SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61099; File No. SR-NYSE-2009-115)

December 2, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Warrant Initial Listing Standard to Exempt from the Minimum Holders Requirement Any Series of Warrants that is Listed in Connection with the Initial Firm Commitment Underwritten Public Offering of Such Warrants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on November 16, 2009, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)[3] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its warrant listing standard set forth in Section 703.12 of the Listed Company Manual (the "Manual") to exempt from the minimum holders requirement of Section 703.12 any series of warrants that is listed in connection with the initial firm commitment underwritten public offering of such warrants.

The text of the proposed rule change is available on NYSE's Web site at www.nyse.com, on the Commission's Web site at www.sec.gov, at NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

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

2 17 CFR 240.19b-4.

3 17 CFR 240.19b-4(f)(6).

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 these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The NYSE's initial listing standard for warrants set forth in Section 703.12 of the Manual requires that, at the time of initial listing, there are at least 1,000,000 warrants outstanding with at lease 400 holders and a market value of at least $4 million.

The Exchange proposes to amend Section 703.12 to exempt from the 400 holders requirement any series of warrants listed in connection with the initial firm commitment underwritten public offering of such warrants. Warrants that benefit from this exemption will still be required to meeting the 1,000,000 warrants outstanding and $4 million market value requirements of Section 703.12.

The Exchange believes that a primary purpose of distribution requirements in listing standards is to ensure a liquid trading market, promoting price discovery and the establishment of an appropriate market price for the listed securities. In the case of warrants, the Exchange believes that this liquidity concern is partially addressed by the fact that the market price for a warrant is in large part determined by the trading price of the underlying common stock.

Warrant values are primarily determined using valuation models which factor in the trading price of the underlying stock, the warrant exercise price and the expiration date of the warrant.

Generally, warrants that are listed on the Exchange have either (i) been distributed to the pre-restructuring shareholders or creditors of a company in connection with its emergence from bankruptcy or (ii) were sold in an underwritten public offering as part of a unit which included warrants and common stock. In either case, the bankruptcy-related distribution or the underwritten public offering of units typically results in a significant number of holders of the warrants. The Exchange has not had any recent experience with the listing of warrants sold on a stand-alone basis in an underwritten public offering. However, the Exchange believes that the sale of warrants in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such warrants after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. For the foregoing reasons, the Exchange believes that it is consistent with the protection of investors and the public interest to exempt from the holders requirement of Section 703.12 any series of warrants that is listed in connection with the initial firm commitment underwritten public offering. The Exchange notes that Nasdaq Global Market's warrant listing standard does not contain any minimum holders requirement.[4]

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[4] See Nasdaq Marketplace Rule 5410.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] 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 the Act in that (i) the concern that a liquid trading market will develop for listed securities that underlies listing standard distribution requirements is partially addressed by the fact that the market price for a warrant is in large part determined by the trading price of the underlying common stock, (ii) the sale of warrants in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such warrants after listing, since the offering process is designed to promote appropriate price discovery, and (iii) the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

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

6 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b-4(f)(6)[8] thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period.

The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the NYSE's narrowly crafted proposal, that exempts from the 400 holders requirement only those warrants that are issued through an initial firm commitment underwritten public offering, helps to address the liquidity and price discovery concerns that underlie the minimum holder

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7 15 U.S.C. 78s(b)(3)(A).

8 17 CFR 240.19b-4(f)(6).

9 The Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

10 17 CFR 240.19b-4(f)(6)(iii).

requirement. The Commission notes that the underwriters in an initial firm commitment public offering in such warrants would generally make a market for a period of time after the offering, thereby alleviating short term liquidity concerns. Moreover, as noted by the NYSE, the price of such warrants would be established by the firm commitment underwritten offering process, in addition to the price of the underlying security, the exercise price of the warrants, and the expiration of the warrants. Finally, the Commission notes that these warrants would have to meet all the other requirements under NYSE's Listed Company Manual Section 703.12, which includes minimum aggregate market value and size requirements. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and the proposal is effective upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

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. Please include File Number SR-NYSE-

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11 For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

12 15 U.S.C. 78s(b)(3)(C).

2009-115 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-2009-115. 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 Web site (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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will 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-2009-115 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.[13]

Florence E. Harmon
Deputy Secretary

13 17 CFR 200.30–3(a)(12).