

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52887; File No. SR-NYSE-2005-82)

December 5, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Pilot Program Relating to Minimum Numerical Standards in Section 102.01A of the Listed Company Manual

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 23, 2005, the New York Stock Exchange, Inc. (“NYSE” or “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 NYSE. On December 1, 2005, NYSE filed Amendment No. 1 to the proposed rule change.³ NYSE has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, NYSE made a technical change to Exhibit 5 (text of the proposed rule change). The correction to Exhibit 5 does not make any changes to the current initial listing distribution criteria for companies listing in connection with a transfer or quotation, but only adds missing rule text that was inadvertently excluded in the filing submitted by the Exchange on November 23, 2005.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

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

The NYSE is proposing to amend, on a six-month pilot program basis (the "Pilot Program"), to expire on May 31, 2006, Section 102.01A of the Exchange's Listed Company Manual (the "Manual") regarding the minimum numerical listing standards.⁶ The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the principal office of the NYSE, 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 NYSE 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 is proposing to introduce a Pilot Program to amend certain of its minimum numerical standards for the listing of domestic equity securities on the NYSE. Section 102.01A of the Manual sets out minimum initial requirements for size and volume that must be met in order for a company to be listed. Currently, companies that are listing in conjunction with an initial public offering are required to demonstrate that there are at least 2000 or more round lot

⁶ Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Annemarie Tierney, Assistant General Counsel, NYSE, on December 2, 2005 (clarifying that the pilot program expires on May 31, 2006).

holders⁷ of the security to be listed in order to be authorized to list. If a company cannot confirm that it satisfies the 2000 round lot holder threshold prior to the date that trading commences, the security is ineligible for listing.

The Exchange states that it is increasingly being approached by companies that are ultimately unable to list due to special circumstances that result in the company's inability to satisfy the 2000 round lot holder requirement prior to commencement of trading. For example, companies listing following emergence from bankruptcy and companies affiliated with a currently listed company that were created in conjunction with a private placement or similar transaction generally do not meet the round lot holder threshold unless the company conducts a public offering simultaneously with listing. To accommodate the listing of these types of companies absent a public offering, the Exchange proposes to adopt alternative round lot holder distribution standards for affiliated companies and companies listing upon emergence from bankruptcy so that these types of companies will be eligible to list if they can demonstrate that they have at least 400 round lot holders prior to commencement of trading. The additional distribution criteria for number of publicly held shares and aggregate market value of publicly held shares that are set forth in Section 102A of the Manual are not proposed to be amended.

2. Statutory Basis

The Exchange believes that the basis under the Act for the Pilot Program is the requirement under Section 6(b)(5)⁸ that an exchange have rules that are designed to prevent

⁷ A "round lot" is a trading unit equivalent to 100 shares (or an otherwise defined unit of trading). Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Annemarie Tierney, Assistant General Counsel, NYSE, on December 2, 2005.

⁸ 15 U.S.C. 78f(b)(5).

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed Pilot Program will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed Pilot Program.

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

Because the foregoing proposed rule change, as amended: (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)⁹ of the Act and Rule 19b-4(f)(6) thereunder.¹⁰

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. NYSE has requested that the Commission waive the five-day pre-filing notice requirement. The Commission waives the five-day pre-filing notice requirement.

The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),¹¹ and designate the proposed rule change to become operative immediately so that the Exchange can implement its Pilot Program relating to minimum numerical initial listing standards to facilitate listings by limited categories of companies that meet the Exchange's current listing standards other than the round lot holder threshold. The Commission notes that the Exchange states that the proposed round lot holder threshold for affiliated companies and companies emerging from bankruptcy is substantially similar to the listing threshold utilized by The Nasdaq Stock Market¹² and the American Stock Exchange LLC.¹³ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal to be effective and operative upon filing with the Commission.¹⁴

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 Act.¹⁵

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² See NASD Rule 4420.

¹³ See Section 102(a) of the Amex Company Guide.

¹⁴ 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).

¹⁵ The effective date of the original proposed rule is November 23, 2005. The effective date of Amendment No. 1 is December 1, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 1, 2005, the date on which NYSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSE-2005-82 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-82. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE.

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-2005-82 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).