

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59684; File No. SR-NYSE-2009-32)

April 1, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Extend until August 31, 2009, the Application of the NYSE Arca Transfer Standard

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 March 17, 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 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 change from interested persons.

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

The Exchange proposes to amend Section 102.01C of the Listed Company Manual (the “Manual”) to extend until August 31, 2009, the application of the special initial listing standard applicable only to companies that are listed on NYSE Arca, Inc. (“NYSE Arca”).

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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<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).

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 102.01C of the Manual includes an initial listing standard that is applicable only to companies that are listed on NYSE Arca, Inc. (“NYSE Arca”) as of October 1, 2008 and that transfer to the Exchange on or before March 31, 2009 (the “NYSE Arca Transfer Standard”).<sup>5</sup> The NYSE Arca Transfer Standard was adopted in connection with NYSE Euronext’s business strategy of consolidating its equities listings on two of the three U.S. registered securities exchanges it owns – the NYSE and NYSE Alternext US LLC. As part of this transition, the Exchange wished to offer the opportunity to list on the NYSE to all suitable NYSE Arca companies. Most companies currently listed on NYSE Arca would meet the NYSE’s continued listing requirements set forth in Section 802.01B of the Manual for companies listed under the Exchange’s Earnings Test.<sup>6</sup> However, a number of these companies that meet the NYSE’s

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<sup>5</sup> See Securities Exchange Act Release No. 58741 (October 6, 2008), 73 FR 60378 (October 10, 2008) (SR-NYSE-2008-97).

<sup>6</sup> Companies listed under the Earnings Test are considered to be below compliance standards if their average global market capitalization over a consecutive 30 trading-day period is less than \$75,000,000 and, at the same time, total stockholders' equity is less than \$75,000,000. In addition Section 802.01B requires all listed companies to maintain

continued listing standards do not qualify to list under any of the existing NYSE initial listing standards. In order to list these companies, the Exchange adopted the NYSE Arca Transfer Standard.<sup>7</sup>

At the time of initial adoption of the NYSE Arca Transfer Standard, the Exchange believed that all of the NYSE Arca companies that were suitable for NYSE listing would be able to transfer prior to March 31, 2009. However, due to the turbulent market conditions of recent months, a number of these companies have experienced significant reductions in their stock prices and, consequently, are not currently qualified for listing on the NYSE. Companies whose total market capitalization has fallen below \$75 million are particularly problematic, as the NYSE Arca Transfer Standard requires companies to exceed this threshold for at least 90 consecutive days prior to applying for listing. Any company whose total market capitalization is currently below \$75 million would not have sufficient time prior to March 31 to meet this requirement even if its total market capitalization exceeded \$75 million on the date of this filing. In light of the extraordinary market conditions, the Exchange proposes to extend from March 31 to August 31, 2009, the life of the NYSE Arca Transfer Standard. The Exchange believes that this extension will enable companies to transfer from NYSE Arca to the NYSE that, but for the overall decline in the equities markets, would have qualified to transfer during the life of the NYSE Arca Transfer Standard as initially adopted.

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a minimum of \$25 million in global market capitalization and Section 802.01C requires all listed companies to maintain a \$1.00 minimum stock price.

<sup>7</sup> Companies transferring from NYSE Arca under the NYSE Arca Transfer Standard are required to have \$75 million in total market capitalization for 90 consecutive days prior to applying for listing and \$20 million in market value of publicly-held shares (but not the \$100 million market value of publicly-held shares requirement of Section 102.01B). Such companies have to meet the holders, publicly-held shares and trading volume requirements set forth in Section 102.01A and the \$4 stock price requirement of Section 102.01B.

The Exchange believes it is appropriate to extend the time period during which it can apply the NYSE Arca Transfer Standard as a short-term listing standard applicable only to NYSE Arca companies. These companies listed on NYSE Arca on the assumption that it would exist as a permanent listing market and it is solely because of a business decision made by NYSE Euronext that these companies will need to transfer their listings. Many of these companies listed on NYSE Arca because of its association with the NYSE and in the expectation that they would ultimately switch their listing to the NYSE when they met the NYSE's listing standards. As such, the Exchange believe that fairness dictates that it should seek to list these companies on the NYSE where such a listing is appropriate and in the interests of the investing public.

The NYSE will only list companies under the NYSE Arca Transfer Standard if it believes that those companies are suitable for trading on the NYSE. All of the companies that would be listed under the NYSE Arca Transfer Standard will far exceed the NYSE's continued listing standards at the time of initial listing and will be in compliance with NYSE Arca continued listing standards. In addition, the same staff in NYSE Regulation's Financial Compliance and Corporate Governance groups is responsible for ongoing compliance reviews of both NYSE and NYSE Arca companies. As such, the NYSE Regulation staff involved in making initial listing determinations on the NYSE is extremely familiar with the companies currently listed on NYSE Arca and is uniquely positioned to determine whether those companies are suitable for listing on the NYSE. The Exchange believes its depth of knowledge with respect to NYSE Arca companies makes it appropriate to list them on this one time basis under a less onerous standard than the Exchange applies to other listing applicants. Companies listing under the NYSE Arca Transfer Standard will be subject to the standard listing application and review process applicable to all listing applicants and, if Exchange staff determine that an NYSE Arca company

is not suitable for listing on the NYSE – notwithstanding its qualification under the numerical requirements of the NYSE Arca Transfer Standard – the Exchange will not list that company.

The requirements of the NYSE Arca Transfer Standard exceed those established by Exchange Act Rule 3a51-1(a)(2) (the “Penny Stock Rule”).<sup>8</sup> The NYSE Arca Transfer Standard’s requirement that an applicant have \$75 million in global market capitalization for 90 days prior to transferring from NYSE Arca exceeds the \$50 million market capitalization for 90 days prior to listing option in the Penny Stock Rule, as well as the \$50 million market capitalization requirement of Rule 3a51-1(a)(2)(i)(B). In addition, companies listing under the NYSE Arca Transfer Standard will be required at the time of transfer to have a \$4 stock price, 400 round lot holders and 1.1 million publicly held shares, thereby meeting or exceeding all of the Penny Stock Rule’s remaining requirements.

Companies listing under the NYSE Arca Transfer Standard will have to comply with all other applicable Exchange listing rules, including the Exchange’s corporate governance requirements. As with all other listing applicants, the Exchange reserves the right to deny listing to any company seeking to list under the NYSE Arca Transfer Standard if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>10</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster

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<sup>8</sup> 17 CFR 240.a51-1(a)(ii).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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 protection of investors and the public interest in that the requirements of the NYSE Arca Transfer Standard are sufficiently stringent that the proposed amendment will not lead to the listing of any companies that are not suited for listing on the NYSE. In addition, the proposal applies for a limited period to a small number of companies that are subject to unique and disadvantageous circumstances.

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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>14</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 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 would allow the exchange to keep in place, without interruption, the operation of the NYSE Arca Transfer Standard.

The Commission expects that the Exchange will deny listing to any company seeking to list pursuant to the proposed rule change if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest. In accordance with the terms of the proposed rule, the Exchange will apply this standard only for the very narrow category of companies, listed on NYSE Arca as of October 1, 2008, that transfer to the Exchange on or before August 31, 2009. Since NYSE Regulation's Financial Compliance and Corporate Governance groups are responsible for ongoing compliance reviews of both NYSE and NYSE Arca companies, the Commission believes the Exchange should be sufficiently familiar with

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</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>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

companies seeking to transfer to be able to determine if any such company is an appropriate transfer candidate. The Commission expects the NYSE to only list those NYSE Arca transfers which they believe, through their past expertise reviewing these companies, are suitable for trading on the NYSE and the maintenance of fair and orderly markets. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>15</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.

#### 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-2009-32 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.

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<sup>15</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).

All submissions should refer to File Number SR-NYSE-2009-32. 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-2009-32 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>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).