

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61912; File No. SR-NYSE-2010-15)

April 15, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Making Permanent the Exchange's Pilot Program with Respect to its Continued Listing Standards

I. Introduction

On February 26, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ a proposal to make permanent an amendment to the continued listing requirements in Section 802.01B of the Exchange's Listed Company Manual (the "Manual") that is currently in effect on a pilot program basis (the "Pilot Program"). The proposed rule change was published for comment in the Federal Register on March 12, 2010.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to make its Pilot Program permanent. Prior to the adoption of the Pilot Program,⁵ Section 802.01B(I) of the Manual provided that any company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 61657 (March 5, 2010), 75 FR 11970.

⁵ See Securities Exchange Act Release No. 59996 (May 28, 2009), 74 FR 26912 (June 4, 2009) (SR-NYSE-2009-48) (the "Pilot Program Notice").

103.01B(I) (in the case of foreign private issuers) or pursuant to the requirements set forth under the Assets and Equity Test set forth in Section 102.01C(IV) or the “Initial Listing Standard for Companies Transferring from NYSE Arca” (the “NYSE Arca Transfer Standard”) set forth in Section 102.01(C)(V) (the NYSE Arca Transfer Standard expired by its terms on August 31, 2009) was considered to be below compliance standards if such company’s average global market capitalization over a consecutive 30 trading-day period was less than \$75 million and, at the same time, total stockholders' equity was less than \$75 million. Under the Pilot Program, companies that listed under the initial listing standards set forth in the immediately preceding sentence are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million.

The Pilot Program originally expired by its terms on October 31, 2009, but the Exchange extended its application for an additional five months, until February 28, 2010.⁶ NYSE filed an immediately effective proposed rule change to extend the Pilot Program for a further four months, until June 30, 2010.⁷ This order approves the Pilot Program on a permanent basis.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

⁶ See Securities Exchange Act Release No. 60911 (November 2, 2009), 74 FR 57730 (November 9, 2010) (SR-NYSE-2009-109).

⁷ See Securities Exchange Act Release No. 61609 (March 1, 2010), 75 FR 10336 (March 5, 2010) (SR-NYSE-2010-13).

applicable to a national securities exchange⁸ and, in particular, the requirements of Section 6 of the Act.⁹ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an initial public offering will 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. Once a security has been approved for initial listing, maintenance criteria allow an

⁸ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.
15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

The Commission believes that the proposal to make permanent the Pilot Program is reasonable and consistent with the Act, and furthers investor protection and the public interest. Under the proposal, companies that initially listed under the Earnings Test, Assets and Equity Test, or NYSE Arca Transfer Standard are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million. The Commission notes that for companies listed under the Earnings Test, the Pilot Program returned continued listing requirements to those in place prior to the higher standards adopted on June 9, 2005.¹¹ Thus, even prior to implementation of the Pilot Program, the Exchange had had considerable historical experience with the continued listing of companies that had continued to trade on the Exchange with global market capitalization and stockholders' equity each below \$75 million but greater than \$50 million. In addition, the Exchange represents that its experience under the Pilot Program has been very positive, as only one of the companies that was deemed back in compliance as a result of the adoption of the Pilot Program has subsequently fallen below the standard as amended by the Pilot Program as of the date of this filing and only two additional companies have been newly identified as being below the Pilot Program standard.

¹¹ See Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR-NYSE-2004-20). The Assets and Equity Test set forth in Section 102.01C(IV) and the NYSE Arca Transfer Standard set forth in Section 102.01C(V) were adopted subsequent to this amendment.

The Commission notes that the continued listing standards as amended by the Pilot Program are at least as stringent as those of any other national securities exchange. In addition, the Exchange notes that the Commission stated in the Pilot Program Notice¹² that it believed that the continued listing standards adopted under the Pilot Program met the requirements established in Exchange Act Rule 3a51-1(a)(2)(ii)¹³ in that they were reasonably related to the initial listing standards set forth in paragraph (a)(2)(i) of Exchange Act Rule 3a51-1 (the “Penny Stock Rule”).¹⁴

Based on the above, the Commission believes that permanent adoption of the Pilot Program is appropriate and that the continued listing standards, although lower than the standards in place prior to the Pilot Program, should help to ensure that listed companies continue to have adequate depth and liquidity to maintain fair and orderly markets for the protection of investors. Consequently, the Commission believes that the Pilot Program is consistent with the Act.

¹² See the Pilot Program Notice at Note 5.

¹³ 17 CFR 240.3a51-1(a)(2)(ii).

¹⁴ 17 CFR 240.3a51-1(a)(2)(i).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSE-2010-15) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).