SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65034; File No. SR-NYSE-2011-38)

August 4, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Sections 102.01 and 103.01 of the Exchange's Listed Company Manual to Adopt Additional Listing Requirements for Companies Applying to List After Consummation of a "Reverse Merger" with a Shell Company

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 July 22, 2011, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 102.01 and 103.01 of the Exchange's Listed Company Manual (the "Manual") to adopt additional initial listing requirements for companies applying to list after consummation of a "reverse merger" with a shell company. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 NYSE proposes to adopt more stringent listing requirements for operating companies that become Exchange Act reporting companies by combining with a shell company which is an Exchange Act reporting company. The proposed listing requirements would apply to combinations with a shell company which is an Exchange Act reporting company, through a reverse merger, exchange offer or otherwise (a "reverse merger transaction").

In a reverse merger transaction, an existing public shell company merges with a private operating company in a transaction in which the shell company is the surviving legal entity.[4] While the public shell company survives the merger, the shareholders of the private operating company typically hold a large majority of the shares of the public company after the merger and the management and board of the private company will assume those roles in the post-merger public company. The assets and business operations of the post-merger surviving public company are primarily, if not solely, those of the former private operating company. The Exchange understands that private operating companies generally enter into reverse merger transactions to enable the company and its shareholders to sell shares in the public equity markets. By becoming a public reporting company via a reverse merger, a private operating company can access the public markets quickly and avoid the generally more expensive and

[4] In some cases a private company effects an exchange offer or other transaction pursuant to which it combines with a public shell company.

lengthy process of going public by way of an initial public offering. While the public shell company is required to report the reverse merger in a Form 8-K filing with the Securities and Exchange Commission (the "Commission"), generally there are no registration requirements under the Securities Act of 1933 (the "Securities Act")[5] at that point in time, as there would be for an IPO.

Significant regulatory concerns, including accounting fraud allegations, have arisen with respect to a number of reverse merger companies in recent times. The Commission has taken direct action against reverse merger companies. During 2011, the Commission has suspended trading in the securities of a number of reverse merger companies and has revoked the securities registration of a number of reverse merger companies.[6] The Commission also recently brought an enforcement proceeding against an audit firm relating to its work for reverse merger companies.[7] In addition, the Commission issued a bulletin on the risks of investing in reverse merger companies, noting potential market and regulatory risks related to investing in reverse merger companies.[8]

In response to these concerns, NYSE Regulation staff has been conducting heightened, risk-informed reviews of reverse merger companies seeking to list on the NYSE or NYSE Amex to consider factors other than the enumerated initial listing criteria in making listing determinations. In this regard, Section 101.00 of the Manual provides that the Exchange has "broad discretion regarding the listing of a company." Section 101.00 provides that the Exchange may use such discretion to "deny listing or apply additional or more stringent criteria

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5 15 U.S.C. 77a.

6 See Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 ("Schapiro Letter"), at pages 3-4.

7 See Schapiro Letter at page 4.

8 See "Investor Bulletin: Reverse Mergers" 2011-123.

based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange." The Exchange may use this discretionary authority to increase the stringency of its stated listing criteria but not to decrease their stringency.

In light of the well-documented concerns related to some reverse merger companies as described above, the Exchange believes it is appropriate to codify in its rules specific requirements with respect to the initial listing qualification of reverse merger companies. As proposed, a reverse merger company would not be eligible for listing unless the combined entity had, immediately preceding the filing of the initial listing application:

(1) traded for at least one year in the U.S. over-the-counter market, on another national securities exchange or on a regulated foreign exchange following the consummation of the reverse merger and (i) in the case of a domestic issuer, filed with the Commission a Form 8-K including all of the information required by Item 2.01(f) of Form 8-K, including all required audited financial statements, or (ii) in the case of a foreign private issuer, filed the information described in (i) above on Form 20-F;

(2) maintained on both an absolute and an average basis for a sustained period a minimum stock price of at least $4; and

(3) timely filed with the Commission all required reports since the consummation of the reverse merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the filing described in (1) above.

In addition, a reverse merger company would be required to maintain on both an absolute and an average basis a minimum stock price of at least $4 through listing.

The Exchange believes that requiring a "seasoning" period prior to listing for reverse merger companies should provide greater assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to

address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company, and for any concerns that would preclude listing eligibility to be identified.

In addition, the Exchange believes that the proposed rule change will increase transparency to issuers and market participants with respect to the factors considered by NYSE Regulation in assessing reverse merger companies for listing, and generally should reduce the risk of regulatory concerns with respect to these companies being discovered after listing. However, the Exchange notes that, while it believes the proposed requirements would be a meaningful additional safeguard, it is not possible to guarantee that a reverse merger company (or any other listed company) is not engaged in undetected accounting fraud or subject to other concealed and undisclosed legal or regulatory problems.

For purposes of proposed Section 102.01F of the Manual (which will be applicable to reverse merger companies which qualify to list under the domestic companies criteria of Section 102.01) and proposed Section 103.01E of the Manual (which will be applicable to reverse merger companies which qualify to list under the non-U.S. companies criteria of Section 103.01), a "Reverse Merger" would mean any transaction whereby an operating company became an Exchange Act reporting company by combining with a shell company that was an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company that qualified for initial listing under Section 102.06 of the Manual (i.e., the Exchange's special purpose acquisition company ("SPAC") listing standard). In determining whether a company was a shell company, the Exchange would consider, among other factors: whether the company was considered a "shell company" as defined in Rule 12b-2

under the Exchange Act; what percentage of the company's assets were active versus passive; whether the company generated revenues, and if so, whether the revenues were passively or actively generated; whether the company's expenses were reasonably related to the revenues being generated; how many employees worked in the company's revenue-generating business operations; how long the company had been without material business operations; and whether the company had publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

In order to qualify for initial listing, a company that was formed by a Reverse Merger (a "Reverse Merger Company") would be required to comply with one of the initial listing standards for operating companies set forth in Section 102.01C or 103.01B of the Manual and the applicable distribution, stock price and market value requirements of Sections 102.01A and 102.01B of the Manual (in the case of companies listing pursuant to Section 102.01) and Section 103.01A (in the case of companies listing pursuant to Section 103.01). Proposed Sections 102.01F and 103.01E would supplement and not replace any applicable requirements of Sections 102.01 or 102.03. However, in addition to the otherwise applicable requirements of Sections 102.01 or 103.01, a Reverse Merger Company would be eligible to submit an application for initial listing only if it meets the additional criteria specified above.

The Exchange would have the discretion to impose more stringent requirements than those set forth above if the Exchange believed it was warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that were not subject to transfer restrictions, if the Reverse Merger Company had not had a Securities Act registration statement or other filing subjected to a comprehensive review by the

Commission, or if the Reverse Merger Company had disclosed that it had material weaknesses in its internal controls which had been identified by management and/or the Reverse Merger Company's independent auditor and had not yet implemented an appropriate corrective action plan.

A Reverse Merger Company would not be subject to the requirements of proposed Section 102.01F or proposed Section 103.01E, as applicable, if it was listing in connection with an Initial Firm Commitment Underwritten Public Offering (as defined in Section 102.01B[9]) where the proceeds to the Reverse Merger Company were sufficient on a standalone basis to generate $40,000,000 in aggregate market value of publicly-held shares and the offering was occurring subsequent to or concurrently with the reverse merger.[10] In that case, the Reverse Merger Company would only need to meet the requirements of one of the initial listing standards in Section 102.01C or Section 103.01B, as applicable.[11] The Exchange believes that it is appropriate to exempt Reverse merger Companies from the proposed rule where they are listing in conjunction with a sizable offering, as those companies would be subject to the same

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9 For purposes of Section 102.01B, a company is listing in connection with its Initial Firm Commitment Underwritten Public Offering if (i) such company has a class of common stock registered under the Exchange Act, (ii) such common stock has never been listed on a national securities exchange in the period since the commencement of its current registration under the Exchange Act, and (iii) such company is listing in connection with a firm commitment underwritten public offering that is its first firm commitment underwritten public offering of its common stock since the registration of its common stock under the Exchange Act.

10 The prospectus and registration statement covering the offering would thus need to relate to the combined financial statements and operations of the Reverse Merger Company.

11 The Commission notes that under NYSE's proposal a non-U.S. Reverse Merger Company that will not be subject to the proposed 103.01E requirements because it is listing in connection with an Initial Firm Commitment Underwritten Public Offering where the proceeds in the offering will generate a minimum of $40,000,000 in aggregate market value of publicly held shares would still have to meet all the requirements in Section 103.01A of the Manual that include a market value of publicly held shares of $100 million worldwide.

Commission review and due diligence by underwriters as a company listing in conjunction with its IPO or any other company listing in conjunction with an Initial Firm Commitment Underwritten Public Offering, so it would be inequitable to subject them to more stringent requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[12] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] 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 rule change is consistent with Section 6(b)(5) of the Act in that, as discussed above under the heading "Purpose", its purpose is to apply more stringent initial listing requirements to a category of companies that have raised regulatory concerns, thereby furthering the goal of protection of investors and the public interest.

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.

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.

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12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(5).

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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, as amended, 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 Number SR-NYSE-2011-38 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2011-38. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2011-38, 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.[14]

Elizabeth M. Murphy
Secretary

[14] 17 CFR 200.30-3(a)(12).