

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59139; File No. SR-NYSE-2008-109)

December 22, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change to Clarify Amendments to “Other Securities” Initial Listing Standards

I. Introduction

On October 31, 2008, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 703.19 of the Exchange’s Listed Company Manual (the “Manual”), the Exchange’s initial listing standards for “Other Securities.” The proposed rule change was published in the Federal Register on November 19, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend Section 703.19 of the Manual⁴ to state that companies whose securities that are not listed on the Exchange and wish to list securities under Section 703.19 must meet one of the Exchange’s financial original listing standards for equity listings,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58928 (November 10, 2008), 73 FR 69706 (“Notice”).

⁴ Section 703.19 was adopted to provide the Exchange with the flexibility to list securities that could not be readily categorized under the Exchange’s traditional listing standards for common and preferred stocks, debt securities and warrants. Section 703.19 was intended to provide flexibility to enable the Exchange to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. Section 703.19 is not intended to accommodate the listing of securities that raise significant new regulatory issues, which would require a separate filing with the

but need not meet any of the other initial listing requirements set forth in Section One of the Manual.

Currently, a company who wishes to list securities on the NYSE but whose securities do not fall under the traditional listing standards for common stock, preferred stock, debt securities, warrants, or under parts of the Manual, may list such securities under Section 703.19 of the Manual. In order to list these securities, they must meet the following criteria. First, if the company currently has securities listed on NYSE, the company must be in good standing.⁵ If the company does not have securities listed on NYSE, the company must meet the initial common stock listing standards set forth in Sections 102.01 to 102.03 and 103.01 to 103.05 of the Manual. Second, equity securities must have at least (1) one million securities outstanding; (2) 400 holders; and (3) \$4 million dollars in market value and debt securities must have a minimum public market value of \$4 million.

The Exchange proposes to change the requirement for companies that do not have securities listed on NYSE to meet the Exchange's initial common stock listing standards as set forth in Sections 102.01 to 102.03 and 103.01 to 103.05 of the Manual. As proposed, such companies must meet one of the financial standards in Section 102.01C and for foreign companies, Section 103.01B.

The Exchange also proposes to remove the sub-heading "Earnings/Net Tangible Assets" from the second paragraph of Section 703.19.

Commission. See Securities Exchange Act Release No. 28217 (July 18, 1990) 55 FR 30056 (July 24, 1990) (SR-NYSE-90-30).

⁵ See Section 703.19 of the Manual. If the company is an affiliate of a NYSE-listed company, the NYSE-listed company must be in good standing.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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 development and enforcement of adequate standards governing the initial listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.

Under the proposal, companies with securities that are not listed on NYSE and who wish to list securities under Section 703.19 must now meet one of four financial listing standards

⁶ 15 U.S.C. 78f.

⁷ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

under Section 102.01C of the Manual.⁹ Under the proposal, companies who are foreign private issuers must meet one of three financial listing standards under Section 103.01B of the Manual.¹⁰ The Exchange represented that it has not imposed the other standards in Sections 102.01 to 102.03 or Sections 103.01 to 103.05, as the Exchange has applied these other standards to the common stock.

The Commission notes that, as proposed, the numerical listing standards under proposed Section 703.19 would be similar to the numerical listing standards for “other securities” on other exchanges.¹¹ The Commission also notes that the proposed change would apply only for companies whose securities are not otherwise listed on the Exchange. In addition, the Commission notes that Section 703.19 currently provides public float and distribution listing standards.

Furthermore, the Commission believes that the proposal to remove the obsolete sub-heading “Earnings/Net Tangible Assets” from Section 703.19 should eliminate any potential confusion.

The Commission believes the proposed rule change is reasonable and should continue to provide for the listing of securities with sufficient depth and liquidity to maintain fair and orderly markets. Accordingly, the Commission believes that the changes are consistent with the requirements of the Act.

⁹ Section 102.01C of the Manual lists four different financial standards for companies to qualify for listing on the Exchange: (1) Earnings Test; (2) Valuation/Revenue Test; (3) Affiliated Company Test; or (4) Assets and Equity Test.

¹⁰ Section 103.05B of the Manual lists three different financial standards for companies who are foreign private issuers to qualify for listing on the Exchange: (1) Earnings Test; (2) Valuation/Revenue Test; or (3) Affiliated Company Test.

¹¹ See e.g., Nasdaq Marketplace Rule 4420(f), Section 107 of the Amex Company Guide, and NYSE Arca Rule 5.2(j)(1).

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-2008-109) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Acting Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).