

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59123; File No. SR-NYSE-2008-128)

December 19, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Amend the Requirements of Section 203.01 of the Listed Company Manual with respect to Annual Reports

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Exchange Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 16, 2008, New York Stock Exchange, LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission the proposed rule changes [sic] 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 [sic] from interested persons.

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

The Exchange proposes to provide that a listed company that is subject to the U.S. proxy rules, or is an issuer not subject to the proxy rules that provides its audited financial statements to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in the U.S. proxy rules, is not required to issue the press release or post the undertaking required by Section 203.01. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary and at the Commission’s Public Reference room.

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

The Exchange proposes to amend Section 203.01 of the NYSE Listed Company Manual to provide that a listed company that is subject to the U.S. proxy rules, or is an issuer not subject to the proxy rules that provides its audited financial statements to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in the U.S. proxy rules, is not required to issue the press release or post the undertaking required by Section 203.01.

Section 203.01 was amended in August 2006 to eliminate the requirement that companies physically distribute an annual report containing audited financial statements.⁴ The rule currently requires that a listed company must make its annual report filed with the SEC simultaneously available on or through its website. Listed companies are also required to post a prominent undertaking on their website providing all holders the ability to receive a hard copy of the audited financial statements upon request and to issue a press release stating that the filing is

⁴ See Exchange Act Release No. 54344 (August 21, 2006), 71 FR 51260 (August 29, 2006) (SR-NYSE-2005-68).

available and reiterating that all shareholders have the ability to receive a hard copy upon request.

Since the section was amended, however, the Exchange believes that many U.S. companies are very confused by the press release and website undertaking requirements of Section 203.01 since many of them still avail themselves of the option under the proxy rules to meet the annual report distribution requirement by means of a physical distribution. In light of the fact that many U.S. companies still meet the annual report distribution requirement by means of a physical distribution and a number of foreign companies voluntarily comply with the requirements of the U.S. proxy rules by making physical distributions, the Exchange proposes to amend Section 203.01 to provide that a listed company that is subject to the U.S. proxy rules, or is an issuer not subject to the proxy rules that provides its audited financial statements (as included on Forms 10-K, 20-F and 40-F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in the U.S. proxy rules, is not required to issue the press release or post the undertaking required by Section 203.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁵ of the Exchange Act in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with the protection of investors, as only companies that are distributing their annual financial statements to beneficial holders in a manner consistent with the requirements of the Commission's proxy rules will be exempted from the press release and undertaking requirements of Section 203.01.

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act.⁷

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will 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 Exchange provided 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,

⁷ 15 U.S.C. 78s(b)(3)(A)

at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b-4(f)(6).⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE has requested that the Commission waive the 30-day delayed operative date, as permitted by Rule 19b-4(f)(6)(iii), so that the proposed rule change may become operative immediately. The Exchange believes that such waiver is appropriate so that a company that qualifies for the exemption and is filing its annual report with the Commission during the 30 days after the effective date of the proposal may be relieved of the obligation to issue a press release in relation to its filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it relieves companies of an obligation that may be redundant for companies that already meet the delivery requirements applicable to annual reports set forth in the U.S. proxy rules, and that in any case will no longer be applicable to companies similarly situated after the 30-day period.⁹ Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the 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.

⁸ 17 C.F.R. 240.19b-4(f)(6).

⁹ 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. See 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. Please include File Number SR-NYSE-2008-128 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.

All submissions should refer to File Number SR-NYSE-2008-128. 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-2008-128 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.¹⁰

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).