

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61609; File No. SR-NYSE-2010-13)

March 1, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Extend the Pilot Program in Relation to Certain of its Continued Listing Standards

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 25, 2010, New York Stock Exchange LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission the proposed rule changes as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)<sup>4</sup> under the Exchange Act. 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 extend [sic] until June 30, 2010, the operation of an amendment to the continued listing requirements in Section 802.01B of the Exchange’s Listed Company Manual (the “Manual”) that is currently in effect on a pilot program basis (the “Pilot Program”).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

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 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

The NYSE proposes to extend until June 30, 2010, the Pilot Program currently in effect in relation to the continued listing requirements in Section 802.01B of the Manual.

Prior to the adoption of the Pilot Program,<sup>5</sup> Section 802.01B(I) of the Manual provided that any company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I) (in the case of foreign private issuers) or pursuant to the requirements set forth under the Assets and Equity Test set forth in Section 102.01C(IV) or the "Initial Listing Standard for Companies Transferring from NYSE Arca" (the "NYSE Arca Transfer Standard") set forth in Section 102.01(C)(V) (the NYSE Arca Transfer Standard expired by its terms on August 31, 2009) was considered

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<sup>5</sup> See Securities Exchange Act Release No. 59996 (May 28, 2009), 74 FR 26912 (June 4, 2009) (SR-NYSE-2009-48) (the "Pilot Program Notice").

to be below compliance standards if such company's average global market capitalization over a consecutive 30 trading-day period was less than \$75 million and, at the same time, total stockholders' equity was less than \$75 million. Under the Pilot Program, companies that listed under the initial listing standards set forth in the immediately preceding sentence are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million. The Pilot Program originally expired by its terms on October 31, 2009, but the Exchange extended its application for an additional five months, until February 28, 2010.<sup>6</sup> The Exchange now proposes to extend the Pilot Program until June 30, 2010. The Exchange is submitting a filing concurrently with this filing in which it proposes to make the Pilot Program permanent.<sup>7</sup> If the SEC approves that filing prior to June 30, 2010, the Pilot Program will expire and the amendment to Section 802.01B(I) will become permanent at that time.

For companies listed under the Earnings Test, the Pilot Program returned continued listing requirements to those in place prior to the adoption of the current requirements on June 9, 2005.<sup>8</sup> Consequently, prior to implementation of the Pilot Program, the Exchange had considerable historical experience with the continued listing of companies that had continued to trade on the Exchange with global market

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<sup>6</sup> See Securities Exchange Act Release No. 60911 (November 2, 2009), 74 FR 57730 (November 9, 2010) (SR-NYSE-2009-109).

<sup>7</sup> The Commission notes that on February 26, 2010, the Exchange submitted a proposed rule change to make the Pilot Program permanent. (See SR-NYSE-2010-15).

<sup>8</sup> See Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR-NYSE-2004-20). The Assets and Equity Test set forth in Section 102.01C(IV) and the NYSE Arca Transfer Standard set forth in Section 102.01C(V) were adopted subsequent to this amendment.

capitalization and stockholders' equity each below \$75 million but greater than \$50 million. In addition, the Exchange's experience under the Pilot Program has been very positive, as only one of the companies that was deemed back in compliance as a result of the adoption of the Pilot Program has subsequently fallen below the standard as amended by the Pilot Program as of the date of this filing and only two additional companies have been newly identified as being below the Pilot Program standard. Based on this experience, the Exchange believes that companies that exceed the continued listing standards as amended by the Pilot Program are suitable for continued listing on the Exchange.

The Exchange believes that the continued listing standards as amended by the Pilot Program are at least as stringent as those of any other national securities exchange. Consequently, the Exchange believes that the Pilot Program is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. In addition, the Exchange notes that the Commission stated in the Pilot Program Notice<sup>9</sup> that it believed that the continued listing standards adopted under the Pilot Program met the requirements established in Exchange Act Rule 3a51-1(a)(2)(ii)<sup>10</sup> in that they were reasonably related to the initial listing standards set forth in paragraph (a)(2)(i)[sic] of Exchange Act Rule 3a51-1 (the "Penny Stock Rule").<sup>11</sup>

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<sup>9</sup> See the Pilot Program Notice at Note 5.

<sup>10</sup> 17 CFR 240.a51-1(a)(2)(ii). [sic]

<sup>11</sup> 17 CFR 240.a51-1. [sic]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>12</sup> of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5)<sup>13</sup> of the Exchange Act 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 extension to the Pilot Program is consistent with the investor protection objectives of the Exchange Act in that the continued listing standards under the Pilot Program are set at a high enough level that only companies that are suitable for continued listing on the Exchange will exceed the standards.

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.

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this 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)<sup>14</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>18</sup> which would make the rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the current Pilot Program to continue without interruption. The Commission notes that the

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

<sup>16</sup> Id.

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

<sup>18</sup> Id.

standards under the Pilot Program are identical, for those companies qualifying under the Earnings Test, to those in effect on the Exchange prior to the adoption of the current standards in 2005.<sup>19</sup> The NYSE represents that the continued listing standards proposed under the Pilot Program are at least as stringent as those of any other national securities exchange. In addition, the Commission notes that the pilot period will allow the NYSE and the Commission to continue to assess the new continued listing standards. For these reasons, the Commission designates the proposed rule change operative upon filing.<sup>20</sup>

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 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 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-2010-13 on the subject line.

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<sup>19</sup> See Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR-NYSE-2004-20).

<sup>20</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2010-13. 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 Web site viewing and printing 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-2010-13 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>21</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).