SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61407; File No. SR-NYSE-2010-02)

January 21, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Amend Certain of its Initial Listing Requirements

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act"),[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on January 7, 2010, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes 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 changes from interested persons.

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

The Exchange proposes to amend certain of its initial listing requirements as they relate to companies listing in connection with a firm commitment underwritten public offering whose common stock is registered under the Securities Exchange Act of 1934 prior to listing but not listed on a national securities exchange.

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.

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 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 102.01B of the Exchange's Listed Company Manual (the "Manual") requires that a company listing at the time of its initial public offering ("IPO") or as a result of a spin-off or under the Affiliated Company standard of Section 102.01C(iii) must demonstrate an aggregate market value of publicly-held shares ("public float") of $40 million at the time of listing. All other companies must have a public float of $100 million at the time of initial listing. For purposes of Section 102.01B, an IPO is defined as an offering by an issuer which, immediately prior to its original listing, does not have a class of common stock registered under the Act. The distribution requirements set forth in Section 103.01A for companies listing under the NYSE's listing standards for non-U.S. companies also utilize the same definition of an IPO. Section 102.01B and 103.01A both provide that – in connection with an IPO – the NYSE will rely on a written commitment from the company's underwriter to represent the anticipated value of the

company's offering to demonstrate the company's compliance with the applicable public float requirement.[4]

The Exchange proposes to add a new definition for use in Sections 102.01B and 103.01A. The proposed definition would classify a company as listing at the time of its "Initial Firm Commitment Underwritten Public Offering" if (i) such company has a class of common stock registered under the Act, (ii) such common stock has not been listed on a national securities exchange during the period since the commencement of its current registration under the Act,[5] and (iii) such company is listing in connection with a firm commitment underwritten public offering that is its first firm commitment underwritten public offering of its common stock since the registration of its common stock under the Act. The Exchange would apply the $40 million public float requirement of Section 102.01B to a company listing in connection with its Initial Firm Commitment Underwritten Public Offering. Notwithstanding the fact that a company is listing in connection with its Initial Firm Commitment Underwritten Public Offering, the Exchange will apply the $100 million market value of publicly-held shares standard of Section 102.01B if there is significant trading volume in the company's securities in the over-the-counter market prior to listing. In addition, the Exchange will generally apply the $100 million test if the company has previously registered on one or more Securities Act registration statements the sale of significant numbers of shares of the class that the company proposes to list, unless there is evidence that subsequent trading has been very limited.

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4 Section 103.01A requires a worldwide public float of $100 million for all listings.

5 A company which had previously been listed but was taken private prior to its current registration under the Act would qualify.

Companies not listing in connection with an IPO are generally transferring their listing from another national securities exchange. These companies have a history of trading in a liquid market and, in general, there is no reason to believe that their public float will significantly increase in size simply as a result of transferring to the NYSE. On the other hand, companies listing in connection with an IPO have generally not previously had a trading market with significant liquidity and it has been the NYSE's experience that officers, directors and holders of more than 10% of the company's stock – whose shares are not counted as part of the public float – in many cases sell significant amounts of stock into the public markets after listing. This possibility of sales of shares by insiders after the IPO gives rise to a reasonable expectation that a company's public float will increase significantly over time after its IPO and the Exchange believes that the lower public float requirement for IPOs is an appropriate response to that fact.

While most companies listing on the NYSE do so upon consummation of an IPO, a spin-off or a carve-out or upon transfer from another exchange, the NYSE occasionally receives applications for listing from companies whose common stock was registered under the Act prior to listing but which were neither listed on another exchange nor had a liquid trading market prior to listing. Typically, these are companies that have never undertaken a firm commitment underwritten public offering but have voluntarily registered their common stock under the Act or incurred an obligation to register under Section 12(g) of the Act because the number of holders of their common stock exceeded the minimum established under SEC rules. These companies may seek to list in connection with a public offering which the company and the market will view as essentially identical to an IPO – as it is the first broadly distributed public equity offering

by the company – but which will not meet the NYSE's definition of an IPO, as the company's common stock was registered under the Act immediately prior to the listing. These companies will generally not have a large public float at the time of initial listing, as there will not have been any prior transaction that led to a significant distribution event and, in the absence of a listing, the company will not have had a liquid trading market. The Exchange believes that these companies are more similar to companies listing in connection with an IPO than to companies transferring from another exchange. As with companies listing in connection with an IPO, these companies are undertaking their first major public distribution of their stock and will have their first truly liquid trading market after listing. As such, the Exchange believes that there is a reasonable basis for concluding that the public float of these companies will increase over time in the same way as is the case for a company after its IPO. Consequently, the Exchange believes it is generally appropriate to subject companies listing in connection with an Initial Firm Commitment Underwritten Public Offering to the same public float requirements as companies listing in connection with an IPO. Notwithstanding the foregoing, the Exchange recognizes that there are companies that have significant trading volume on the over-the-counter market and which are more similar to companies trading on a national securities exchange than to the closely-held companies with illiquid stocks for which the Initial Firm Commitment Underwritten Public Offering provision is proposed. The Exchange will continue to apply the $100 million public float requirement to those types of companies. In addition, there are companies traded on the over-the-counter market that have sold significant numbers of equity securities pursuant to Securities Act registration statements, either in direct placements or best efforts underwritings. The

Exchange will generally apply the $100 million public float requirement to those companies, unless there is only very limited trading activity in such securities in the over-the–counter market, as they are also more similar to companies trading on a national securities exchange than to the closely-held companies with illiquid stocks for which the Initial Firm Commitment Underwritten Public Offering provision is proposed.

The Exchange also believes that it is appropriate to amend Sections 102.01B and 103.01A to allow the Exchange to (i) base its determination as to whether a company listing in connection with an Initial Firm Commitment Underwritten Public Offering has complied with the $4 stock price initial listing requirement on the public offering price in the Initial Firm Commitment Underwritten Public Offering and (ii) rely on a letter from the company's underwriter in the Initial Firm Commitment Underwritten Public Offering as evidence of compliance with the applicable public float requirement. These changes do not modify the quantitative public float requirement for companies whose common stock was registered prior to listing but which are not transferring from another exchange. Rather, (i) in the case of the $4 stock price requirement, it recognizes the fact that the offering price is a better gauge of the stock's likely trading price after listing than would be provided by any limited trading occurring in the over-the-counter market, and (ii) in the case of the public float requirement, it recognizes the fact that companies listing in connection with an Initial Firm Commitment Underwritten Public Offering typically will not have a significant public float prior to consummating their offering, but will be able to demonstrate the required public float at the time of listing. The Exchange also proposes to amend the domestic company financial listing standards of Section 102.01C and the non-U.S. company financial listing standards of Section 103.01B to permit the

Exchange to rely on a letter from the company's underwriter as evidence of compliance with the market capitalization requirements of the various financial listing standards for companies listing in connection with an Initial Firm Commitment Underwritten Public Offering.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. The Exchange notes that the $40 million public float requirement for domestic IPOs and $100 million worldwide public float requirement for non-U.S. companies are both higher than the public float requirements under the various Nasdaq Global Market initial listing standards, which range from $8 million to $20 million. The Exchange also notes that Nasdaq Global Market does not distinguish between IPOs and other new listing for purposes of establishing its quantitative public float requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] 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 Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that, while it will allow certain companies to list subject to a

6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(5).

lower public float requirement, that lower requirement is still set at a high enough level that only companies that are suitable for listing on the Exchange will qualify to list. In addition, in expanding the circumstances in which the Exchange may rely on underwriters' letters to determine compliance with market capitalization requirements, the proposed rule change is not substantively changing the Exchange's quantitative initial listing requirements.

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 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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 Exchange Act.

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 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. Please include File Number SR-NYSE-2010-02 on the subject line.

Paper Comments:

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

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8 15 U.S.C. 78s(b)(3)(A).

9 17 CFR 240.19b-4(f)(6). In addition, the Commission notes that Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

All submissions should refer to File Number SR-NYSE-2010-02. 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,[10] 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

[10] The text of the proposed rule change is available on the Commission's Web site at http://www.sec.gov.

that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2010-02 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.[11]

Florence E. Harmon
Deputy Secretary

[11] 17 CFR 200.30-3(a)(12).