determined that the company has an average global market capitalization over a consecutive 30 trading-day period of less than \$25 million, regardless of the original listing standard under which it listed. A company is not eligible to utilize the cure procedures set forth in Sections 802.02 and 802.03 with respect to this criterion and instead is immediately subject to the Exchange’s delisting procedures set forth in Section 804 of the Manual. Through April 22, 2009, this provision will apply only to companies (including limited partnerships and REITs) whose average global market capitalization over a consecutive 30 trading-day period falls below \$15 million.<sup>3</sup> Companies that fall below the \$25 million market capitalization requirement but not below the \$15 million level will benefit from this modified requirement to the extent that they

---

<sup>3</sup> Any company whose consecutive 30 trading-day average global market capitalization has fallen below \$15 million prior to the date of submission of this filing will continue to be subject to delisting. Any company whose 30 consecutive trading-day average global market capitalization falls below \$15 million at any time after the submission of this filing will be subject to delisting, including if that 30 trading-day period includes trading days prior to the submission of this filing. For example, a company whose 30 consecutive trading-day average global market capitalization falls below \$15 million 10 days after submission of this filing (so that a portion of that 30 trading-day period preceded and a portion of the period followed submission of this filing) will be subject to delisting.

are not otherwise subject to suspension under the Exchange's other continued listing criteria.<sup>4</sup> All of the Exchange's other continued listing criteria will continue to apply during this period and companies that meet the modified average global market capitalization requirement during this period may be deemed to be below compliance or delisted for falling below other quantitative standards or pursuant to the "Other Criteria" set forth in Section 802.01D.

In the past several months, the U.S. and global equities markets have experienced extreme volatility and a precipitous decline in trading prices of many securities. The Commission has acknowledged in several recent emergency Orders that these unusual market conditions threaten the fair and orderly functioning of the securities markets and can lead to a crisis of confidence among investors regarding the viability of companies whose stock prices have declined significantly.<sup>5</sup> As a consequence of this market crisis, the number of companies

---

<sup>4</sup> Section 804 of the Manual provides that a request for review of a delisting determination will ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend from trading any security pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade. The lowered \$15 million standard will be applied to any company for which the Exchange has not yet announced a suspension of trading pending delisting by the date of this filing, including any company whose suspension under the \$25 million standard had been stayed pending appeal which is trading on the Exchange pending the outcome of the appeal process. Such companies will benefit from the lowered standard, assuming they are and remain above the requisite \$15 million average market cap. If the sole basis for delisting in such a case is the company's noncompliance with the \$25 million market capitalization requirement, NYSE Regulation will inform the company in writing that it is withdrawing its delisting determination and that the company's appeal is now moot. As noted above, any such company remains subject to suspension and delisting under the Exchange's other continued listing standards.

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) ("The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can

listed on the Exchange whose average global market capitalization has fallen below \$25 million over a 30 trading-day period has been significantly higher than the historical norm. The Exchange believes that, in many cases, these companies have experienced precipitous stock price declines not due to company-specific issues, but because of the general decline in investor confidence and other unusual circumstances affecting the broad market. Consequently, the Exchange believes that many of these companies may remain suitable for continued listing and that their market capitalizations may well return to prior levels once the current market turbulence passes.

The Exchange believes that temporarily lowering the 30 trading-day average global market capitalization requirement from \$25 million to \$15 million will facilitate the retention, during this period of market turbulence, of companies whose size and quality makes them suitable for continued listing on the NYSE. The proposed modified requirement will enable these companies to remain listed in the current difficult market conditions with the prospect of a future recovery in their stock prices enabling them to comply with the \$25 million market capitalization requirement upon its reinstatement. The Exchange has chosen to temporarily lower this listing standard rather than to impose a complete moratorium on application of the standard, because it continues to believe that, even at this time, companies whose market capitalization deteriorates to a level below \$15 million are not suitable for continued listing on the Exchange.

The Exchange notes that it adopted its \$25 million average global market capitalization requirement as recently as 2004 – at a time when stock prices and the overall market were far

---

create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.”).

higher than they are currently – and that the requirement prior to that date was \$15 million.<sup>6</sup> Consequently, the Exchange has recent experience with the continued listing of companies whose average global market capitalization exceeds \$15 million but is lower than \$25 million, and is comfortable allowing these companies to continue to be listed on the Exchange for a temporary period. The Exchange notes that, unlike with the Exchange’s other quantitative listing standards, Section 802.01B does not provide companies with any period of time to take steps to attempt to regain compliance with the standard. The Exchange believes that temporarily lowering the level at which a company’s average global market capitalization subjects it to automatic delisting is appropriate in light of the extreme volatility in companies’ stock prices in the current market and the absence of any cure provisions in the rule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>8</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to remove uncertainty regarding the ability of certain companies to remain listed on the NYSE

---

<sup>6</sup> See Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (SR-NYSE-2003-43).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the

---

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the NYSE to immediately implement a temporary measure to lower its continued listing requirement relating to average global market capitalization to respond to recent market volatility and conditions. The Commission notes that the Exchange's current standard does not provide companies with a period of time to regain compliance and, instead, companies failing to meet this standard are immediately subject to the Exchange's delisting procedures in Section 804 of the Manual. As such, the Commission believes that waiving the 30-day operative delay will provide certain companies with immediate relief from being delisted as a result of the current market conditions, provided that their average global market capitalization over a consecutive 30-day trading period remains at \$15 million or above. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

---

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-06 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>14</sup> 17 CFR 200.30-3(a)(12).