

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60305; File No. SR-NYSE-2009-66)

July 14, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Lower its 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 July 2, 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>3</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 permanently lower its market capitalization continued listing standard set forth in Section 802.01B of the Exchange’s Listed Company Manual (the “Manual”) from \$25 million to \$15 million. 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

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

In response to the unusual market conditions over the last twelve months, the Exchange previously adopted a policy (by means of an immediately effective rule filing<sup>4</sup>) providing that, through April 22, 2009, its average global market capitalization continued listing standard will apply only to companies (including limited partnerships and real estate investment trusts ("REITs")) whose average global market capitalization over a consecutive 30 trading-day period falls below \$15 million.<sup>5</sup> In a subsequent filing, the Exchange extended the period for which it temporarily lowered its market capitalization continued listing standard, so that the lower standard is currently in place through June 30, 2009.<sup>6</sup> The Exchange now proposes to

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<sup>4</sup> See Securities Exchange Act Release No. 59299 (January 27, 2009), 74 FR 5709 (January 30, 2009) (SR-NYSE-2009-06).

<sup>5</sup> Section 802.01B of the Manual provides that the Exchange will promptly delist any company (including limited partnerships and 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.

<sup>6</sup> See Securities Exchange Act Release No. 59510 (March 4, 2009), 74 FR 10636 (March 11, 2009)(SR-NYSE-2009-21).

make permanent this lowering of its market capitalization continued listing standard (including as it applies to limited partnerships and REITs).

The Exchange notes that it adopted its \$25 million average global market capitalization requirement as recently as 2004 – at a time when stock prices were far higher than they are currently – and that the requirement prior to that date was \$15 million.<sup>7</sup> In addition, the temporary lowering of the standard through June 30, 2009, has provided the Exchange with more recent experience with the continued listing of companies whose average global market capitalization exceeds \$15 million but is lower than \$25 million. This experience has made the Exchange comfortable allowing the continued listing of companies that have a market capitalization above \$15 million but below \$25 million, because the Exchange’s experience has been that, where these companies are otherwise in compliance with all of the Exchange’s other qualitative and quantitative continued listing standards, they remain viable enterprises and suitable for auction market trading. The Exchange also 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 further notes that its continued listing standards after permanent adoption of the \$15 million market capitalization continued listing standard will continue to be at least as stringent as those of any other national securities exchange. Consequently, the Exchange believes that the proposed amendment is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. In addition, the proposed amendment does not affect the status of NYSE listed securities under Securities Exchange Act Rule 3a51-1(a) (the “Penny

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<sup>7</sup> See Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (SR-NYSE-2003-43).

Stock Rule”),<sup>8</sup> as the Exchange’s initial listing standards satisfy the requirements of Rule 3a51-1(a)(2)(i)<sup>9</sup> and the continued listing standards as amended are reasonably related to those initial listing standards, as required by 3a51-1(a)(2)(ii).<sup>10</sup> In particular, the \$15 million market capitalization continued listing standard is reasonably related to (i) the market value of listed securities of \$50 million for 90 consecutive days prior to applying for listing initial listing requirement of Rule 3a51-1(a)(2)(i)(A)(2)<sup>11</sup> and (ii) the market value of listed securities of \$50 million initial listing requirement of Rule 3a51-1(a)(2)(i)(B).<sup>12</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>13</sup> of the Securities Exchange Act of 1934 (the “Act”),<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>15</sup> of the 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 NYSE’s continued listing requirements as amended by the proposed rule change remain at least as

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<sup>8</sup> 17 CFR 240.a51-1(a). [sic]

<sup>9</sup> 17 CFR 240.a51-1(a)(2)(i). [sic]

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

<sup>11</sup> 3a51-1(a)(2)(i)(A)(2). [sic]

<sup>12</sup> Rule 3a51-1(a)(2)(i)(B).

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

<sup>14</sup> See 15 U.S.C. 78a.

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

stringent as those of any other national securities exchange and, consequently, the proposed amendment is consistent with the protection of investors and the public interest.

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>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>18</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>19</sup>

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</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 Commission has determined to waive this requirement.

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-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. 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 the proposal will return the Exchange's market capitalization continued listing standard to the same level that it was in 2004 to \$15 million.<sup>20</sup> In addition, the Commission notes that the \$15 million market capitalization standard, which immediately subjects a company failing to meet this standard to the Exchange's delisting procedures in Section 804 of the Manual, is at least as stringent as the continued listing requirements of another national securities exchange.<sup>21</sup> For these reasons, the Commission believes that the proposed rule change does not raise any new regulatory issues. Accordingly, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>22</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

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<sup>20</sup> See supra note 7.

<sup>21</sup> See The NASDAQ Stock Market LLC Rule 5450.

<sup>22</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).

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-2009-66 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-2009-66. 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-2009-66 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>23</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).