

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73071; File No. SR-NYSE-2014-49)

September 10, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing to Amend Section 107.03 of the Listed Company Manual to Provide That No Security Shall Be Approved for Listing on the Exchange That is Delinquent in its Filing Obligation With the Securities and Exchange Commission

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 28, 2014, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 [sic] The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, 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 those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 107.03 of the Manual to provide that no security shall be approved for listing on the Exchange that is delinquent in its filing obligation with the Commission. The Exchange adopted Section 107.03 of the Manual to codify its longstanding practice of requiring that issuers provide investors with current and complete financial and corporate information prior to the date on which such issuer seeks to list a security.⁴ Currently, Section 107.03 states that no security shall be approved for listing on the Exchange if the issuer has not for the 12 months immediately preceding the date of listing filed on a timely basis all periodic reports required to be filed with the Commission. While this requirement furthers the Exchange's goal of requiring adequate current disclosure, the Exchange believes that Section 107.03 could currently be read to impose requirements upon issuers that the Exchange did not intend and that go beyond the Exchange's practices it intended to embody in the rule. Accordingly, the Exchange proposes to amend Section 107.03 to clarify how it will evaluate an issuer's compliance with Commission reporting requirements as it relates to approving such issuer for listing on the Exchange.

In its current form, the language of Section 107.03 precludes the listing of any company that has failed to timely file any of its periodic reports with the SEC in the 12 months prior to the listing approval date, even if that company was current in its filings as of the date of its listing

⁴ See Securities Exchange Act Release No. 70218 (August 15, 2013), 78 FR 51788 (August 21, 2013) (SR-NYSE-2013-33).

application. This would preclude the Exchange from listing a security if its issuer had been late—even by a de minimis amount—in filing just one of its required periodic reports during the preceding 12 months. The Exchange believes this outcome would, in certain instances, be disproportionately punitive in comparison to the infraction and would not provide any meaningful investor protection benefits. In particular, the Exchange generally does not believe that there is any investor protection benefit to be derived from conditioning an issuer’s listing on the timely filing of a Form 10-Q when the issuer has subsequently filed an annual report for a fiscal year including the period covered by that Form 10-Q. For these reasons, the Exchange now believes it is more appropriate to state that a security will not be approved for listing on the Exchange if its issuer is delinquent in its filing obligation with the Commission.

The Exchange proposes to take a two pronged approach to determining whether an issuer is delinquent in its filing obligations. First, the Exchange will in every case deem an issuer to be delinquent and will not authorize such issuer for listing if it has not filed an annual report (on Forms 10-K, 20-F, 40-F or N-CSR) for its most recent fiscal year end and all subsequent quarterly reports (on Form 10-Q) by the date it seeks to list on the Exchange. Second, the Exchange will undertake a qualitative review of an issuer’s past (i.e. prior to its annual report for its most recent fiscal year) compliance with the Commission’s reporting requirements. If, in the course of that review, the Exchange learns that an issuer has failed to file one or more historical annual or quarterly reports (each such report an “omitted filing”), it will create a rebuttable presumption that the Exchange will deem the issuer to be delinquent in its filing obligations with the Commission and therefore will not approve the issuer for listing. Notwithstanding the foregoing, the Exchange, in its sole discretion, may decide that an omitted filing is not a bar to listing if it is satisfied that (i) there is evidence that the Commission does not intend to take

action against the issuer as a result of the company's failure to submit such omitted filing or (ii) a sufficient period of filing compliance has passed since the due date of the omitted filing that the information required to be included in such omitted filing would be of little relevance to investors at the time of listing⁵.

The Exchange believes that, as amended, Section 107.03 will still provide investors with a sufficient level of protection. Under the proposed rule, issuers will still be required to have filed their most recent annual report and all subsequent quarterly reports. Further, historical non-compliance with the Commission's filing requirements will serve as a bar to listing in the absence of the mitigating factors described above. Lastly, the Exchange's proposed amendment to Section 107.03 of the Manual is comparable to Nasdaq Stock Market ("Nasdaq") Rule 5210(e).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(5) 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 Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because issuers under the proposed amended rule will still be required to provide investors with current and complete

⁵ While the period of elapsed time that the Exchange would consider to be sufficient will vary from case to case, the Exchange expects it to be a minimum of two years and potentially longer depending on the facts and circumstances surrounding a particular issuer.

financial and corporate information prior to having their securities authorized for listing on the Exchange. Further, looking back more than twelve months at an issuer's filing compliance will enhance investor protection. Moreover, the proposed amendment will foster cooperation and coordination with persons engaged in regulating transactions in securities by harmonizing the Exchange's listing requirements in this regard with those of Nasdaq.

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. The proposed rule change is applicable to all issuers applying to list their securities on the Exchange and is comparable to the Nasdaq requirement. Accordingly, the Exchange does not believe that the proposed change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, 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

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

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

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 deems this requirement to have been met.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2014-49 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-2014-49. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2014-49 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.¹²

Jill M. Peterson
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).