

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69565; File No. SR-NYSE-2013-33)

May 13, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Proposing To: (i) Delete the Sections in the Listed Company Manual (the “Manual”) Containing the Listing Application Materials (Including the Listing Application and the Listing Agreement) and Adopt Updated Listing Application Materials that will be Posted on the Exchange’s Website; and (ii) Adopt As New Rules Certain Provisions that are Currently Included in the Various Forms of Agreements That Are in the Manual, As Well As Some Additional New Rules that Make Explicit Existing Exchange Policies with Respect to Initial Listings

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 30, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 Substance of the Proposed Rule Change

The Exchange proposes to: (i) delete the sections in the Listed Company Manual (the “Manual”) containing the listing application materials (including the listing application and the listing agreement) and adopt updated listing application materials that will be posted on the Exchange’s website; and (ii) adopt as new rules certain provisions that are currently included in the various forms of agreements that are in the Manual, as well as some additional new rules that make explicit existing Exchange policies with respect to initial listings. The text of the proposed

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) delete the forms of documents required in connection with a listing from the Manual and eliminate requirements from those documents that are redundant or that no longer serve any regulatory purpose; and (ii) adopt as new rules certain provisions that are currently included in the various forms of agreements that are in the Manual, as well as some additional new rules that make explicit existing Exchange policies with respect to initial listings. In lieu of their inclusion in the Manual, the Exchange proposes to make all of the required documents (including the listing application and the listing agreement) available on its website ([www.nyx.com](http://www.nyx.com)).<sup>4</sup> In the event that in the future the Exchange makes any substantive changes

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<sup>4</sup> The forms of all of the documents required in connection with a listing application as they will appear on the Exchange's website are included in Exhibit 3 to this filing. The Commission notes that Exhibit 3 is attached to the filing, not to this Notice. It has been a long-standing practice of the Exchange to post on its website the forms of the documents required to be submitted in connection with applications to list. After approval of this proposal the Exchange will continue that practice as before, but the forms of those documents will no longer be set forth in the Manual.

(including changes to the rights, duties, or obligations of the applicant or the Exchange, or that would otherwise require a rule filing) to those documents being removed from the Manual, it will submit a rule filing to the Securities and Exchange Commission (“SEC”) to obtain approval of such changes.<sup>5</sup> The Exchange will maintain all historical versions of those documents on its website after changes have been made, so that it will be possible to review how each document has changed over time.

Part I of the rule filing includes a discussion of the proposed changes to the Manual on a section-by-section basis. Part II sets out the Exchange’s proposed approach to each item included in the current forms of listing agreements for domestic companies and Part III sets out the Exchange’s proposed approach to each item included in the current forms of listing agreements for foreign private issuers. Part IV sets forth the Exchange’s proposed approach to each requirement in the current form of the original listing application. Finally, Part V sets forth the Exchange’s proposed approach to the requirements in the forms of transfer agent and registrar agreements.

#### I. Proposed Changes to the Manual by Section

The following is a discussion of the changes being made to the Manual on a section-by-section basis<sup>6</sup>:

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<sup>5</sup> The Exchange will not submit a rule filing if the changes made to a document are typographical or stylistic in nature.

<sup>6</sup> All rule references in this filing are to sections of the Manual unless otherwise specified. In addition to the changes discussed herein, the Exchange proposes to amend the following sections of the Manual to remove cross-references therein to sections that are proposed to be deleted or amended and to state that the required documents are on the Exchange’s website or available from the Exchange upon request: Sections 102.01C(F) (Minimum Numerical Standards—Domestic Companies—Equity Listings); 103.01B(C) (Minimum Numerical Standards Non-U.S. Companies Equity Listings); 103.04 (Sponsored American Depositary Receipts or Shares (“ADRS”)); 204.00(B) (Notice to

### Amendments to Sections 102.01C and 103.01B

Sections 102.01C and 103.01B permit companies to make certain adjustments to their reported financial information for purposes of complying with the Exchange's initial quantitative listing standards. This adjusted financial data is required to be included as part of the company's listing application. The Exchange proposes to amend each of these sections to remove a cross-reference to the listing application in Section 702.04 and to state that the form of listing application and information regarding supporting documents required in connection with adjustments to historical financial data are available on the Exchange's website or from the Exchange upon request.

### Amendment to Sections 103.04 – Sponsored American Depositary Receipts or Shares (“ADRs”)

Section 103.04 contains requirements for companies listing American Depositary Receipts (“ADRs”). The Exchange proposes to delete a cross-reference to the listing agreements in Section 901.00 and to add a statement that the form of listing agreement and information regarding supporting documents required in connection with listing ADRs are available on the Exchange's website or from the Exchange upon request.

### Addition of Section 104.00 – Confidential Review of Eligibility

The Exchange proposes to add a new Section 104.00 to describe the free confidential review of the eligibility for listing undertaken by the Exchange of any company that (i) requests such a review and (ii) provides the documents listed in Section 104.01 (for domestic companies) or Section 104.02 (for non-U.S. companies). A company may submit an original listing application only after it has been cleared to do so by the Exchange after completion of a

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and Filings with the Exchange); 204.04 (Business Purpose Changed); 204.13 (Form or Nature of Listed Securities Changed); 204.18 (Name Change); and 204.23 (Rights or Privileges of Listed Security Changed Last Modified: 8/21/2006).

confidential eligibility review.

Amendment to Section 104.01 – Domestic Companies

The Exchange proposes to amend Section 104.01 to delete the requirement to certify the copy of the applicant’s charter and by-laws provided in connection with a confidential eligibility review, as the certification is not necessary for such review. The Exchange proposes to modify the provision specifying that it will review specimen bond or stock certificates by inserting the words “if any” at the end of the provision, as not all listed securities are certificated and the provision will therefore not always be applicable.<sup>7</sup> In addition, the Exchange proposes to add a statement that the form of listing application and information regarding supporting documents are available on the Exchange’s website or from the Exchange upon request.

Amendment to Section 104.02 – Non-U.S. Companies

The Exchange proposes to amend Section 104.02 to state that an applicant seeking a confidential eligibility review should provide a copy of its charter and by-laws “or equivalent constitutional documents,” in recognition of the fact that in a number of countries constitutional documents are not in the form of charters or by-laws. At the same time, the Exchange proposes to delete the requirement that the copy provided be certified, as the certification is not necessary for such review. The Exchange proposes to modify the provision specifying that it will review specimens of certificates traded or to be traded in the U.S. market by inserting the words “if any” at the end of the provision, as not all listed securities are certificated and the provision will therefore not always be applicable. The Exchange also proposes to delete the requirement to provide worldwide and U.S. stock distribution schedules. The stock distribution schedule

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<sup>7</sup> The Exchange’s requirements with respect to the form and content of stock certificates are set forth in Section 501.01 of the Manual and those with respect to bond certificates are set forth in Section 501.02.

requirement is obsolete because the Exchange obtains the distribution information it needs from the applicant's transfer agent. In addition, the Exchange proposes to add a statement that the form of listing application and information regarding supporting documents are available on the Exchange's website or from the Exchange upon request.

Proposed Section 107.00 - Financial Disclosure and Other Information Requirements

The Exchange proposes to include in the Manual a new Section 107.00 ("Financial Disclosure and Other Information Requirements") as follows:

- Section 107.01 (Auditing Standards) A company's qualification to list will be determined on the basis of financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; or (ii) reconciled to U.S. generally accepted accounting principles as required by the SEC's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the SEC's rules.
- Section 107.02 (Auditor Registration) Each company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002.<sup>8</sup>
- Section 107.03 (SEC Compliance) No security shall be approved for listing if the issuer has not for the 12 months immediately preceding the date of listing filed on a timely basis all periodic reports required to be filed with the SEC or Other

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<sup>8</sup> 15 U.S.C. 7212.

Regulatory Authority or the security is suspended from trading by the SEC pursuant to Section 12(k) of the Exchange Act. "Other Regulatory Authority" means: (i) in the case of a bank or savings authority identified in Section 12(i) of the Exchange Act, the agency vested with authority to enforce the provisions of Section 12 of the Exchange Act; or (ii) in the case of an insurance company that is subject to an exemption issued by the SEC that permits the listing of the security, notwithstanding its failure to be registered pursuant to section 12(b), the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary state.

- Section 107.04 (Exchange Information Requests) The Exchange may request any information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial listing, including, but not limited to, any material provided to or received from the SEC or Other Regulatory Authority (as defined in Section 107.03). A company's security may be denied listing if the company fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading.

While the Exchange's historical and current practice has been to impose all of the foregoing requirements as a matter of practice, it believes that the transparency of having these policies stated explicitly in the Manual will be helpful.

Amendments to Sections 204.00 – Notice to and Filings with the Exchange, 204.04 – Business Purpose Changed, 204.13 – Form or Nature of Listed Securities Changed, 204.18 – Name Change, and 204.23 – Rights or Privileges of Listed Security Changed

The Exchange proposes to amend Sections 204.00, 204.04, 204.13, 204.18 and 204.23 to delete cross-references therein to sections of the Manual relating to the listing application and listing agreements and to replace such cross-references with a statement that the form of listing application and information regarding supporting documents required in connection with the listing application are available on the Exchange’s website or from the Exchange upon request.

Amendment to Section 311.01 – Publicity and Notice to the Exchange of Redemption

The Exchange proposes to delete from the forms of listing agreements for domestic and non-U.S. companies a provision that requires partial redemptions of listed securities to be either pro rata or by round lot. In lieu of those provisions, the Exchange proposes to amend Section 311.01 to impose an identical requirement.

Amendments to Sections 501.01 – Stock Certificates and 501.02 – Bond Certificates

The Exchange proposes to delete from the forms of listing agreements for domestic and non-U.S. companies a provision that requires listed companies to issue new certificates for listed securities replacing lost ones upon notification of loss of the original certificate and receipt of proper indemnity. In lieu of those provisions, the Exchange proposes to amend Section 501.01 to include an identical requirement.

The Exchange proposes to delete from the forms of listing agreements for domestic and non-U.S. companies a provision that provides that, in the event of the issuance of any duplicate bond to replace a bond which has been alleged to be lost, stolen or destroyed and the subsequent appearance of the original bond in the hands of an innocent bondholder, either the original or the duplicate bond must be taken up and cancelled and the issuer must deliver to such holder another



bond theretofore issued and outstanding. In lieu of those provisions, the Exchange proposes to amend Section 501.02 to include an identical requirement.

Section 601.00 et seq. – Services to be Provided by Transfer Agents and Registrars and Sections 906.01-906.03. – Agreements of Transfer Agents and Registrars with the Exchange

In its revised listing agreement, as described in Parts II and III below, the Exchange has included an explicit agreement by the applicant issuer to abide by the transfer agent and registrar requirements set forth in Section 601.00 of the Manual et seq. In light of that requirement in the proposed listing agreement and the explicit requirements of Section 601.00 et seq., the Exchange proposes to no longer require the execution of the forms of transfer agent and registrar agreements currently set forth in Sections 906.01, 906.02 and 906.03 of the Manual. The Exchange notes that neither NASDAQ nor NYSE MKT requires similar agreements. As described in Part V below, the Exchange proposes to add to Section 601.01 certain requirements set forth in the transfer agent and registrar agreements that are not currently embodied in any other rule. In addition to deleting Sections 906.01, 906.02 and 906.03, the Exchange proposes to delete the references to those agreements in Section 601.01 and an erroneous reference in Section 601.01(B) to Section 906.04, which does not exist.<sup>9</sup> The Exchange proposes to delete Section 601.03 in its entirety, as it relates solely to the forms of transfer agent and registrar agreements which the Exchange is proposing to eliminate.

Modification to Section 701.02 – Listing Fees

The Exchange proposes to modify the reference to Section 902.02 in Section 701.02 so

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<sup>9</sup> The reference to Section 906.04 is included as a parenthetical after a reference to the “Transfer Agent-Registrar Agreement Type A” in Section 601.01 (B) and to the “Transfer Agent-Registrar Agreement Type B” in Section 601.01 (C), which are actually included in Section 906.03. The Exchange therefore believes that the erroneous references to Section 906.04 should have instead referred to Section 906.03.

that it will refer to the correct current title of Section 902.02, “General Information on Fees.”

Amendment to Section 702.00 – Original Listing Application Securities of Other than Debt Securities

The Exchange proposes to amend Section 702.00 (Original Listing Application Securities of Other than Debt Securities) to replace the general information currently in that section with a general outline of the listing process which will be more informative for listing applicants.

Section 702.00 will be renamed “Original Listing Application for Securities of an Issuer Which Does Not at the Time of Application Have any Other Securities Listed On the Exchange.” The following is a description of the listing process as set forth in Section 702.00 as amended:

If a company wishes to list a class of securities (including common equity securities) but does not at the time of application have any other class of securities listed on the Exchange, the company must first seek a free confidential review of listing eligibility as set forth in Section 104.00. If, upon completion of this free confidential review, the Exchange determines that a company is eligible for listing, the Exchange will notify that company in writing (the “clearance letter”) that it has been cleared to submit an original listing application. A clearance letter is valid for nine months from its date of issuance. If a company does not list within that nine month period and wishes to list thereafter, the Exchange will perform another confidential listing eligibility review as a condition to the issuance of a new clearance letter.

After receiving a clearance letter, a company choosing to list must file an original listing application. The original listing application and other required supporting documents can be found on [www.nyx.com](http://www.nyx.com). A company should submit drafts of the original listing application and other required documents as far in advance as possible of the time it seeks Exchange authorization of its application. In the case of documents which by their nature cannot be

completed until close to the listing date, the Exchange will authorize an application upon the condition that a company submits the supporting documents as soon as available, but, in any event, before the listing date. Prior to the listing date, the company's securities will be allocated to a Designated Market Maker pursuant to the Exchange's Allocation Policy. The company's Exchange representative will provide a copy of the Allocation Policy to the company.

Section 902.03 hereof requires certain categories of listing applicants to pay an Initial Application Fee as a prior condition to receipt of eligibility clearance. Promptly after making a determination that a company is eligible to list but subject to payment of the Initial Application Fee, the Exchange shall inform such company in writing that it is entitled to receive a clearance letter upon payment of the applicable Initial Application Fee.<sup>10</sup> Applicants that are not subject to the Initial Application Fee will not receive any similar notification, but rather will receive a clearance letter promptly after the Exchange has made an eligibility determination.

In addition to applying to the Exchange, a company must, prior to the listing date, register its securities with the SEC under the Exchange Act (unless securities are exempt from the registration requirement). When the Exchange approves securities for listing and receives a company's Exchange Act registration statement, it will certify such approval to the SEC. (See Section 702.01 (Registration under the Securities Exchange Act of 1934).)

The Exchange proposes to delete from the Manual Sections 702.01 (Introduction), 702.02 (Timetable for Original Listing of Securities Other than Debt Securities), 702.03 (Submission of Listing Application), 702.04 (Supporting Documents) and 702.05 (Printing of Application).

Section 702.01 describes the listing application as historically used, which was not on a

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<sup>10</sup> The purpose of this notification is to assure any such company that it will not have to pay a non-refundable Initial Application Fee subject to any risk that it will not subsequently receive a clearance letter.

set form and required companies to provide a narrative of the information relevant to the particular issue. The listing application form used going forward will be in the form of a questionnaire and the Exchange will not require the sort of narrative that was historically included in the listing application, as this information is typically all readily available in the company's SEC filings, as discussed in Parts II and III below. Section 702.02 is being eliminated because the timeline provided in that section is very approximate and does not necessarily bear any relation to the listing experience of any individual company. As such, the Exchange believes it is of limited practical value.

The Exchange proposes to eliminate Section 702.03 (Submission of Listing Application), as the Exchange's requirements with respect to the submission of copies of the listing application will be set forth in detail in listing checklists posted on the Exchange's website. The Exchange also proposes to delete Section 702.04 (Supporting Documents). To the extent that the documents described in Section 702.04 continue to be relevant to the listing process, the Exchange will request them from issuers pursuant to the listing application checklists described above.

The following is the list of supporting documents required by Section 702.04 in its current form and a discussion of whether each individual document will continue to be required and, if not, why not:

Signed Application: The Exchange will continue to require copies of the signed application but will require two signed copies of the application going forward rather than the signed copy and five conformed copies specified in Section 702.04, as Exchange staff only require two copies for internal record keeping purposes.

Charter and By-Laws: The charter and by-laws will continue to be required. The Exchange proposes to no longer require that the copies provided be certified, as the certification is not necessary for its review.

Resolutions: The Exchange will continue to require copies of the applicable board resolutions, although they will no longer need to be certified, as certification is not necessary to the Exchange's review.

Opinions of Counsel/Certificate of Good Standing: These documents will continue to be required.

Stock Distribution Schedule: The Exchange proposes to eliminate the stock distribution schedule requirement. The stock distribution schedule requirement is obsolete because the Exchange obtains the distribution information it needs from the applicant's public filings and from its transfer agent.

Certificate of Transfer Agent/Certificate of Registrar: The Exchange proposes to no longer require these documents, as the information the Exchange needs about the applicant's outstanding shares is available in its prospectus or periodic SEC reports, as well as the report of the applicant's outstanding shares that will be required to be delivered to the Exchange once a quarter after listing.

Notice of Availability of Stock Certificates: The Exchange proposes to no longer require this document as all transactions in listed securities in the national market system are conducted electronically through DTCC.

Specimens of the Securities for Which Listing Application is Made:

The Exchange proposes to continue to require copies of specimen certificates, if any.

Public Authority Certificate: The Exchange proposes to continue to require public authority certificates, where applicable.

Prospectus: The Exchange does not propose to continue to require applicants to provide copies of their final prospectuses, as they are publicly available on the SEC's website.

Financial Statements: The Exchange does not propose to continue to require applicants to provide copies of their financial statements, as they are included in the applicant's SEC filings which are publicly available on the SEC's website.

Adjustments to Historical Financial Data: The Exchange proposes to continue to require companies to provide as part of their application copies of any adjusted financial data used in connection with the financial qualification for listing of the applicant.

Listing Agreement: The Exchange proposes to require the applicable form of proposed revised listing agreement as set forth elsewhere in this filing.

Memorandum with Respect to Unpaid Dividends, Unsettled Rights and Record Dates: The Exchange proposes to no longer require this document, as all of the required information is included in the proposed revised listing application included in Exhibit 3 hereto.<sup>11</sup>

Registration form under the Securities Exchange Act of 1934: The Exchange proposes to continue to require applicants to supply this document.

The second paragraph of Section 702.04 requires applicants to provide required documents at least one week prior to listing or, if this is not possible because of the nature of the document in question, as soon as practicable thereafter, but in any event prior to the first day of trading subject to the Exchange's conditional listing approval. As set forth above, similar requirements will be included in Section 702.00 as amended. Section 702.00 as amended will

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<sup>11</sup> The Commission notes that Exhibit 3 is attached to the filing, not to this Notice.

provide that documents should be provided to the Exchange as far in advance of when the company seeks authorization of its application as possible.

The Exchange proposes to delete Section 702.05 (Printing of Application). The Exchange has not distributed printed copies of approved listing applications for many years and, consequently, the discussion of the printing and distribution of applications in Section 702.05 has no current relevance. The listing application in its current form requires issuers to provide significant amounts of disclosure about the issuer's business and financial condition and market participants needed copies of applications to obtain access to that information. The listing application has lost its relevance as a disclosure document in recent decades due to the development of the SEC's own comprehensive disclosure system. Market participants now rely on a company's SEC filings as a comprehensive source of information about the applicant company and they no longer need to receive copies of a company's listing application for that purpose.

Section 702.06 (Registration under the Securities Exchange Act of 1934) will be renumbered as Section 702.01.

Amendment to 703.00 - Subsequent Listing Applications and Debt Securities Applications

The Exchange proposes to amend Section 703.00 by modifying subsections 703.01 through 703.14, each of which relates to the filing of supplemental listing applications in different circumstances and in relation to different types of securities. In each case, the subsection will be amended to delete references to the form of supplemental listing application set forth in Section 903.02 and also the lists of documents required to be submitted in connection with the relevant supplemental listing application. Instead, each applicable subsection of Section 703.00 will state that the form of listing application and information regarding supporting

documents required in connection with supplemental listing applications and debt securities applications are available on the Exchange's website or from the Exchange upon request.

Section 703.01 Part 1(A) currently states that the application must be in the form of a memo from the company. This statement is modified to instead provide that the applicable forms of listing applications and information regarding supporting documents required in connection with supplemental listing applications and debt securities applications are available on the Exchange's website or from the Exchange upon request.

Section 703.01 Part 2(B) currently provides that four signed typewritten copies of the supplemental listing application must be provided to the Exchange. The Exchange currently needs only two signed copies and its needs may change over time. Therefore the Exchange proposes to amend this provision so that it will state that information about the number of required copies of the application can be found on the Exchange's website or will be provided by Exchange staff upon request.

The Exchange proposes to amend Section 703.02 Part 1(B) to remove an obsolete reference to the Exchange's weekly bulletin, which is no longer distributed.

The Exchange proposes to amend a reference in Section 703.02 (part 2) (Stock Split/Stock Rights/Stock Dividend Listing Process) of the Manual to the form of due-bill agreement as currently set forth in Section 904.05 so that it will refer to Section 904.02 to reflect the proposed renumbering described below.

#### Proposed Amendment to Section 802.01D – Other Criteria

Section 802.01D of the Manual sets forth non-quantitative bases on which the Exchange may make a determination to delist a company when it deems such action to be appropriate. The Exchange proposes to add to this section a provision explicitly providing that the Exchange may



delist a company for a breach of the terms of its listing agreement. While Section 802.01D already provides broad discretion to the Exchange to delist a company when its continued listing is deemed inadvisable, the Exchange believes that a violation of the terms of a company's listing agreement may in certain circumstances be of such a serious nature that it should result in a delisting and that it is desirable to make that possibility explicit in the rule.

The Exchange also proposes to correct typographical errors in Section 802.01D by replacing colons with semi-colons in the list of possible defects in an audit opinion that may be a basis for delisting.

#### Section 901.00 - Listing Agreements

Section 901.00 sets forth the following agreements that are required for listing on the Exchange:

901.01 – Listing Agreement for Domestic Companies

901.02 – Listing Agreement for Foreign Private Issuers

901.03 – Listing Agreement for Depository of a Foreign Private Issuer

901.04 – For Japanese Companies – Free Share Distribution Understanding

901.05 - Listing Agreement for Voting Trusts

As the Exchange has amended the Manual over time, the forms of listing agreements have not always been amended to reflect changes made to the underlying listing requirements. Certain provisions of the listing agreements also reflect practices at the Exchange and in the securities markets generally that are no longer prevalent, such as the transfer of physical securities in Exchange transactions rather than the contemporary system of book entry transfer through the Depository Trust & Clearing Corporation (“DTCC”). Consequently, there are provisions in the listing agreements that are obsolete.

The Exchange proposes to remove from the Manual each of the agreements set forth in Sections 901.01 through 901.05. Revised versions of the agreements will be posted on the Exchange's website. These revised versions will be streamlined to remove obsolete provisions and those provisions that are duplicative of requirements included elsewhere in the Manual. The Exchange believes that this approach is consistent with the practice of other national securities exchanges, including NASDAQ and NYSE MKT.

The Exchange's proposed approach to each item included in the current forms of listing agreements for domestic companies and foreign private issuers in Sections 901.01 and 901.02 is set out in Parts II and III below.

The Exchange proposes to delete from the Manual each of the listing agreement for the depository of a foreign private issuer set forth in Section 901.03, the Free Share Distribution Agreement for Japanese companies in Section 901.04 and the Listing Agreement for Voting Trusts set forth in Section 901.05. However, the current forms of those agreements, as currently set forth in Sections 901.03, 901.04 and 901.05, will be available on the Exchange's web site at [www.nyx.com](http://www.nyx.com) and will continue to be used where applicable.

#### Section 902.01 – Listed Securities Fee Agreement

The Exchange proposes to eliminate the Listing Securities Fee Agreement as an agreement to pay all applicable fees is included as part of the proposed amended listing agreement. Accordingly Section 902.01 of the Manual will be deleted in its entirety.

#### Section 903.00 – Listing Applications

The Exchange proposes to delete from the Manual the form of original listing application contained in Section 903.01 and the form of supplemental listing application contained in Section 903.02. Accordingly, Sections 903.01 and 903.02 will be deleted from the Manual in

their entirety. In addition, Section 903.00, which provides a summary of the current contents of Sections 903.01 and 903.02, will be deleted in its entirety. A revised form of the original listing application and the existing forms of the supplemental listing applications for various types of issuance as currently set forth in Section 903.02 (which are not being revised at this time) will be provided on the Exchange's website. A fuller discussion of the proposed changes to the form of original listing application is included in Part IV below.

#### Section 904.00 – Other Forms

The Exchange proposes to delete from the Manual Sections 904.01 (Stock Distribution Schedule) and 904.02 (Unpaid Dividends, Unsettled Rights, and Record Dates – Memorandum). Section 904.03 ("Due Bill" Form Letter) will be renumbered as Section 904.01. Section 904.04 (Foreign Currency Warrants and Currency Index Warrants and Stock Index Warrants Membership Circular) will be renumbered as Section 904.02.

The Stock Distribution Schedule in Section 904.01 is obsolete because the Exchange obtains the distribution information it needs from the company's transfer agent. The Exchange notes that the only information it needs for purposes of determining the company's compliance with Exchange distribution requirements is the number of round lot holders. Information about how many holders there are of different ranges of numbers of shares, the 10 largest holdings, and the geographical distribution of stockholders, is not relevant to any Exchange listing requirement.

The Exchange proposes to require applicants to provide in the revised form of original listing application the information required by the memorandum currently set forth in Section 904.02.<sup>12</sup>

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<sup>12</sup> See Section II.A of the proposed form of listing application set forth in Exhibit 3 hereto.

## II. Listing Agreement for Domestic Companies

The following sets forth each of the requirements included in the current form of listing agreement for domestic companies currently set forth in Section 901.01 of the Manual and the Exchange's proposed approach to each item upon adoption of its new form of listing agreement. Also set forth are the requirements that would be in the proposed amended listing agreement for domestic companies.

### Section I

1. The Corporation will promptly notify the Exchange of any change in the general character or nature of its business.

- The Exchange proposes to delete this requirement as it is identical to Section 204.19 of the Manual.

2. The Corporation will promptly notify the Exchange of any changes of officers or directors.

- The Exchange proposes to delete this requirement as it is identical to Section 204.10 of the Manual.

3. The Corporation will promptly notify the Exchange in the event that it or any company controlled by it shall dispose of any property or of any stock interest in any of its subsidiary or controlled companies, if such disposal will materially affect the financial position of the Corporation or the nature or extent of its operations.

- The Exchange proposes to delete this requirement as it is identical to Section 204.11 of the Manual.

4. The Corporation will promptly notify the Exchange of any change in, or removal of, collateral deposited under any mortgage or trust indenture, under which securities of the Corporation listed on the Exchange have been issued.

- The Exchange proposes to delete this requirement as it is identical to Section 204.07 of the Manual.

5. The Corporation will:

- a. File with the Exchange four copies of all material mailed by the Corporation to its stockholders with respect to any amendment or proposed amendment to its Certificate of Incorporation.
- Section 204.00(B) of the Manual requires companies to promptly provide to the Exchange one hard copy of any notice to shareholders with respect to any proposed amendments to the company's charter, as well as a certified copy of the amended charter along with a letter of transmittal indicating the sections amended since the previous filing of amendments or amended documents, following the date that such notice is given or the charter is amended. Section 204.00(B) requires companies to follow a similar procedure with respect to resolutions of the Board of Directors, or any certificate or other document, having the effect of an amendment to the charter or by-laws. The requirements of Section 204.00(B) serve the Exchange's needs with respect to charter amendments, in particular because all material used in soliciting shareholders' votes in connection with any charter amendment must be filed with the SEC and are readily accessible by the NYSE's staff on the SEC website. In addition, Section 402.01 of the Manual requires listed companies to file with the Exchange six definitive copies of the

proxy material (together with proxy card) not later than the date on which such material is sent, or given, to any security holders. The Exchange notes that compliance with Section 402.01 fulfills the company's obligation under Exchange Act Rule 14a-6(c) to file with the Exchange three copies of all materials mailed to shareholders in connection with a proxy solicitation. Consequently, the Exchange proposes to eliminate this section of the listing agreement.

b. File with the Exchange a copy of any amendment to its Certificate of Incorporation, or resolution of Directors in the nature of an amendment, certified by the Secretary of the state of incorporation, as soon as such amendment or resolution shall have been filed in the appropriate state office.

- Section 204.00(B) of the Manual requires companies to provide to the Exchange a certified copy of the amended charter. Consequently, the Exchange proposes to eliminate this section of the listing agreement.

c. File with the Exchange a copy of any amendment to its By-Laws, certified by a duly authorized officer of the Corporation, as soon as such amendment shall have become effective.

- The Exchange proposes to delete this requirement as it is duplicative of Section 204.00(B) of the Manual, which requires companies to file with the Exchange copies of any amendments to their by-laws.

6. The Corporation will disclose in its annual report to shareholders, for the year covered by the report: (1) the number of shares of its stock issuable under outstanding options at the beginning of the year; separate totals of changes in the number of shares of its stock under option

resulting from issuance, exercise, expiration or cancellation of options; and the number of shares issuable under outstanding options at the close of the year, (2) the number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan, and (3) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options.

- The Exchange proposes to delete this section, as the SEC previously approved the elimination of a similar requirement in Section 703.09 of the Manual on the basis that the SEC's own rules provided for comprehensive disclosure regarding options.<sup>13</sup>

7. The Corporation will report to the Exchange, within ten days after the close of a fiscal quarter, in the event any previously issued shares of any stock of the Corporation listed on the Exchange have been reacquired or disposed of, directly or indirectly, for the account of the Corporation during such fiscal quarter, such report showing separate totals for acquisitions and dispositions and the number of shares of such stock so held by it at the end of such quarter.

- The Exchange proposes to delete this requirement as it is identical to Section 204.25 of the Manual.

8. The Corporation will promptly notify the Exchange of all facts relating to the purchase, direct or indirect, of any of its securities listed on the Exchange at a price in excess of the market price of such security prevailing on the Exchange at the time of such purchase.

- Exchange rules have not prohibited off-board trading for many years. NYSE Regulation, Inc. ("NYSE Regulation") conducts a variety of surveillances based

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<sup>13</sup> See Securities Exchange Act Release No. 54344 (August 21, 2006), 71 FR 51260 (August 29, 2006) (SR-NYSE-2005-68).

on trading on the NYSE to detect potentially manipulative trading activity in Exchange listed securities, as well as other violative activity. NYSE Regulation investigates alerts triggered by its surveillances and, if warranted, either (i) initiates regulatory action against the responsible member or member organization or (ii) refers to the matter to the SEC if the responsible market participant is not subject to the Exchange's jurisdiction. It is our understanding that other market centers that offer trading in NYSE listed securities pursuant to unlisted trading privileges also conduct surveillance of trading on their markets. NYSE Regulation relies on its regulatory surveillance program to monitor trading in listed securities, rather than on reporting by the companies themselves, and believes that its surveillance program is adequate for that purpose. Of course, any complaints or inquiries by listed companies or others are thoroughly investigated by NYSE Regulation, which takes action if violative activity is identified. In addition, Regulation NMS and the order protection rules of the Exchange and other market centers are designed to assure that orders are not executed outside the prevailing market, subject to certain exceptions. With respect to a listed company's purchases of its own securities, SEC Rule 10b-18 provides a safe harbor for such purchases that meet the conditions set forth in that rule and companies are required to report all purchases of their own securities pursuant to Item 703 of Regulation S-K.

Consequently, the Exchange has for some time not required companies to comply with the requirement to inform the Exchange about any share purchases at prices in excess of the market price on the Exchange and therefore proposes to delete this provision, as the Exchange



believes that the regulatory concerns originally underpinning this requirement are now more appropriately addressed through its regulatory surveillance program and SEC rules and reporting requirements.

9. The Corporation will not select any of its securities listed on the Exchange for redemption otherwise than by lot or pro rata, and will not set a redemption date earlier than fifteen days after the date corporate action is taken to authorize the redemption.

- The Exchange proposes to delete this requirement. The fifteen days [sic] notice of a date set for partial redemptions is included in Sections 204.22 and 311.01 of the Manual. The Exchange proposes to amend Section 311.01 to include the requirement that redemptions of listed securities must be pro rata or by lot.

10. The Corporation will promptly notify the Exchange of any corporate action which will result in the redemption, cancellation or retirement, in whole or in part, of any of its securities listed on the Exchange, and will notify the Exchange as soon as the Corporation has notice of any other action which will result in any such redemption, cancellation or retirement.

- The Exchange proposes to delete this requirement as it is duplicative of Section 204.22 of the Manual.

11. The Corporation will promptly notify the Exchange of action taken to fix a stockholders' record date, or to close the transfer books, for any purpose, and will take such action at such time as will permit giving the Exchange at least ten days' notice in advance of such record date or closing of the books.

- The Exchange proposes to delete this requirement as it is duplicative of the notice requirements contained in Sections 204.06, 204.17, 204.21 and 401.02 of the Manual. The Exchange notes that it reminds listed companies of its notice

requirements in a letter sent annually to all listed companies and that the notice requirements are also included in the “Guide to Requirements for Submitting Data to the Exchange” which is included as part of the introductory material in the Manual.

12. In case the securities to be listed are in temporary form, the Corporation agrees to order permanent engraved securities within thirty days after the date of listing.

- The Exchange proposes to delete this provision, as all securities traded through the facilities of the Exchange are now traded electronically, so requirements with respect to securities certificates are no longer relevant.

13. The Corporation will furnish to the Exchange on demand such information concerning the Corporation as the Exchange may reasonably require.

- The Exchange proposes to retain this provision in its revised form of listing agreement and in proposed new Section 107.04.

14. The Corporation will not make any change in the form or nature of any of its securities listed on the Exchange, nor in the rights or privileges of the holders thereof, without having given twenty days' prior notice to the Exchange of the proposed change, and having made application for the listing of the securities as changed if the Exchange shall so require.

- The Exchange proposes to delete this requirement as it is duplicative of Section 204.13 of the Manual.

15. The Corporation will make available to the Exchange, upon request, the names of member firms of the Exchange which are registered owners of stock of the Corporation listed on the Exchange if at any time the need for such stock for loaning purposes on the Exchange should develop, and in addition, if found necessary, will use its best efforts with any known large

holders to make reasonable amounts of such stock available for such purposes in accordance with the rules of the Exchange.

- The Exchange proposes to delete this requirement, as it is not reflective of current Exchange practices.

16. The Corporation will promptly notify the Exchange of any diminution in the supply of stock available for the market occasioned by deposit of stock under voting trust agreements or other deposit agreements, if knowledge of any such actual or proposed deposits should come to the official attention of the officers or directors of the Corporation.

- The Exchange proposes to delete this requirement as it is duplicative of Section 204.09 of the Manual.

17. The Corporation will make application to the Exchange for the listing of additional amounts of securities listed on the Exchange sufficiently prior to the issuance thereof to permit action in due course upon such application.

- The Exchange proposes to delete this requirement as it is duplicative of Section 703.01 Part 2 of the Manual.

## Section II

1. The Corporation will publish at least once a year and submit to its stockholders at least fifteen days in advance of the annual meeting of such stockholders and not later than three months after the close of the last preceding fiscal year of the Corporation a balance sheet as of the end of such fiscal year, and a surplus and income statement for such fiscal year of the Corporation as a separate corporate entity and of each corporation in which it holds directly or indirectly a majority of the equity stock; or in lieu thereof, eliminating all intercompany transactions, a consolidated balance sheet of the Corporation and its subsidiaries as of the end of

its last previous fiscal year, and a consolidated surplus statement and a consolidated income statement of the Corporation and its subsidiaries for such fiscal year. If any such consolidated statement shall exclude corporations a majority of whose equity stock is owned directly or indirectly by the Corporation:

(a) the caption of, or a note to, such statement will show the degree of consolidation; b) the consolidated income account will reflect, either in a footnote or otherwise, the parent company's proportion of the sum of, or difference between, current earnings or losses and the dividends of such unconsolidated subsidiaries for the period of the report; and (c) the consolidated balance sheet will reflect, either in a footnote or otherwise, the extent to which the equity of the parent company in such subsidiaries has been increased or diminished since the date of acquisition as a result of profits, losses and distributions.

Appropriate reserves, in accordance with good accounting practice, will be made against profits arising out of all transactions with unconsolidated subsidiaries in either parent company statements or consolidated statements.

Such statements will reflect the existence of any default in interest, cumulative dividend requirements, sinking fund or redemption fund requirements of the Corporation and of any controlled corporation, whether consolidated or unconsolidated.

- The Exchange proposes to delete this provision, as it is duplicative in some respects of SEC rules requiring the annual filing of financial statements as part of the company's annual report on Form 10-K, 20-F, 40-F or NCSR filed with the SEC and the requirement of the SEC's proxy rules, applicable to domestic Exchange-listed companies, that when an issuer is soliciting proxies for its annual shareholders meeting, the issuer must distribute an annual report including its

annual financial statements to shareholders, or notifies shareholders where such information may be accessed on the internet, in connection with proxy solicitation, at the same time as or prior to distribution of the proxy statement.<sup>14</sup> The Exchange notes that Section 203.01 of the Manual requires listed companies that are required to file with the SEC an annual report including audited financial statements (i.e., an annual report on Form 10-K, 20-F, 40-F or NCSR) to simultaneously make such annual report available on or through the company's website and to undertake to provide, upon request, a hard copy of its audited financial statements free of charge. The Exchange also notes that Section 802.01E of the Manual requires the delisting of any listed Company that fails to file its annual report within a compliance period determined by the Exchange, but in no event longer than 12 months from the original filing due date.

For foreign private issuers, eliminating this requirement is a substantive change. However, the SEC's proxy rules are not applicable to foreign private issuers and, in conformity with that position, the NYSE does not intend to impose such requirements itself.

2. All financial statements contained in annual reports of the Corporation to its stockholders will be audited by independent public accountants qualified under the laws of some state or country, and will be accompanied by a copy of the certificate made by them with respect to their audit of such statements showing the scope of such audit and the qualifications, if any, with respect thereto.

The Corporation will promptly notify the Exchange if it changes its independent public accountants regularly auditing the books and accounts of the Corporation.

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<sup>14</sup> See Securities Exchange Act Rule 14C-3.

- The Exchange proposes to eliminate the first paragraph above as it is duplicative of the SEC's requirements with respect to Form 10-K and Section 107.02 of the Manual. The Exchange proposes to delete the second paragraph above, as it is duplicative of the requirement to file a Form 8-K (under Item 4.01 of Form 8-K) when a company's auditor resigns or is dismissed. The Exchange monitors the SEC filings of listed companies and would promptly become aware of the filing of a Form 8-K reporting a change of auditors.

3. All financial statements contained in annual reports of the Corporation to its stockholders shall be in the same form as the corresponding statements contained in the listing application in connection with which this Listing Agreement is made, and shall disclose any substantial items of unusual or non-recurrent nature.

- The Exchange proposes to delete this requirement, as the form of companies' annual financial statements is dictated by the SEC's Form 10-K requirements rather than Exchange rules. The Exchange notes that an identical provision was previously deleted from Section 203.01 of the Manual.

4. The Corporation will publish quarterly statements of earnings on the basis of the same degree of consolidation as in the annual report. Such statements will disclose any substantial items of unusual or non-recurrent nature and will show either net income before and after federal income taxes or net income and the amount of federal income taxes.

- The Exchange proposes to replace this requirement with a requirement that companies file quarterly financial information on Form 10-Q. The Exchange notes that Section 802.01E of the Manual, which describes the compliance and delisting provisions for companies that are late in filing their annual reports with

the SEC, does not subject companies to delisting if they are late in filing a Form 10-Q. The Exchange does not currently delist companies as a consequence of a failure to file a Form 10-Q on a timely basis, although the Exchange has discussed with the SEC the establishment of such a requirement in connection with a proposed harmonization of the late filer rules of all of the national securities exchanges that list equity securities. However, the Exchange will (as has always been the case) consider a company's failure to timely file its Form 10-Qs as part of its ongoing review of whether a company is suitable for continued listing.

5. The Corporation will not make, nor will it permit any subsidiary directly or indirectly controlled by it to make, any substantial charges against capital surplus, without notifying the Exchange. If so requested by the Exchange, the Corporation will submit such charges to stockholders for approval or ratification.

- The Exchange proposes to delete this requirement as it is duplicative of Section 204.05 of the Manual.

6. The Corporation will not make any substantial change, nor will it permit any subsidiary directly or indirectly controlled by it to make any substantial change, in accounting methods, in policies as to depreciation and depletion or in bases of valuation of inventories or other assets, without notifying the Exchange and disclosing the effect of any such change in its next succeeding interim and annual report to its stockholders.

- The Exchange proposes to delete this requirement, as companies are required by SEC rules to disclose in their periodic reports on Form 10-K and 10-Q any changes in accounting methods and any effect of such changes on the company's financial statements.

7. The Corporation will maintain an audit committee in conformity with Exchange requirements.

- The Exchange proposes to delete this provision, as it is duplicative of Sections 303A.06 and 303A.07 of the Manual, which require listed companies to have an audit committee in compliance with Exchange rules and SEC Rule 10A-3.

### Section III

1. The Corporation will maintain, in accordance with the requirements of the Exchange:

a. An office or agency where the principal of and interest on all bonds of the Corporation listed on the Exchange shall be payable and where any such bonds which are registerable as to principal or interest may be registered.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.00(B) of the Manual.

b. An office or agency where:

(1) All stock of the Corporation listed on the Exchange shall be transferable.

(2) Checks for dividends and other payments with respect to stock listed on the Exchange may be presented for immediate payment.

(3) A security listed on the Exchange which is convertible will be accepted for conversion.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.00(A) of the Manual.

c. A registrar where stock of the Corporation listed on the Exchange shall be registerable. Such registrar shall be a bank or trust company not acting as transfer agent for the same security.



- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01 of the Manual. The Exchange notes that – contrary to this provision in the listing agreement – Section 601.01(B) of the Manual permits a transfer agent to act in a dual capacity as registrar.

2. The Corporation will not appoint a transfer agent, registrar or fiscal agent of, nor a trustee under a mortgage or other instrument relating to, any security of the Corporation listed on the Exchange without prior notice to the Exchange, and the Corporation will not appoint a registrar for its stock listed on the Exchange unless such registrar, at the time of its appointment becoming effective, is qualified with the Exchange as a registrar for securities listed on the Exchange, nor will the Corporation select an officer or director of the Corporation as a trustee under a mortgage or other instrument relating to a security of the Corporation listed on the Exchange.

- The Exchange proposes to delete this provision, because the requirements with respect to the appointment of transfer agents and registrars are set forth in Section 601.01 of the Manual and the requirements with respect to trustees are set forth in Section 603.01—603.04 of the Manual.

3. The Corporation will have on hand at all times a sufficient supply of certificates to meet the demands for transfer. If at any time the stock certificates of the Corporation do not recite the preferences of all classes of its stock, it will furnish to its stockholders, upon request and without charge, a printed copy of preferences of all classes of such stock.

- The Exchange proposes to delete the foregoing provision. The Exchange believes that the requirement that a company must have sufficient certificates available for transfer is anachronistic in light of the fact that (i) all trading in securities through the facilities of the Exchange is electronic, (ii) Section 501.00 of the Manual

requires all listed securities to be DRS eligible, and (iii) some companies have moved to complete dematerialization. Section 501.01 of the Manual requires that a statement of the rights and preferences of authorized classes or series of stock be readily available to shareholders, so the second sentence of the above provision is duplicative of that requirement.

4. The Corporation will publish immediately to the holders of any of its securities listed on the Exchange any action taken by the Corporation with respect to dividends or to the allotment of rights to subscribe or to any rights or benefits pertaining to the ownership of its securities listed on the Exchange; and will give prompt notice to the Exchange of any such action; and will afford the holders of its securities listed on the Exchange a proper period within which to record their interests and to exercise their rights; and will issue all such rights or benefits in form approved by the Exchange.

- Section 202.05 of the Manual requires a listed company to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities. Section 202.06 of the Manual specifies that information that should be published immediately via a press release or other Regulation FD compliant method would include dividend announcements, tender offers and stock splits. In addition, the material news events listed in Section 202.06 are intended to be illustrative rather than a complete list of instances where a news release is required. It is the Exchange's position that any corporate action that represents a material benefit to the company's shareholders should be publicized as required by Section 202.06, including but not limited to the benefits to shareholders specifically identified in Section 202.06. The Exchange proposes

to delete this requirement as the Exchange's requirements with respect to dividends and other rights are set forth in Section 204.12 of the Manual.

5. The Corporation will solicit proxies for all meetings of stockholders.

- The Exchange proposes to delete this requirement as it is duplicative of Section 402.04 of the Manual.

6. The Corporation will issue new certificates for securities listed on the Exchange replacing lost ones forthwith upon notification of loss and receipt of proper indemnity. In the event of the issuance of any duplicate bond to replace a bond which has been alleged to be lost, stolen or destroyed and the subsequent appearance of the original bond in the hands of an innocent bondholder, either the original or the duplicate bond will be taken up and cancelled and the Corporation will deliver to such holder another bond theretofore issued and outstanding.

- The Exchange proposes to delete this provision from the listing agreement. The provision in the first sentence will be added as an amendment to Section 501.01 of the Manual and the provision in the second sentence will be added as an amendment to Section 501.02 of the Manual.

7. The Corporation will pay when due any applicable Listing Fees established from time to time by the Exchange.

- The Exchange intends to retain this provision.

#### Amended Listing Agreement for Domestic Companies

The following are the requirements that would be set forth in the proposed amended listing agreement for domestic companies:

1. The applicant certifies that it understands and agrees to comply with all current and future rules, listing standards, procedures and policies of the Exchange as they may be amended from time to time.
2. The applicant agrees to promptly notify the Exchange in writing of any corporate action or other event which will cause the applicant to cease to be in compliance with Exchange listing requirements.
3. The applicant understands that the Exchange may remove its securities from listing and trading on the Exchange, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1-2.
4. The applicant understands that if an exception to any of the provisions of any of the Exchange rules has been granted by the Exchange, such exception shall, during the time it is in effect, supersede any conflicting provision of the listing agreement.
5. The applicant agrees to list on the Exchange all subsequent amounts of the securit(y/ies) to be listed which may be issued or authorized for issuance.
6. The applicant agrees to furnish to the Exchange on demand such information concerning the applicant as the Exchange may reasonably request.
7. For purposes of publicity related to the applicant's listing on the Exchange, the applicant authorizes the Exchange to use the applicant's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information and any other information related to the applicant's listing on the Exchange.
8. The applicant indemnifies the Exchange and holds it harmless from any third party rights and/or claims arising out of the Exchange's or any of its affiliates use of the applicant's

corporate logos, web site address, trade names, trade/service marks and/or the trading symbol used by the applicant.

9. The applicant will maintain a transfer agent and a registrar, as necessary, which satisfy the applicable requirements set forth in Section 601.00 et seq of the Manual.
10. The applicant agrees to pay, when due, all fees associated with its listing of securities on the Exchange, in accordance with the Exchange's rules.
11. The applicant agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports, by the due dates established by the SEC.
12. The applicant agrees to comply with all requirements under the federal securities laws and applicable SEC rules.
13. Nothing contained in or inferred from the listing agreement shall be construed as constituting the applicant's contract for the continued listing of the applicant's securities on the Exchange. The applicant understands that the Exchange may, consistent with applicable laws and SEC rules, suspend its securities with or without prior notice to the applicant, upon failure of the applicant to comply with any one or more sections of the listing agreement, or when, in its sole discretion, the Exchange shall determine that such suspension of dealings is in the public interest or otherwise warranted.

### III. Listing Agreement for Foreign Private Issuers

The following sets forth each of the requirements included in the current form of listing agreement for foreign private issuers currently set forth in Section 901.02 of the Manual and the Exchange's proposed approach to each item upon adoption of its new form of listing agreement for foreign private issuers, which in many cases refer to the corresponding provision of the

amended listing agreement for domestic companies as described in Part II hereof. Also set forth are the requirements that would be in the proposed amended listing agreement for domestic companies.

## Section I

1. The Corporation will promptly notify the Exchange of any change in the general character or nature of its business.
  - See response for same provision in Section I.1 of the listing agreement for domestic companies.
2. The Corporation will promptly notify the Exchange of any changes of officers or directors.
  - See response for same provision in Section I.2 of the listing agreement for domestic companies.
3. The Corporation will promptly notify the Exchange in the event that it or any company controlled by it shall dispose of any property or of any stock interest in any of its subsidiary or controlled companies, if such disposal will materially affect the financial position of the Corporation or the nature or extent of its operations.
  - See response for same provision in Section I.3 of the listing agreement for domestic companies.
4. The Corporation will promptly notify the Exchange of any change in, or removal of, collateral deposited under any mortgage or trust indenture, under which securities of the Corporation listed on the Exchange have been issued.
  - See response for same provision in Section I.4 of the listing agreement for domestic companies.

5. The Corporation will:
- a. File with the Exchange four copies (including translations) of all material mailed by the Corporation to its stockholders with respect to any amendment or proposed amendments to its Certificate of Incorporation.
    - See response for same provision in Section I.5. a of the listing agreement for domestic companies.
  - b. File with the Exchange a duly certified copy (including translation) of any amendment to its Certificate of Incorporation, or resolutions of Directors in the nature of an amendment, as soon as such amendment or resolution shall have become effective.
    - See response for same provision in Section I.5.b of the listing agreement for domestic companies.
  - c. File with the Exchange a duly certified copy (including translation) of any amendment to its By-Laws as soon as such amendment shall have become effective.
    - See response for same provision in Section I.5.c of the listing agreement for domestic companies.
6. The Corporation will disclose in its annual report to stockholders, for the year covered by the report, (a) the number of shares of its stock issuable under outstanding options at the beginning of the year; separate totals of changes in the number of shares of its stock under option resulting from issuance, exercise, expiration or cancellation of options; and the number of shares of its stock issuable under outstanding options at the close of the year; (b) the number of unoptioned shares of its stock available at the beginning and at the close of the year for the granting of options under an option plan; and (c) any changes in the exercise price of outstanding options, through cancellation and reissuance or

otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options.

- The Exchange proposes to delete this section, as the SEC previously approved the elimination of a similar provision in Section 703.09 of the Manual.
7. The Corporation will promptly notify the Exchange of all facts relating to the purchase, direct or indirect, of any of its \_\_\_\_\_ listed on the Exchange at a price in excess of the market price of such security prevailing on the Exchange at the time of such purchase.
- See response for same provision in Section I.8 of the listing agreement for domestic companies. Consequently, the Exchange proposes to delete the requirement that listed companies must inform it about any share purchases at prices in excess of the market price on the Exchange, as it believes that the regulatory concerns originally underpinning this requirement are now more appropriately addressed through its regulatory surveillance program, and SEC rules and reporting requirements.
8. The Corporation will not select any of its securities listed on the Exchange for redemption otherwise than by lot or pro rata, and will not set a redemption date earlier than fifteen days after the date corporate action is taken to authorize the redemption.
- See response for same provision in Section I.9 of the listing agreement for domestic companies.
9. The Corporation will promptly notify the Exchange of any corporate action which will result in the redemption or retirement, in whole or in part, of any of its bonds listed on the Exchange, and will notify the Exchange as soon as the Corporation has notice of any other action which will result in any such redemption or retirement.



- The Exchange proposes to delete this requirement as it is duplicative of Section 204.22 of the Manual.
10. The Corporation will promptly notify the Exchange of action taken to fix a stockholders' record date, or to close the transfer books, for any purpose and will take such action at such time as will permit giving the Exchange at least ten days' notice in advance of such record date or closing of the books.
- See response for same provision in Section I.11 of the listing agreement for domestic companies.
11. In case the securities to be listed are in temporary form, the Corporation agrees to order permanent engraved securities within thirty days after the date of listing.
- See response for same provision in Section I.12 of the listing agreement for domestic companies.
12. The Corporation will furnish to the Exchange on demand such information concerning the Corporation as the Exchange may reasonably require.
- See response for same provision in Section I.13 of the listing agreement for domestic companies.
13. The Corporation will not make any changes in the form or nature of any of its bonds listed on the Exchange, nor in the rights or privileges of the holders thereof, without having given twenty days' prior notice to the Exchange of the proposed change, and having made application for the listing of the bonds as changed if the Exchange shall so require.
- The Exchange proposes to delete this requirement as it is duplicative of Section 204.13 of the Manual.
14. The Corporation will promptly notify the Exchange of any diminution in the supply of \_\_\_\_\_ available for the market occasioned by the deposit of such

\_\_\_\_\_ under voting trust agreements or other deposit agreements, if knowledge of any such actual or proposed deposits should come to the official attention of the officers or directors of the Corporation.

- The Exchange proposes to delete this provision as it is duplicative of Section 204.09 of the Manual.

15. The Corporation will make application to the Exchange for the listing of additional amounts of securities listed on the Exchange sufficiently prior to the issuance thereof to permit action in due course upon such application.

- See response for same provision in Section I.17 of the listing agreement for domestic companies.

## Section II

1. The Corporation will publish at least once a year and submit to the record holders of \_\_\_\_\_ (hereinafter called the "Holders"), at least fifteen days in advance of the annual meeting of stockholders and not later than three months after the close of the last preceding fiscal year of the Corporation a balance sheet as of the end of such fiscal year, and a surplus and income statement for such fiscal year of the Corporation as a separate corporate entity and of each corporation in which it holds directly or indirectly a majority of the equity stock; or in lieu thereof, eliminating all inter-company transactions, a consolidated balance sheet of the Corporation and its subsidiaries as of the end of its last previous fiscal year, and a consolidated surplus statement and a consolidated income statement of the Corporation and its subsidiaries for such fiscal year. If any such consolidated statement shall exclude corporations a majority of whose equity stock is owned directly or indirectly by the Corporation: (a) the caption of, or a note to, such statement will show the degree of consolidation; (b) the consolidated income account will

reflect, either in a footnote or otherwise, the parent company's proportion of the sum of, or difference between, current earnings or losses and the dividends of such unconsolidated subsidiaries for the period of the report; and (c) the consolidated balance sheet will reflect, either in a footnote or otherwise, the extent to which the equity of the parent company in such subsidiaries has been increased or diminished since the date of acquisition as a result of profits, losses and distributions.

Appropriate reserves, in accordance with good accounting practice, will be made against profits arising out of all transactions with unconsolidated subsidiaries in either parent company statements or consolidated statements.

Such statements will reflect the existence of any default in interest, cumulative dividend requirements, sinking fund or redemption fund requirements of the Corporation and of any controlled corporation, whether consolidated or unconsolidated.

- The Exchange proposes to delete this provision, as it is duplicative of SEC rules requiring the annual filing of financial statements as part of the company's annual report on Form 10-K, 20-F, 40-F or NCSR filed with the SEC. The Exchange also notes that Section 203.01 of the Manual requires listed companies that are required to file with the SEC an annual report including audited financial statements (i.e., an annual report on Form 10-K, 20-F, 40-F or NCSR) to simultaneously make such annual report available on or through the company's website and to undertake to provide, upon request, a hard copy of its audited financial statements free of charge. The Exchange also notes that Section 802.01E of the Manual requires the delisting of any listed Company that fails to file its

annual report within a compliance period determined by the Exchange, but in no event longer than 12 months from the original filing due date.

2. All financial statements contained in annual reports of the Corporation to Holders will be audited by independent public accountants qualified under the laws of \_\_\_\_\_, and will be accompanied by a copy of the certificate made by such firm with respect to its audit of such statements showing the scope of such audit and the qualifications, if any, with respect thereto.

The Corporation will promptly notify the Exchange if it changes its independent public accountants regularly auditing the books and accounts of the Corporation.

- See response for same provision in Section I.1 of the listing agreement for domestic companies.

3. All financial statements contained in annual reports of the Corporation to Holders shall be in the same form as the corresponding statements contained in the listing application in connection with which this Listing Agreement is made, and shall disclose any substantial items of unusual or non-recurrent nature.

- The Exchange proposes to delete this requirement, as the form of companies' annual financial statements is dictated by the SEC's Form 20-F requirements rather than Exchange rules. The Exchange notes that an identical provision was previously deleted from Section 203.01 of the Manual.

4. The Corporation will publish quarterly statements of earnings on the basis of the same degree of consolidation as in the annual report to Holders. Such statements will disclose any substantial items of unusual or non-recurrent nature and will show either net income before and after income taxes or net income and the amount of income taxes.

- The Exchange proposes to delete this provision as it is inconsistent with Section 103.00 of the Manual, which permits foreign private issuers to provide interim earnings reports on a basis consistent with the company's home country laws and practice.
5. The Corporation will not make any substantial charges, nor will it permit any subsidiary directly or indirectly controlled by it to make any substantial charges, against capital surplus without notifying the Exchange. If so requested by the Exchange, the Corporation will submit such charges to stockholders for approval or ratification.
- The Exchange proposes to delete this requirement as it is duplicative of Section 204.05 of the Manual.
6. The Corporation will not make any substantial change, nor will it permit any subsidiary directly or indirectly controlled by it to make any substantial change, in accounting methods, in policies as to depreciation and depletion or in bases of valuation of inventories or other assets, without notifying the Exchange and disclosing the effect of any such change in its next succeeding interim and annual report to its Holders.
- The Exchange proposes to delete this requirement, as foreign private issuers are required by SEC rules to disclose in their annual reports on Form 20-F any changes in accounting methods and their effect on the company's financial statements.

### Section III

1. The Corporation will ensure that \_\_\_\_\_(hereinafter called the "Depositary"), as Depositary under the Deposit Agreement, dated as of \_\_\_\_\_ (hereinafter called the "Deposit Agreement"), and any succeeding or additional depositary, will have on hand at

all times a sufficient supply of \_\_\_\_\_ to meet the demands for transfer. If at any time the Corporation issues securities which do not recite the preferences of all classes of its stock, the Corporation will furnish the Depository with the information necessary to furnish Holders, upon request and without charge, a printed copy of preferences of all classes of such stock.

- See response for related provision in Section III.3 of the listing agreement for domestic companies.
2. The Corporation will immediately publish to its stockholders and enable the Depository to publish to Holders any action taken by the Corporation with respect to dividends or to the allotment of rights to subscribe or to any rights or benefits pertaining to the ownership of its \_\_\_\_\_ listed on the Exchange; and will give prompt notice to the Exchange of any such action; and will afford its stockholders a proper period within which to record their interests and to exercise their rights. The Corporation will also take such steps as may be necessary to enable the Depository, in accordance with the terms of the Deposit Agreement, to (a) make all such rights or benefits available to Holders; (b) provide Holders a proper period within which to record their interests and to exercise their rights; and (c) issue all such rights or benefits in form approved by the Exchange.
- Section 202.05 of the Manual requires a listed company to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities. Section 202.06 specifies that, while foreign private issuers are not required to comply with Regulation FD, foreign private issuers must comply with the timely alert policy set forth in Section 202.05 and may do so by any method (or combination of methods) that would constitute

compliance with Regulation FD for a U.S. issuer. Section 202.06 of the Manual specifies that information that should be published immediately would include dividend announcements, tender offers and stock splits. In addition, the material news events listed in Section 202.06 are intended to be illustrative rather than a complete list of instances where a news release is required. It is the Exchange's position that any corporate action that represents a material benefit to the company's shareholders should be publicized as required by Section 202.06. The Exchange proposes to delete this requirement as the Exchange's requirements with respect to dividends and other rights are set forth in Section 204.12 of the Manual.

3. The Corporation will solicit proxies for all meetings of stockholders.
  - See response for same provision in Section III.5 of the listing agreement for domestic companies.
4. In the event that a successor Depositary or an additional Depositary is named, the Corporation agrees that it will not appoint any person as such successor Depositary or additional Depositary unless such person shall have entered into a listing agreement with the Exchange in a form substantially similar to the agreement relating to \_\_\_\_\_ between \_\_\_\_\_. and the Exchange. The Corporation will not appoint a transfer agent, registrar or depositary of, nor a trustee under a mortgage or other instrument relating to any security listed on the Exchange without prior notice to the Exchange, and the Corporation will not appoint a registrar for the \_\_\_\_\_ listed on the Exchange unless such registrar, at the time of its appointment becoming effective, is qualified with the Exchange as a registrar for securities listed on the Exchange; nor will the Corporation

select an officer or director of the Corporation as a trustee under a mortgage or other instrument relating to a security of the Corporation listed on the Exchange.

- The Exchange proposes to retain this provision insofar as it relates to the requirement that any successor or additional depositary must enter into an agreement with the Exchange. The Exchange proposes to delete the rest of this provision, because the requirements with respect to the appointment of transfer agents and registrars are set forth in Section 601.01 of the Manual and the requirements with respect to trustees are set forth in Section 603.01—603.04 of the Manual.

#### Amended Listing Agreement for Foreign Private Issuers

The following are the requirements that would be set forth in the proposed amended listing agreement for foreign private issuers:

1. The applicant certifies that it understands and agrees to comply with all current and future rules, listing standards, procedures and policies of the Exchange as they may be amended from time to time.
2. The applicant agrees to promptly notify the Exchange in writing of any corporate action or other event which will cause the applicant to cease to be in compliance with Exchange listing requirements.
3. The applicant understands that the Exchange may remove its securities from listing and trading on the Exchange, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1-2.



4. The applicant understands that if an exception to any of the provisions of any of the Exchange rules has been granted by the Exchange, such exception shall, during the time it is in effect, supersede any conflicting provision of the listing agreement.
5. The applicant agrees to list on the Exchange all subsequent amounts of the security(ies) to be listed which may be issued or authorized for issuance.
6. The applicant agrees to furnish to the Exchange on demand such information concerning the applicant as the Exchange may reasonably request.
7. For purposes of publicity related to the applicant's listing on the Exchange, the applicant authorizes the Exchange to use the applicant's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information and any other information related to the applicant's listing on the Exchange.
8. The applicant indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of the Exchange's or any of its affiliates' use of the applicant's corporate logos, web site address, trade names, trade/service marks and/or the trading symbol used by the applicant.
9. The applicant will maintain a transfer agent and a registrar, as necessary, which satisfy the applicable requirements set forth in Section 601.00 et seq of the Manual.
10. The applicant agrees to pay, when due, all fees associated with its listing of securities on the Exchange, in accordance with the Exchange's rules.
11. The applicant agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports by the due dates established by the SEC.

12. The applicant agrees to comply with all requirements under the federal securities laws and applicable SEC rules.
13. The applicant agrees to solicit proxies from U.S. holders for all meetings of stockholders.
14. Nothing contained in or inferred from the listing agreement shall be construed as constituting the applicant's contract for the continued listing of the applicant's securities on the Exchange. The applicant understands that the Exchange may, consistent with applicable laws and SEC rules, suspend its securities with or without prior notice to the applicant, upon failure of the applicant to comply with any one or more sections of the listing agreement, or when, in its sole discretion, the Exchange shall determine that such suspension of dealings is in the public interest or otherwise warranted.
15. In the event that a successor Depositary or an additional Depositary is named, the Corporation agrees that it will not appoint any person as such successor Depositary or additional Depositary unless such person shall have entered into a listing agreement with the Exchange in a form substantially similar to the agreement relating to \_\_\_\_\_ between \_\_\_\_\_ and the Exchange.

#### IV. Listing Application

As noted in Part I, above, the Exchange proposes to delete from the Manual the form of original listing application contained in Section 903.01 thereof (the "Current Application"). The revised form of original listing application, included in Exhibit 3 hereto (the "Revised Application"), will be provided on the Exchange's website. The following sets forth the information requirements included in the Current Application<sup>15</sup> and states whether each requirement will be included in the Revised Application. Where a requirement is proposed to be

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<sup>15</sup> Instructions included in the Current Application have been omitted.

deleted, an explanation is provided.

In most cases, the Exchange proposes to delete the information requirements of the Current Application, as such information is available in the applicant's filings with the SEC made pursuant to the Exchange Act or the Securities Act of 1933 (the "Securities Act").<sup>16</sup> The Current Application has been in use for many years, and during that time disclosure requirements for Exchange Act and Securities Act filings have dramatically increased, significantly reducing the benefit of many of the information requirements included in the Current Application and rendering many of them redundant. Where information required by the Current Application is not specifically required by parallel disclosure requirements under the securities laws, the Exchange has reviewed the totality of the information required and assessed whether the information required by the Current Application provides any substantial assistance in determining the issuer's suitability for listing.

The provisions of the Current Application are in italics [sic] below. For ease of reference, the provisions have been numbered.

1. Description of Transaction—

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<sup>16</sup> 15 U.S.C. 77a. When listing a company in connection with its initial public offering or other securities offering, the Exchange relies on the company's Securities Act prospectus that registered the transaction. Generally, the forms used are Form S-1 (for a domestic issuer), Form F-1 (for a foreign private issuer), Form S-11 (for a real estate investment trust or "REIT") and Form N-2 (for closed-end funds). When listing a company transferring from another exchange or whose common stock was previously publicly traded on the over-the-counter market, the Exchange typically relies on the company's annual report filed with the SEC on Form 10-K (in the case of a domestic issuer) or Form 20-F (in the case of a foreign private issuer). When listing a company in connection with a spin-off, the Exchange typically relies on the company's Form 10, and, when listing a company in connection with a merger transaction, the Exchange typically relies on a Form S-4. For purposes of this rule filing, the Exchange focused on the requirements of Regulation S-K and Form 20-F. However, the Exchange reviewed the totality of the information required in all of the aforementioned forms in its assessment whether disclosure is adequate and a particular requirement can be deleted from the Current Application.

State that the listing application is the company's original application for the listing of its securities on the Exchange.

- The Revised Application states that it is the original listing application and requires an attestation by an authorized executive officer.

2. Shares Applied for but Not Yet Issued—

The transactions for which share reserves are needed should be described in sufficient detail to set forth the essential facts.

- The Exchange proposes to delete this requirement as it is duplicative of Items 201(a)(2), 201(d) and 202(c) of Regulation S-K and Item 10(A) of Form 20-F. In addition, the Revised Application requires that the applicant specify the number, date of authorization, and purpose of shares unissued but authorized for issuance.

3. Authority for Issuance—

Give the dates directors approved the purpose for and issuance of any unissued securities covered by the application. If shareholder approval has been, or will be given, give that date also.

- The Revised Application requires that the applicant specify the number, date of authorization, and purpose of shares unissued but authorized for issuance. In addition, applicants are required to provide copies of board and shareholder resolutions authorizing issuance with respect to any unissued securities for which a listing application is made, where applicable.

4. History and Business—

State where and when the company was organized, its form of organization, and the duration of its charter. Give in succinct form the history of its development and growth in the

particular line of business now conducted. If organized as the result of merger, consolidation, or reorganization, trace the history of the predecessor companies. If organized through reorganization, describe briefly the circumstances leading to, and the effect of, the reorganization.

Describe briefly the present business of the company and its subsidiaries or controlled companies, including principal products manufactured or services performed, principal markets for products and raw materials, operations conducted, merchandising or product-distribution methods, and, in general, furnish such information as will serve to indicate clearly the growth and development of the particular industry in which the company is engaged and the growth and development of the company and the relative ranking it occupies in its field.

If a material part of the business is dependent upon patents, proprietary formulae, or secret processes, so state. Give date of expiration of principal patents or proprietary interests in principal formulae.

- The Exchange proposes to delete this requirement as it is duplicative of Items 101(a), 101(c) and 101(h) of Regulation S-K and Item 4 of Form 20-F,<sup>17</sup> with the exception of the duration of the charter, which is required to be filed with the SEC pursuant to Item 601(b)(3)(i) of Regulation S-K.

#### 5. Public Utilities—

In the case of public utilities, the description of the business should include the various services rendered by the system, the proportionate gross revenue derived from each service, and the territory and population served by each service.

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<sup>17</sup> Item 4 of Form 20-F requires information on the company on a consolidated basis.

Indicate the number of customers, or meters in service, classifying them into categories such as residential, industrial or commercial, municipalities, etc.

State the aggregate number of kilowatt-hours of electricity, or cubic feet of gas, sold annually for the past five years, and the aggregate revenue derived from each service annually during that period, for each customer classification.

State average and peak loads and installed capacity, indicating whether the figures given represent rated capacity or actual capacity.

Describe, in general terms, interconnection facilities and arrangements for purchases or sales of electricity and gas.

- The Exchange proposes to delete this requirement as it is duplicative of the general disclosure requirements of Items 101 and 303 of Regulation S-K and Item 4 of Form 20-F. While those provisions do not have specific disclosure requirements for electric and gas utilities, the Exchange notes that in 1996, as part of its regulatory simplification effort, the SEC eliminated Industry Guide 1, which had set forth specific disclosure requirements for electric and gas utilities, on the basis that “the information requested by the Guide also is within the coverage of other rules of the SEC, including Items 101 and 303 of Regulation S-K.”<sup>18</sup>

#### 6. Property Description—

Describe briefly the physical properties of the company and its subsidiaries or controlled companies, stating location, type of construction and area of plants and buildings, functions thereof, condition of equipment, acreage, transportation facilities, etc. State whether properties

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<sup>18</sup> Securities Act Release No. 33-7300 (May 31, 1996), 61 FR 30397 (June 14, 1996).

are owned or leased. Indicate normal capacity of plants in terms of units of production where possible.

- The Exchange proposes to delete this requirement as it is duplicative of Item 102 of Regulation S-K and Item 4(D) of Form 20-F, with the exception that such provisions do not specifically require disclosure of some details listed in the Current Application, namely the type of construction and area of plants and buildings and functions thereof, condition of equipment, acreage, and transportation facilities. However, Instruction 1 to Item 102 of Regulation S-K requires inclusion of such information as reasonably will inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities by the company.<sup>19</sup>

Affiliated Companies—

- a. Give a list of all subsidiary or controlled companies, including all companies in which the company owns or controls directly or indirectly 50% or more of the voting power.

Indicate, as to each such company, the amount of each class of capital stock outstanding and show the amount of each class owned, directly or indirectly, by the parent company.

State briefly the proportionate revenue/earnings each such company has in the business.

- The Exchange proposes to delete this requirement as it is duplicative of Item 601(b)(21) of Regulation S-K and Item 4(C) of Form 20-F, with the exception that such provisions do not require disclosure of (i) subsidiaries that are not significant (or, in the case of Item 601(b)(21) of Regulation S-K, that are not in

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<sup>19</sup> In addition, such information would be required to be disclosed pursuant to Securities Act Rule 408 (17 CFR §230.408) or Exchange Act Rule 12b-20 (17 CFR §240.12b-20), as applicable, if it were material information necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

the aggregate significant) or (ii) the amount of each class of capital stock outstanding for each company or the proportionate revenue/earnings that each subsidiary has in the business. The Exchange believes that the disclosures required under the federal securities laws are adequate for purposes of determining an issuer's suitability for listing, because, unless such details were required to be disclosed under Securities Act Rule 408 or Exchange Act Rule 12b-20, as applicable, they would not be material to the Exchange's determination. The disclosure regarding an applicant's business segments (as defined by applicable accounting standards) is more meaningful in such analysis, which is consistent with current disclosure requirements under the federal securities laws.<sup>20</sup>

b. If the company has a substantial, but less than controlling, interest in any company or organization, such interests should be similarly described.

- Item 601(b)(21) of Regulation S-K and Item 4(C) of Form 20-F require disclosure regarding subsidiaries as defined by Securities Act Rule 405<sup>21</sup> and Exchange Act Rule 12b-2,<sup>22</sup> which define a subsidiary "of a specified person" as "an affiliate controlled by such person directly, or indirectly through one or more intermediaries." As such definition is substantially broader than the Current Application's control threshold of 50% or more of voting power, Item 601(b)(21) of Regulation S-K and Item 4(C) of Form 20-F include both subsidiaries that meet

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<sup>20</sup> Item 101(b) and 101(c) of Regulation S-K and Item 5 of Form 20-F require disclosure based on segments. See also Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 280-10.

<sup>21</sup> 17 CFR §230.405.

<sup>22</sup> 17 CFR §240.12b-2.



the 50% threshold requirement and the “substantial, but less than controlling” additional requirement.

- c. Indicate, to the extent that the information is available, the name of any company, individual, or other entity which owns directly or indirectly, 10% or more of any class of voting stock of the company, and the extent of such ownership.
- The Exchange proposes to delete this requirement as it is duplicative of Item 403 of Regulation S-K and Item 7(A) of Form 20-F.
- d. If control of the company is held by any other company through lease or contract, describe the circumstances of such control.
- The Exchange proposes to delete this requirement as it is duplicative of the general disclosure requirements of Item 101 of Regulation S-K and Items 4 and 10(C) of Form 20-F, in that if the applicant is held by another company through lease or contract, such information would be material and therefore subject to disclosure. Further, to the extent that the control of the company is held through written contract, such contract would be material and therefore subject to filing under Items 601(b)(2) or 601(b)(10) of Regulation S-K.

#### 7. Management—

Give the names and titles of all directors and officers, stating other principal business affiliations they may have. Give a brief biographical outline for each of the principal officers of the company. If directors are elected by classes, so indicate.

- The Exchange proposes to delete this requirement as it is duplicative of Item 401 of Regulation S-K and Items 6(A) and 6(C) of Form 20-F.

## 8. Capitalization—

Give a summary statement of changes in authorized stock capitalization of the company since organization, with reference to dates of corporate actions effecting such changes. This data may be given in narrative form if desired, but if changes have been numerous, a tabulated statement is preferable.

Give in tabular form a statement as to substantial changes in the outstanding amounts of stock of the company over the period of the past five years, showing dates on which authorized for issuance, purpose of issuance and consideration received. The statement should show shares reacquired by the company or its subsidiary or controlled companies.

- The Exchange proposes to delete this requirement as it is duplicative of (i) Item 701 of Regulation S-K, with respect to securities sold by the applicant within the past three years which were not registered under the Securities Act, and (ii) the relevant registration statement, with respect to securities that were registered. This requirement is also duplicative of Item 10(A) of Form 20-F with respect to changes in the outstanding amounts of stock of the company within the past three years. In addition, Item 3(B) of Form 20-F requires inclusion of a capitalization table, and many other registrants voluntarily include a capitalization table in their registration statements. In the absence of a capitalization table, information is available in the financial statements.<sup>23</sup>

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<sup>23</sup> See Securities Act Release No. 33-6331 (August 5, 1981) (“[a]n item requiring a table of capital structure has not been included in ... Regulation S-K. The commentators ... generally agreed with the Commission that a requirement for such a table is unnecessary because information presented therein is readily apparent from other sources such as the financial statement.”)

The Exchange notes that Item 701 of Regulation S-K requires information for three years, as opposed to the longer periods required by the Current Application. However, consistent with the disclosure requirements under the federal securities laws, none of the Exchange's initial listings are based on more than three years of historical financial data. The Exchange also notes that Item 701 does not require information on when stock was authorized for issuance or the purpose of issuance. However, the Exchange finds that the totality of the information provided under Item 701, which includes the date of sale, persons or class of persons to whom the securities were sold, and the exemption from registration claimed, is more than adequate for purposes of determining whether an issuer's securities outstanding prior to listing were issued in compliance with applicable law.

9. Funded Debt—

State the aggregate amount of funded debt of the company and subsidiary or controlled companies, and give a list of the outstanding issues and amounts, indicating amounts held by subsidiary or controlled companies. If such list is extensive, it may be attached to the application as an exhibit.

- The Exchange proposes to delete this requirement as it is duplicative of Item 303(a)(5) of Regulation S-K and Item 5(F) of Form 20-F, which require tabular disclosure on a consolidated basis of contractual obligations, including long-term debt obligations, with the exception that the tables are on a consolidated basis. The Exchange finds the required information adequate since unless separate disclosure for subsidiaries or controlled companies were required to be disclosed

under Securities Act Rule 408 or Exchange Act Rule 12b-20, as applicable, it would not be material to its determination as to an issuer's suitability for listing.

#### 10. Stock Provisions—

- a. If application is being made to list stock, give a summary of the rights, preferences, privileges and priorities of the class of stock for which application is made. Provide similar information on any other class of stock which is senior or equal to the proposed issue.
  - The Exchange proposes to delete this requirement as it is duplicative of Item 202 of Regulation S-K, with the exception that such provisions do not require similar information on any class of stock which is senior or equal to the proposed issue. However, they do require disclosure regarding any other authorized class of securities if the rights evidenced by the shares to be registered are, or may be, materially limited or qualified by the rights of any such other authorized class of securities. This requirement is also duplicative of Item 10(B)(3) of Form 20-F, which requires a description of the rights, preferences and restrictions attaching to each class of shares. In addition, the Revised Application requires a complete description of any existing class of common stock or equity security entitling the holder(s) to differential voting rights, dividend payments, or other preferences. The Exchange believes that the disclosure required under Item 202 of Regulation S-K, Item 10(B)(3) of Form 20-F and the Revised Application is more informative than the request for information in the Current Application, and therefore adequate for purposes of determining whether an issuer's equity securities are suitable for listing.

- b. If application is being made to list one or more senior classes of stock, recite verbatim the charter provisions attaching thereto, and to each class on a parity therewith or senior thereto, in an exhibit appended to the application in addition to the summarized statement included in the application.
- c. Give a summary statement of any provisions of any indentures or agreements restricting payment of dividends or affecting voting rights of the class of stock applied for.

State whether or not shareholders of any class have preemptive rights to subscribe to additional issues, whether by charter provision or statute.

- The Exchange proposes to delete this requirement as it is duplicative of Items 202, 601(b)(3)(i) and 601(b)(4) of Regulation S-K and Item 10(B)(3) of Form 20-F, with the exception that such provisions do not require that the charter provisions of senior stock be recited verbatim. However, they do require a summary of the relevant provisions, and Items 601(b)(3)(i) and 601(b)(4) of Regulation S-K require companies to file their charter and any instruments defining the rights of security holders, including indentures. In addition, the Revised Application requires a complete description of any existing class of common stock or equity security entitling the holder(s) thereof to differential voting rights, dividend payments, or other preferences. The Exchange believes that the disclosure required under Items 202, 601(b)(3)(i) and 601(b)(4) of Regulation S-K, Item 10(B)(3) of Form 20-F and the Revised Application are adequate for purposes of determining whether a class of equity securities is suitable for listing.

11. Employees-Labor Relations—

- a. State total number regularly employed and, if subject to seasonal fluctuation, the maximum and minimum numbers employed during the preceding twelve months.
  - The Exchange proposes to delete this requirement as it is duplicative of Item 101(c)(1) of Regulation S-K and Item 6(D) of Form 20-F, with the exception that such provisions do not require disclosure of maximum and minimum numbers employed. However, the Exchange finds the required information adequate since disclosure of maximum and minimum numbers employed would not be material to the Exchange’s determination of whether an issuer was suitable for listing.
- b. State dates and duration of material work stoppages due to labor disagreements during the past three years, and the general terms of settlement of such disagreements.
  - The Exchange proposes to delete this requirement as it is duplicative of the general disclosure requirements in Item 101 of Regulation S-K and of Item 6(D) of Form 20-F, with the exception that such provisions do not specifically require disclosure regarding work stoppages. However, Item 6(D) requires information regarding the relationship between management and labor unions. The Exchange believes that disclosures required under the federal securities laws are sufficient because unless information regarding work stoppages was required to be disclosed under Securities Act Rule 408 or Exchange Act Rule 12b-20, as applicable, it would not be material to the Exchange’s determination of whether an issuer was suitable for listing.

- c. Describe briefly any pension, retirement, bonus, profit participation, stock purchase, insurance, hospitalization, or other plans of benefit to employees which may be in effect.
- The Exchange proposes to delete this requirement as it is duplicative of the disclosure requirements in Items 402, 201(d) and 601(b)(10) of Regulation S-K and in Item 6(B) of Form 20-F. The requirements in Item 402 of Regulation S-K and Item 6(B) of Form 20-F are limited to plans of benefit that apply to certain directors and officers. However, Item 201(d) of Regulation S-K requires tabular disclosure of any securities authorized for issuance under equity compensation plans to any persons employed by the company, not just executive officers, and unless the plan was approved by shareholders, a summary of the terms of the plan, and Item 601(b)(10) requires that any compensatory plan, contract or arrangement adopted without the approval of security holders must be filed with the SEC. The Exchange believes that, taken as a whole, the disclosure and documentation provided under these items is sufficient for purposes of determining whether an issuer is suitable for listing.

## 12. Shareholder Relations—

Describe briefly the procedures followed by the company in the field of shareholder relations, indicating, among other things, the method by which shareholders are informed of either a declaration of dividends or a failure to declare a dividend at an accustomed time; whether interim statements of earnings are mailed to shareholders or released to the press; how soon after the close of the period such interim statements usually are available; whether the company advises shareholders or otherwise gives periodic publicity to the progress of the

company or new developments in its affairs (otherwise than through interim statements of earnings or annual reports and proxy statements).

- The Exchange proposes to delete this requirement as the requirements for declaring dividends, issuing interim statements of earnings, and making periodic disclosure are set out in Sections 202.05, 203.02 and 204.12 of the Manual.

### 13. Dividend Record—

State the amount of dividends (per share and in aggregate) paid by the company (or its predecessors) during each of the five preceding years. Show stock dividends separately, indicating, in respect of each stock dividend, the percentage amount, the number of shares issued in payment, the amount per dividend share and the aggregate charged against earnings or retained earnings, and the basis for calculating the amount charged.

State the aggregate and per share amount of preferred dividend arrearages.

Indicate whether dividends have been paid on a quarterly, semi-annual or annual basis, and state how long dividends have been paid without interruption.

State the record date, payment date and date of declaration with respect to each dividend paid during the past two years.

- Item 201(c) of Regulation S-K requires issuers to state the frequency and amount of any cash dividends declared on each class of its common equity by the registrant for the two most recent fiscal years and any subsequent interim period for which financial statements are required to be presented by Article 3 of Regulation S-X. After listing, a company is subject to Sections 204.12 and 204.21 of the Manual, which require companies to give the Exchange at least 10 days advance notice of the setting of the record date for any dividend or other



distribution. The audited financial statements included in a company's SEC filings would include information about accrued and unpaid preferred stock dividends, as well as any stock dividends paid during the period covered by the financial statements. The Exchange believes that, taken as a whole, the disclosure provided under these items is sufficient for purposes of determining whether an issuer is suitable for listing.

14. Option, Warrants, Conversion Rights, Etc.—

- a. State the terms and conditions of any options, purchase warrants, conversion rights or any other commitments, whether of definitive or contingent nature (including stock compensation or remuneration plans), under which the company may be required to issue any of its securities. If there are no such commitments, so state.
  - The Exchange proposes to delete this requirement as it is duplicative of the disclosure requirements in Items 402, 201(a)(2)(i), 201(d), 202(c) and 601(b)(10) of Regulation S-K and of Item 10(A) of Form 20-F. Disclosure under Item 402 of Regulation S-K is limited to plans of benefit that apply to certain directors and officers. However, Item 201(d) of Regulation S-K requires tabular disclosure of any securities authorized for issuance under equity compensation plans to any persons employed by the company, not just executive officers, and unless the plan was approved by shareholders, a summary of the terms of the plan. Additionally, Item 601(b)(10) requires that any compensatory plan, contract or arrangement adopted without the approval of security holders must be filed with the SEC. Items 201(a)(2)(i) and 202(c) of Regulation S-K require disclosure of all outstanding options and warrants, whether or not issued under a compensation

plan, relating to the class of securities being offered. The Exchange believes that, taken as a whole, the disclosure and documentation provided under these items is sufficient for purposes of determining whether an issuer is suitable for listing.

b. In the case of options granted to directors, officers or employees, and in the case of stock compensation or remuneration plans relating to directors, officers or employees, indicate whether or not the options or plans, or some measure or proposal implementing them, were approved by shareholders, and if so approved, the date of approval.

- The Exchange proposes to delete this requirement as it is duplicative of Items 201(d) and 601(b)(10) of Regulation S-K and Items 6(B) and 10(A)(7) of Form 20-F, with the exception that such provisions do not require disclosure of the date of approval. The Exchange believes that, taken as a whole, the disclosure provided under these items is sufficient for purposes of determining whether an issuer is suitable for listing.

#### 15. Litigation—

Describe all pending litigation of a material nature in which the company, or any of its subsidiaries or controlled companies, may be involved which may affect its income from, title to, or possession of any of its properties.

- The Exchange proposes to delete this requirement as it is duplicative of Item 103 of Regulation S-K and Item 8(A)(7) of Form 20-F.

#### 16. Business, Financial and Accounting Policies—

- a. Independent Public Accountants—State the name of independent public accountants; how long they have audited the company's accounts; when and by whom they were

appointed; whether or not they report directly to the Board of Directors; whether they make a continuous or periodic audit; extent of their authority to examine all records and supporting evidence;

- The Exchange proposes to delete this requirement as it is duplicative of Rule 2-02 of Regulation S-X and Exchange Act Rule 10A, with the exception that such provisions do not require disclosure of the how long the public accountants have audited the company's accounts, whether their audit is continuous or periodic, or the extent of their authority. The Exchange believes that, taken as a whole, the disclosure provided under these items is adequate for purposes of determining the reliability of the audited financial statements relied upon in determining the issuer's qualification for listing.

whether or not they are authorized or invited to attend shareholders' meetings; whether they do attend such meetings; and, if they do attend, whether or not they are authorized to answer questions raised by shareholders.

- The Exchange proposes to delete this requirement as it is duplicative of Item 9 of Schedule 14A of the Commission's proxy rules.
- b. Chief Executive Officer—State the name and title of the chief executive officer.
    - The name and title of the issuer's chief executive officer will continue to be a requirement in the Revised Application.
  - c. Chief Financial Officer—State the name and title of the company's chief financial officer; to whom he reports and the extent of his authority; whether or not he attends meetings of the Board of Directors.

- The Exchange proposes to delete this requirement as it is duplicative of Item 401(b) of Regulation S-K and Item 6(A) of Form 20-F, with the exception that such provisions do not require disclosure of to whom the chief financial officer reports or whether he or she attends meetings of the Board of Directors.
- d. Commitments— Indicate whether or not it is policy of the company to make future commodity commitments to an extent which may materially affect its financial position.
- The Exchange proposes to delete this requirement as it is duplicative of Item 305(b) of Regulation S-K and Item 11(a) of Form 20-F, as well as the general disclosure requirement of Item 503(c) of Regulation S-K.
- e. Indicate whether or not, in the normal course of business, it is necessary to expand working capital through short term loans (or otherwise) to a material extent.
- The Exchange proposes to delete this requirement as it is duplicative of Item 303(a)(1) of Regulation S-K and Item 5(B) of Form 20-F. The information may also in some circumstances be required by Item 101(c) of Regulation S-K.
- f. Other Policies— In cases where, because of the nature of the industry or circumstances peculiar to the company, unique business, financial or accounting policies are considered to be of material effect in determination of the company's income or its financial position, or in interpretation of its financial statements, describe such other policies.
- The Exchange proposes to delete this requirement as it is duplicative of Items 101 and 303 of Regulation S-K, Items 4 and 5 of Form 20-F and FASB ASC 235-10.<sup>24</sup> While these provisions do not specifically require disclosure of unique

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<sup>24</sup> See FASB ASC 235-10-50-3 (requiring that the financial statements “identify and describe the accounting principles followed by the entity and the methods of applying those principles that materially affect the determination of financial position, cash flows,

business or financial policies that are considered to be of material effect in determining an applicant's income or financial position, the Exchange finds the required information adequate because, unless such policies were required to be disclosed under Securities Act Rule 408 or Exchange Act Rule 12b-20, as applicable, they would not be meaningful in the Exchange's analysis of whether a proposed issuance complies with the Exchange's listing requirements.

#### 17. Financial Statements—

Include in the listing application the following financial statements

A summary statement of earnings, prepared in conformity with generally accepted accounting principles, for the last five fiscal years.

- The Exchange proposes to delete this requirement as it is duplicative of Item 301 of Regulation S-K and Item 3(A) of Form 20-F.

Consolidated financial statements, prepared in conformity with generally accepted accounting principles, together with the report of the company's independent public accountants.

- The Exchange proposes to delete this requirement as it is duplicative of Article 3 and Rule 2-02 of Regulation S-X and Item 8(A) of Form 20-F.

Latest available interim financial statements for the current fiscal year, prepared in conformity with generally accepted accounting principles. The interim statements shall include a

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or results of operations.”) *See also* Securities Act Release No. 33-8350 (December 29, 2003) (“[w]hen preparing disclosure under the current requirements [of Item 303], companies should consider whether they have made accounting estimates or assumptions where: the nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change; and the impact of the estimates and assumptions on financial condition or operating performance is material. If so, companies should provide disclosure about those critical accounting estimates or assumptions in their MD&A.”)

report thereon by the company's chief financial officer if such statements have not been audited.

- The Exchange proposes to delete this requirement as it is duplicative of Article 3 and Rules 2-02 and 10-01 of Regulation S-X and Item 8(A)(5) of Form 20-F, with the exception that such provisions do not require that the company's chief financial officer provide a report on the interim financial statements. However, the signature of the principal financial officer is required by Forms S-1 and F-1 and also by Form 10-Q, the form on which U.S. companies that are Exchange Act registrants report their quarterly financial information.

Pro forma or "giving effect" consolidated financial statements in cases where there has been, or is contemplated, any major financing, recapitalization, acquisition or reorganization.

- The Exchange proposes to delete this requirement as it is duplicative of Article 11 of Regulation S-X.

Parent Company Statements—Statements of the parent company as a separate corporate entity may also be required if such statements appear essential or desirable. In general, parent company statements are not required in cases where the subsidiaries are wholly owned and do not have any substantial amount of funded debt outstanding.

- The Exchange proposes to delete this requirement as it is duplicative of Rules 5-04(c) and 12-04 of Regulation S-X.

#### V. Form of Transfer Agent Agreements

As noted in Part I, above, the Exchange proposes to delete from the Manual the forms of transfer agent and registrar agreements currently set forth in Sections 906.01, 906.02 and 906.03 of the Manual. In both of its revised listing agreements, the Exchange has included an explicit agreement by the applicant issuer to abide by the transfer agent and registrar requirements set

forth in Section 601.00 of the Manual et seq. The following sets forth the requirements currently included in the forms of transfer agent and registrar agreements and states where each requirement can be found in Section 601.00 of the Manual et seq.

Transfer Agent Registrar Agreement – Type A

1. That its capital, surplus (both capital and earned) and undivided profits now aggregate more than \$10,000,000, and so long as it acts as a transfer agent or registrar, or both, for a single security issue or security issues listed on the NYSE, it will continue to have capital, surplus and undivided profits aggregating more than \$10,000,000.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(1) of the Manual.

2. That it will comply with the rules and requirements of the NYSE, as the same may from time to time be amended, in regard to the transfer and registration of security issues listed on the NYSE.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(5) of the Manual.

3. That it will notify the Exchange, 10 days after the close of each calendar quarter, of the number of shares outstanding for each security listed on the Exchange.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.00(B) of the Manual.

4. That before ceasing to act as transfer agent or registrar, or both, for any security issue or issues listed on the NYSE it will give to the NYSE written notice of its intention to cease to act at least five (5) business days before the date after which it will no longer act as transfer agent or registrar, or both, provided, however, that no such notice shall be

required if (1) a transfer agent or registrar, or both, approved by the NYSE, is to be substituted for the Agent or (2) the Agent is prevented by law or by contract from continuing to act as transfer agent or registrar, or both, for the length of time necessary to give such notice.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.02 of the Manual.

5. That the Agent's offices maintained for the purpose of transfer activities will be staffed by experienced personnel qualified to handle so-called "legal terms" and to advise on and handle other transfer problems.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(6) of the Manual.

6. That it will provide adequate facilities for the safekeeping of securities in its possession or under its control with respect to which it acts as transfer agent or registrar or both.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(7) of the Manual.

7. That all securities sent to a transfer agent (i) by mail or a commercial delivery service in each case on a same day or next day delivery basis, (ii) by a clearing agency registered with the Securities and Exchange Commission under Section 17A of the Exchange Act (a "Clearing Agency"), (iii) clearly marked as a record date transfer, and (iv) deposited into the mail or with the commercial delivery service no later than the record date must, if the Clearing Agency so directs in writing in the letter of transmittal, be recorded by the transfer agent as having been received as of the record date so as to establish the



transferee's rights as of that date. For purposes of this policy the term "record date" shall include any date as of which the rights of a shareholder are established.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(3) of the Manual.

8. That in the case of routine transfers, the Agent agrees that any NYSE listed security received by the Agent for transfer, will be transferred, registered and mailed to the transferee of such security, within 48 hours (Saturdays, Sundays and holidays excluded) from the time of receipt of the securities by the transfer agent at its address designated for registration of transfers.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(2) of the Manual.

9. That it will maintain facilities to expedite transfers, where requested, of NYSE listed security issues for which the Agent acts.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(8) of the Manual.

10. That it will be totally responsible and liable for all securities for which it acts as Agent from the time the securities are delivered to or picked up by it, or by its designated Agent until such securities are picked up by or delivered to the recipient pursuant to instructions given to the Agent by the recipient.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(4) of the Manual.

11. That in connection with any loss of any security for which the Agent acts while such security is in the custody of the Agent or arising in connection with any receipt, delivery or transportation of any such security by or for the Agent, or any armored car service

used by the Agent, the Agent agrees that it will at all times maintain insurance covering any such loss; that such insurance shall be in the amount of not less than \$25 million with respect to each such loss; and that such insurance shall be payable prior to any other insurance covering any such loss that may be maintained by and available to the NYSE.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(1) of the Manual.

12. That when acting both as transfer agent and registrar for a single security issue, the Agent will assure that these functions are maintained separate and distinct with appropriate internal accounting controls, subject to an annual review by the Agent's independent auditors. Such auditors will provide a report on an annual basis to the Agent's Board of Directors with a copy to the NYSE setting forth the results of their review. The independent auditor's review shall include such tests of the transfer and registration systems and controls including the period since the prior examination date as considered necessary in the circumstances to establish that the control system is basically adequate and that no material weakness in the internal control exists. If applicable the auditor's report will comment upon any material weaknesses found to exist and shall indicate any corrective action taken or proposed.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(B) of the Manual.

13. That if the auditor's report, as outlined in Section 12 above, specifies any material weaknesses, the Agent hereby agrees to take immediate corrective action. When such corrective steps have been completed, the auditor will provide a subsequent letter indicating that the material weaknesses have been corrected.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(B) of the Manual.

14. That approval of an Agent to act pursuant to this agreement will not be granted until such time as an independent auditor has submitted a report covering the results of such review to the Agent's Board of Directors and to the NYSE in a form satisfactory to the NYSE.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(B) of the Manual.

15. That the NYSE may at any time determine that the Agent is no longer a qualified transfer agent or registrar, or both, of a security issue or issues listed on the NYSE in the event the Agent fails to comply with all or any part of the provisions of this Agreement.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(9) of the Manual.

16. The Agent hereby appoints \_\_\_\_\_ as its agent for service of process in connection with matters arising out of or by reason of Agent's acting as transfer agent or registrar or both, for NYSE listed security issues. This appointment shall be limited to process served in connection with the performance or failure to perform such services including transportation and custody, shall not extend to matters unrelated thereto or shall not be or be deemed to be a general appointment as agent for service upon the Agent.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(15) of the Manual.

17. For companies required to maintain eligibility for a security in a direct registration system pursuant to Para . 501.00 of this Manual: The Agent will at all times be eligible

either for the direct registration system operated by the Depository Trust Company or for another direct registration system operated by a securities depository that is registered as a clearing agency with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Exchange Act.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(13) of the Manual.

Transfer Agent Registrar Agreement – Type B

1. That its capital, surplus (both capital and earned) and undivided profits now aggregate more than \$2,000,000 and so long as it acts as a transfer agent or registrar for security issues listed on the NYSE, it will continue to have capital, surplus and undivided profits aggregating more than \$2,000,000.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(D) of the Manual.

2. That it will comply with the rules and requirements of the NYSE, as the same may from time to time be amended, in regard to the transfer and registration of security issues listed on the NYSE.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(5) of the Manual.

3. That it will notify the Exchange, 10 days after the close of each calendar quarter, of the number of shares outstanding for each security listed on the Exchange.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.00(B) of the Manual.

4. That before ceasing to act in either capacity for any security issue or issues listed on the NYSE it will give to the NYSE written notice of its intention to cease to act at least five (5) business days before the date after which it will no longer act as transfer agent, or registrar provided, however, that no such notice shall be required if (1) a co-transfer agent or registrar approved by the NYSE, is to be substituted for the Agent or (2) the Agent is prevented by law or by contract from continuing to act as co-transfer agent or registrar for the length of time necessary to give such notice.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.02 of the Manual.

5. That the Agent's offices maintained for the purpose of transfer activities be staffed by experienced personnel qualified to handle so-called "legal items" and to advise on and handle other transfer problems.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(6) of the Manual.

6. That it will provide adequate facilities for the safekeeping of securities in its possession or under its control with respect to which it acts as co-transfer agent or registrar.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(7) of the Manual.

7. That, as co-transfer agent, it will be totally responsible and liable for all securities for which it acts from the time the securities are delivered to or picked up by it, or its designated agent, until such securities are picked up by or delivered to the recipient pursuant to instructions given to the Agent by the recipient.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(4) of the Manual.

8. That all securities sent to a transfer agent (i) by mail or a commercial delivery service in each case on a same day or next day delivery basis, (ii) by a clearing agency registered with the Securities and Exchange Commission under Section 17A of the Exchange Act (a "Clearing Agency"), (iii) clearly marked as a record date transfer, and (iv) deposited into the mail or with the commercial delivery service no later than the record date must, if the Clearing Agency so directs in writing in the letter of transmittal, be recorded by the transfer agent as having been received as of the record date so as to establish the transferee's rights as of that date. For purposes of this policy the term "record date" shall include any date as of which the rights of a shareholder are established.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(3) of the Manual.

9. That in the case of routine transfers, the Agent agrees that any NYSE listed security delivered to or picked up by the Agent for transfer, will be transferred, registered and available for pick up at its office within 48 hours (Saturdays, Sundays and holidays excluded) from the time of pick up by or delivery to the Agent.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(2) of the Manual.

10. That it will maintain facilities to expedite transfers, where requested, of NYSE listed security issues for which the Agent acts.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(8) of the Manual.

11. That the NYSE may at any time determine that the Agent is no longer a qualified transfer agent or registrar of security issues listed on the NYSE in the event the Agent fails to comply with all or any part of the provisions of this Agreement.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(9) of the Manual.

Agreement for Corporate Issuers to Act as Transfer Agent and Registrar

1. That it presently meets the Exchange's applicable minimum original or continued numerical standards for listing.

- The Exchange's minimum original and continued numerical standards for listing are set forth in Sections 102.00 and 802.01A of the Manual. For initial public offerings, the Exchange verifies these standards via an underwriter's representation letter. For transfers or continued listing issues, the Exchange verifies these standards via shareholder lists obtained from the Company, Broadridge Financial Solutions or the company's public filings. Because the Exchange can independently confirm the minimum original and continued numerical standards for listing, the Exchange proposes to delete this requirement.

2. That it will comply with the rules and requirements of the NYSE, as the same may from time to time be amended, in regard to the transfer and registration of security issues listed on the NYSE.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(5) of the Manual.

3. That it will notify the NYSE 10 days after the close of each calendar quarter of the number of shares outstanding for each security listed on the Exchange for which it acts as transfer agent and registrar.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.00(B) of the Manual.

4. That before ceasing to act as transfer agent and registrar, it will give to the NYSE written notice of its intention to cease to act at least five (5) business days before the date after which it will no longer act as transfer agent and registrar, provided, however, that no such notice shall be required if (1) a transfer agent and registrar approved by the NYSE is to be substituted for the Agent or (2) the Agent is prevented by law or by contract from continuing to act as transfer agent and registrar for the length of time necessary to give such notice.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.02 of the Manual.

5. That the Agent's offices maintained for the purpose of transfer activities will be staffed by experienced personnel qualified to handle so-called "legal items" and to advise on and handle other transfer problems.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(6) of the Manual.

6. That it will provide adequate facilities for the safekeeping of securities in its possession or under its control with respect to which it acts as transfer agent and registrar.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(7) of the Manual.



7. That all securities sent to a transfer agent (i) by mail or a commercial delivery service in each case on a same day or next day delivery basis, (ii) by a clearing agency registered with the Securities and Exchange Commission under Section 17A of the Exchange Act (a "Clearing Agency"), (iii) clearly marked as a record date transfer, and (iv) deposited into the mail or with the commercial delivery service no later than the record date must, if the Clearing Agency so directs in writing in the letter of transmittal, be recorded by the transfer agent as having been received as of the record date so as to establish the transferee's rights as of that date. For purposes of this policy the term "record date" shall include any date as of which the rights of a shareholder are established.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(3) of the Manual.

8. That in the case of routine transfers, the Agent agrees that its NYSE listed securities received by the Agent for transfer, will be transferred, registered and mailed to the transferee of such security within 48 hours (Saturdays, Sundays and holidays excluded) from the time of receipt of the securities by the transfer agent at its address designated for registration of transfers.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(2) of the Manual.

9. That it will maintain facilities to expedite transfers, where requested, of its NYSE listed security issues.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(8) of the Manual.

10. That it will be totally responsible and liable for all securities for which it acts as Agent from the time the securities are delivered to or picked up by it, or its designated agent, until such securities are delivered to the recipient pursuant to instructions given to the Agent by the recipient.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(4) of the Manual.

11. That it will file an agreement with the Exchange indemnifying purchasers of its NYSE listed securities from and against any and all loss arising out of over/under issuance.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(B) of the Manual.

12. That the Agent will assure that the transfer agent and registrar functions are maintained separate and distinct with appropriate internal controls, subject to an annual review by the Agent's independent auditors. Such auditors will provide a letter on an annual basis to the Agent's Board of Directors with a copy to the NYSE setting forth the results of their review. The independent auditor's review shall include tests of the transfer and registrations systems and controls including the period since the prior examination date as considered necessary in the circumstances to establish that the control system is basically adequate and that no material weakness in the internal control exists. If applicable, the auditor's review will comment upon any inadequacies found to exist and shall indicate any corrective action taken or proposed.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(B) of the Manual.

13. That if the auditor's review, as outlined in Section 12 above, specified any inadequacies, the Agent hereby agrees to take immediate corrective action. When such corrective steps have been completed, the auditors will provide a subsequent letter indicating that the inadequacies have been corrected.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(B) of the Manual.

14. That approval to act pursuant to this agreement will not be granted until such time as an independent auditor has submitted a letter covering the results of such review to the Agent's Board of Directors and to the NYSE in a form satisfactory to the NYSE.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(B) of the Manual.

15. That the NYSE may at any time determine that the Agent is no longer a qualified transfer agent and registrar for its NYSE listed security issues in the event the Agent fails to comply with all or any part of the provisions of this Agreement.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(9) of the Manual.

16. For companies required to maintain eligibility for a security in a direct registration system pursuant to Para 501.00 of this Manual: The Agent will at all times be eligible either for the direct registration system operated by the Depository Trust Company or for another direct registration system operated by a securities depository that is registered as a clearing agency with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Exchange Act.

- The Exchange proposes to delete this requirement as it is duplicative of Section 601.01(A)(13) of the Manual.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>25</sup> of the Exchange Act in general, and furthers the objectives of Section 6(b)(5)<sup>26</sup> of the Exchange Act in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms 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 the investor protection and public interest goals of the Exchange Act because a listing applicant will continue to undergo a rigorous application process, in which it will continue to provide to the Exchange all information necessary for the Exchange to make an informed decision about the issuer's qualification for listing. In addition, the proposed revised listing agreements provide that any listing applicant will agree to comply with the Exchange's rules.

The Exchange believes that: (i) the provisions the Exchange proposes to include in new Section 107.00 and (ii) the proposal to amend Section 802.01D to explicitly include a violation of the listing agreement as a basis for delisting are consistent with the protection of investors and the public interest. The requirements included in proposed Section 107.00 are all policies the Exchange has long applied as part of its initial listing process and they are important in insuring that only qualified companies are admitted to listing. The proposed amendment to Section 802.01D simply makes explicit that it may be appropriate in certain circumstances for the

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<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

Exchange to utilize its discretion under that rule to delist a company for a violation of its listing agreement.

The proposed changes to Sections 702.03, 702.04, 901, 902.01 and 903 of the Manual are consistent with the protection of investors and the public interest, as the proposed changes do not weaken regulatory requirements but instead simply streamline the Exchange's listing application process and the organization of the Manual by deleting from the Manual documents that will now be made available on the Exchange's website.

The proposed changes to Sections 104.00, 702.00 and 702.02 of the Manual are consistent with the protection of investors and the public interest, as the proposed changes do not weaken regulatory requirements, but instead simply provide a more helpful description of the Exchange's confidential review of eligibility and overall listing process. The indicative timeline proposed to be deleted from Section 702.02 is very approximate and does not necessarily bear any relation to the listing experience of any individual company. The Exchange believes these changes, as described in Part I above, will make the relevant sections more informative for listing applicants and add transparency and clarity to the Exchange's rules.

The Exchange's proposed changes to Sections 906.01, 906.02, 906.03, 601.01 and 601.03 of the Manual, deleting the requirements with respect to transfer agent and registrar agreements, are consistent with the protection of investors and the public interest, as a listing applicant will continue to be required to explicitly agree in the revised listing agreement that it will have a qualified transfer agent and registrar at all times while listed on the Exchange.

The proposed modifications to the listing application are consistent with the protection of investors and the public interest, because the Exchange is simply eliminating from the application information requirements that are duplicative of disclosure requirements under the

Federal securities laws or where similar disclosure provisions under the Federal securities laws provide information sufficient for the Exchange to make informed determinations about the suitability of issuers for listing.

The proposed modifications to the domestic and foreign listing agreements are consistent with the protection of investors and the public interest because, as described in detail in Parts II and III of the “Purpose” section of this filing, any requirements that are eliminated are either: (i) duplicative of provisions included elsewhere in the Manual as listing rules; (ii) no longer applicable because the SEC has previously approved the elimination of an identical listing rule requirement; (iii) no longer relevant in light of changes to the structure and practices in the securities markets; or (iv) proposed additions to the Manual as listing rules.

The Exchange’s proposed changes to Sections 701.02, 702.06 and 703 of the Manual, as described in Part I above, are technical and conforming changes that are non-substantive in nature.

The Exchange’s proposed deletion of Section 702.01 of the Manual in its current form, as described more fully in Part I of the “Purpose” section of this filing, is consistent with the protection of investors and the public interest, as it simply eliminates a description which is not accurate as it relates to the listing application process proposed to be adopted pursuant to this filing.

The proposed deletion of Section 702.05 of the Manual is consistent with the protection of investors and the public interest, because market participants and investors no longer need to rely on the publication of an issuer’s listing application by the Exchange for information about the issuer, as all disclosures material to an investment in that issuer’s securities must be included in such issuer’s SEC filings.

The proposed deletions of Sections 904.01—904.03 of the Manual are consistent with the protection of investors and the public interest, as: (i) the Stock Distribution Schedule in Section 904.01 is obsolete because the Exchange obtains the distribution information it needs from the Company’s transfer agent; (ii) the information required by Section 904.02 would be required to be included in the revised listing application; and (iii) the “Due Bill” Form Letter included in Section 904.03 is no longer used, as investors have access to this information in real time through online market data service providers.

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. The proposed rule change does not substantively alter the requirements for initial listing in any material respect and therefore will not advantage the Exchange in competing for new listings.

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

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 the 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2013-33 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-2013-33. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. 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-2013-33 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.<sup>27</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).