



July 25, 2016

VIA E-MAIL

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C., 20549-1090

Re: Amendments to Smaller Reporting Company Definition (Release No. 33-10107; 34-78168; File No. S7-12-16).

Dear Mr. Fields:

The NYSE Group (“NYSE”)<sup>1</sup> wishes to express its support for the proposed amendments<sup>2</sup> to the definition of “smaller reporting company.” NYSE has long been a supporter of providing smaller companies with a scaled disclosure and audit regime that allows them to focus more resources on growth. In addition to compliance with SEC disclosure and audit requirements, NYSE-listed companies must be in compliance with the NYSE’s listing requirements, which are rigorously monitored and enforced by the exchange’s regulatory department.

### **Changing the Definition**

NYSE believes that the SEC has taken the right approach by proposing to change the definition of “smaller reporting company” in a manner that looks more towards the percentage of companies eligible for the scaled disclosure rather than simply relying on inflation. NYSE representatives routinely meet with companies considering accessing the public markets, and we hear repeatedly that the costs associated with being a public company play a large role in their decision making. We believe that the SEC’s proposed new rules for scaled disclosure would lower those costs and make it feasible for more small companies to access the public markets. In addition, scaled disclosure rules allows for existing smaller public companies to reduce the cost burden and invest more capital back into their businesses to fund growth.

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<sup>1</sup> NYSE Group is a wholly subsidiary of Intercontinental Exchange, Inc. NYSE Group is the owner and operator of three listing exchanges, the New York Stock Exchange LLC, NYSE MKT LLC and NYSE Arca, Inc.

<sup>2</sup> See SEC Proposal to amend the definition of smaller reporting company for registrants with less than \$250 million in public float or with zero public float if their revenues were below \$100 million in the previous year. <https://www.sec.gov/rules/proposed/2016/33-10107.pdf>

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NYSE does, however, believe that the SEC should consider changing two items in the proposal, which would amplify the benefits to issuers.

**SOX 404(b).** NYSE believes that the SEC should amend the accelerated filer definition given that it, rather than the smaller reporting company definition, governs the exemptions from Section 404(b) of the Sarbanes-Oxley Act (“SOX”) by increasing the threshold to align with the new smaller reporting company threshold of \$250 million. Section 404(b) is often the most burdensome requirement from a cost perspective and reforming the accelerated filer definition would provide small companies a great deal of relief. In addition, aligning these two proposals would make it easier for investors to understand the thresholds and know which companies are eligible for scaled disclosure.

**Revenue Test.** NYSE believes the SEC should reconsider its decision not to include a simple revenue test for meeting the smaller reporting company and accelerated filer thresholds. Setting a revenue cap without a limitation on the market capitalization of the company will allow for technology and biotechnology companies with larger market capitalizations but low revenue to also be eligible for the scaled reporting. These companies tend to be highly dependent upon research and development of new innovative products, which demand a great deal of capital to develop, but produce low or zero revenue until the product has been developed and tested over a 5-10 year period.

NYSE appreciates the opportunity to comment and looks forward to continuing the dialog on important policy issues that help companies access the capital markets.

Sincerely,

A handwritten signature in black ink that reads "T W Farley". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Thomas W. Farley  
President, NYSE Group