

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69914; File No. SR-NYSE-2013-40)

July 2, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending 303A.00 of the Exchange's Listed Company Manual to Provide a One-Year Transition Period to Comply with the Internal Audit Requirement of Section 303A.07(c) for Companies Listing in Connection with An Initial Public Offering, as New Registrants or by Means of a Carve-Out or Spin-Off Transaction

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 June 18, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend 303A.00 of the Exchange's Listed Company Manual (the "Manual") to provide a one-year transition period to comply with the internal audit requirement of Section 303A.07(c) for companies listing in connection with an initial public offering ("IPO"), as new registrants or by means of a carve-out or spin-off transaction. The text of the proposed 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.

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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.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 303A.07(c) of the Listed Company Manual requires that any listed company which is subject to Section 303A.07 must have an internal audit function to provide management and the audit committee with ongoing assessments of the listed company's risk management processes and system of internal control. A listed company may choose to outsource this function to a third party service provider other than its independent auditor.

Consistent with the transition provisions of Section 303A.00, any company listing upon transfer from another national securities exchange that does not have an internal audit requirement has one year from the date of listing to comply with the internal audit function requirement of Section 303A.07(c). Neither the Nasdaq Stock Market LLC ("Nasdaq") nor NYSE MKT LLC ("NYSE MKT") has an internal audit requirement. Consequently, any company transferring from Nasdaq or NYSE MKT to the NYSE has one year from the date of listing to comply with the requirement specifically set forth in its rules. By contrast, Section 303A.00 does not provide any transition period for compliance with the internal audit

requirement to a company which is listing in connection with: (i) its IPO<sup>4</sup> or whose common stock has not previously been registered under the Exchange Act or (ii) by means of a carve-out or spin-off transaction.<sup>5</sup> The Exchange believes that the lack of a transition period in relation to the internal audit requirement for these categories of newly-listed companies is anomalous in light of the treatment of companies transferring from other markets. Accordingly, the Exchange proposes to amend Section 303A.00 to extend the application of the one-year transition period to comply with the internal audit function requirement to such companies.

The Exchange believes that providing a transition period to comply with the internal audit function requirement to companies listing in connection with their IPO, as new registrants or by mean of a carve-out or spin-off transaction does not give rise to any novel regulatory issues that do not arise in connection with the existing transition provision for companies transferring from another national securities exchange. The Exchange believes that providing a transitional period after listing for a newly public company to establish its internal audit function would

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<sup>4</sup> For purposes of Section 303A other than Sections 303A.06 (which incorporates Exchange Act Rule 10A-3 by reference) and 303A.12(b), Section 303A.00 currently provides that a company is considered to be listing in conjunction with an IPO if, immediately prior to listing, it does not have a class of common stock registered under the Exchange Act. Consequently [sic], a company whose common stock has not previously been registered under the Exchange Act is eligible to avail itself of the IPO transition periods in Section 303A.00 regardless of whether that company is conducting a public offering at the time of its initial listing. The Exchange's proposed amendment would provide a one-year transition period for compliance with the internal audit function requirement to all companies currently eligible for the IPO transition periods in Section 303A.00.

<sup>5</sup> Section 102.01B of the Manual defines a carve-out as the initial offering of an equity security to the public by a publicly traded company for an underlying interest in its existing business (which may be subsidiary, division, or business unit). For all practical purposes, a carve-out is the same as an IPO, as it involves the listing of a newly-public company in connection with the initial public offering of its common stock. A spin-off involves the distribution by a listed company of all of the outstanding common stock of a subsidiary to the listed company's shareholders and the listing of the new company, generally without any concurrent offering.

benefit investors by making the company's implementation of the internal audit function more effective and efficient and reducing the costs that a company faces in its first year as a public company. The proposed transition period would also limit any interference by the Exchange's internal audit requirement with a company's business decision regarding the timing and use of resources relating to its initial listing. In that regard, the Exchange notes that newly-public companies are typically in the process of upgrading their accounting systems and internal controls and hiring additional staff to meet the greater demands placed on public companies. In addition, many such companies appoint a number of new directors at the time of listing to comply with NYSE independence requirements. Frequently, a newly-listed company will appoint a completely new audit committee on the date of listing. As the audit committee has an oversight role with respect to internal audit and risk management, it is appropriate for that newly-constituted committee to have a significant role in the design and implementation of the company's internal audit function. A one-year transition period would give a newly-appointed audit committee an opportunity to become familiar with the internal controls and risk management of the company and determine what kind of internal audit function is suitable for the company given its specific circumstances.

Given the limited scope of the proposed transition provision and the fact that other national securities exchanges do not have comparable rules, the Exchange believes that the extension of the transition provision to IPOs, new registrants, carve-outs and spin-offs is consistent with the protection of investors and the public interest. Moreover, given that any company which would be able to avail itself of the proposed transition could list on Nasdaq without ever having to comply with an internal audit requirement, the Exchange believes that investors would be at least as well protected by having these companies listed on the Exchange,

where they would be subject to such a requirement after the transition period. After adoption of the proposed amendment, all companies that are subject to Section 303A.07 would continue to be required to have an internal audit function no later than one year after their listing date. The Exchange proposes to amend Section 303A.07 to include a sentence explicitly stating this fact.

The Exchange notes that there are several provisions in Section 303A.07 that set forth duties of the audit committee with respect to the internal audit function. The Exchange proposes to amend those provisions to clarify the duties of the audit committee with respect to the internal audit function during any transition period applicable to IPOs, new registrants, transfers from another national securities exchange, carve-outs and spin-offs. The proposed amendments are as follows:

- Section 303A.07(b)(i)(A) provides that the audit committee's charter must provide that the committee will assist board oversight of (1) the integrity of the listed company's financial statements, (2) the listed company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the listed company's internal audit function and independent auditors. The proposed amendment would provide that if the listed company does not yet have an internal audit function because it is availing itself of a transition period pursuant to Section 303A.00, the charter must provide that the committee will assist board oversight of the design and implementation of the internal audit function) [sic].
- Section 303A.07(b)(i)(E) provides that the audit committee's charter must provide that the committee will meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function)

and with independent auditors. The proposed amendment would provide that if the listed company does not yet have an internal audit function because it is availing itself of a transition period pursuant to Section 303A.00, the committee must meet periodically with the company personnel primarily responsible for the design and implementation of the internal audit function.

- Section 303A.07(b)(i)(F) provides that the audit committee's charter must provide that the committee will review with the independent auditor any audit problems or difficulties and management's response. This review is required to include discussion of the responsibilities, budget and staffing of the listed company's internal audit function. The proposed amendment would provide that if the listed company does not yet have an internal audit function because it is availing itself of a transition period pursuant to Section 303A.00, the review should include discussion of management's plans with respect to the responsibilities, budget and staffing of the internal audit function and its plans for the implementation of the internal audit function.
- Section 303A.07(b)(i)(H) provides that the audit committee's charter must provide that the committee will report regularly to the board of directors to review, among other things, the performance of the company's internal audit function. The proposed amendment would provide that if the listed company does not yet have an internal audit function because it is availing itself of a transition period pursuant to Section 303A.00, the committee should review with the board management's activities with respect to the design and implementation of the internal audit function.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) of the Act in that the proposed amendment would provide an appropriate transition period to comply with the internal audit requirement to companies listing in connection with an IPO, as a new registrant, or by means of a carve-out or spin-off transaction, while retaining its general requirement that all such companies must have an internal audit function no later than one year from the company’s listing date. The Exchange notes that during any transition period the audit committee would continue to have a role in overseeing the listed company’s financial systems and internal controls and would also be involved in overseeing the design and implementation of the company’s internal audit function during that period.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act, as it

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

simply provides a transition period for newly-listed companies to comply with the Exchange's internal audit requirement.

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-2013-40 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-2013-40. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSE-2013-40, 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>8</sup>

Elizabeth M. Murphy  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).