

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73265; File No. SR-NYSE-2014-52)

September 30, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 102.01C of the NYSE Listed Company Manual to Adopt a New Global Market Capitalization Test Initial Listing Standard for Operating Companies and to Eliminate All of the Current Initial Listing Standards for Operating Companies Except the Earnings Test

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 September 19, 2014, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Section 102.01C of the NYSE Listed Company Manual (the “Manual”) to adopt a new initial listing standard for operating companies and to eliminate all of the current initial listing standards for operating companies with one exception. The text of the proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 NYSE proposes to amend Section 102.01C of the Manual to adopt a new initial listing standard for operating companies and eliminate all of the current initial listing standards for operating companies with one exception.

The Exchange proposes to amend Section 102.01C of the Manual to adopt a new initial listing standard for operating companies (the "Global Market Capitalization Test") consisting solely of a requirement that the listing applicant must have a minimum total global market capitalization of \$200 million at the time of initial listing.³ Companies listing under the Global Market Capitalization Test will also be required to meet the existing distribution requirements of Section 102.01A of the Manual and the stock price and market value of publicly-held shares requirements of Section 102.01B of the Manual.⁴ In connection with the adoption of the Global

³ If a company is currently publicly traded at the time it applies to list on the Exchange and is being qualified for listing under the Global Market Capitalization Test, it will be required to meet the \$200 million global market capitalization requirement for at least the 90 consecutive trading days immediately preceding the date on which it receives clearance to submit an application to list on the Exchange. The Commission notes a company which is currently publicly traded at the time it applies to list on the Exchange and is being qualified for listing under the Global Market Capitalization Test will also need to maintain a closing price of at least \$4 per share for a period of at least 90 consecutive trading days prior to receipt of clearance to make application to list on the Exchange. See proposed NYSE Manual Section 102.01C(II)**.

⁴ All operating companies listing on the NYSE are required by Section 102.01B of the Manual to have a stock price of at least \$4 per share at the time of listing, which the Exchange notes is identical to the comparable requirement for listing on the Nasdaq Global Market. Companies listing in connection with an IPO or upon emergence from

Market Capitalization Test, the Exchange proposes to eliminate the Valuation/Revenue with Cash Flow Test, the Pure Valuation/Revenue Test, the Affiliated Company Test and the Assets and Equity Test. The Earnings Test will remain in effect.⁵

The Exchange currently has five initial listing standards for operating companies: the Earnings Test; the Valuation/Revenue with Cash Flow Test; the Pure Valuation/Revenue Test; the Affiliated Company Test; and the Assets and Equity Test. All of these initial listing standards other than the Earnings Test include a global market capitalization requirement component (\$500 million for the Valuation/Revenue with Cash Flow Test; \$750 million for the Pure

bankruptcy are required by Section 102.01A of the Manual to have 400 holders of round lots of their common stock and 1.1 million publicly-held shares at the time of initial listing. Companies listing in connection with a transfer or quotation are required by Section 102.01A of the Manual to have 1.1 million publicly-held shares and either: (i) 400 holders of round lots; (ii) 2,200 total stockholders together with average monthly trading volume of 100,000 shares (for the most recent six months); or (iii) 500 total stockholders together with average monthly trading volume of one million shares (for the most recent 12 months). The Exchange notes that these requirements are at least as stringent as the parallel requirement for listing on the Nasdaq Global Market that an applicant must have 400 round lot holders plus 1.1 million publicly-held shares. Section 102.01B of the Manual provides that any company listing in connection with an IPO or a spin-off must have \$40 million in market value of publicly-held shares at the time of initial listing and requires all other applicants to have \$100 million in market value of publicly-held shares. The Exchange notes that these requirements are significantly higher than the comparable requirements for listing under any of the Nasdaq Global Market initial listing standards. For example, under the various initial listing standards set forth in Nasdaq Marketplace Rule 5405(b), the highest market value of publicly-held shares that an issuer is required to demonstrate is \$20 million.

⁵ Pursuant to Section 102.01C of the Manual, a company can qualify for initial listing under the Earnings Test if it can demonstrate that it has pre-tax earnings from continuing operations, as adjusted, of (i) at least \$10,000,000 in the aggregate for the last three fiscal years together with a minimum of \$2,000,000 in each of the two most recent fiscal years, and positive amounts in all three years or (ii) at least \$12,000,000 in the aggregate for the last three fiscal years together with a minimum of \$5,000,000 in the most recent fiscal year and \$2,000,000 in the next most recent fiscal year. A company that qualifies as an emerging growth company as defined in Section 2(a)(19) of the Securities Act of 1933 and Section 3(a)(80) of the Act can qualify for initial listing under the Earnings Test if it can demonstrate that it has pre-tax earnings from continuing operations, as adjusted, of at least \$10,000,000 in the aggregate for the last two fiscal years with a minimum of \$2,000,000 in both years.

Valuation/Revenue Test; \$500 million for the Affiliated Company Test; and \$150 million for the Assets and Equity Test). Because the Global Market Capitalization Test that the Exchange proposes to adopt will require only a minimum total global market capitalization of \$200 million at the time of initial listing, the Exchange proposes to eliminate the Valuation/Revenue with Cash Flow Test, the Pure Valuation/Revenue Test, the Affiliated Company Test and the Assets and Equity Test as they require an issuer to demonstrate a global market capitalization of more than \$200 million and would therefore no longer be relevant.

In recent times, a number of companies have successfully completed sizable initial public offerings but have not qualified for listing on the NYSE. Typically, these companies are involved solely or primarily in research and development (“r&d”) activities at the time of their IPO and are raising funds in the IPO to continue their research. As these companies are not at a stage in their development where they are generating revenue, they do not qualify to list under the current initial listing standards that include requirements that are more suitable to companies that generate revenue (i.e., the Earnings Test, the Valuation/Revenue with Cash Flow Test, and the Pure Valuation/Revenue Test). Many of these companies also do not have any appreciable amount of stockholders’ equity at the time of their IPOs and they therefore are unable to meet the \$50 million stockholders’ equity requirement of the Assets and Equity Test. Consequently, a company of this type may be able to raise a significant amount of capital in an IPO and not meet any of the current NYSE initial listing standards. However, these companies are not precluded from listing on Nasdaq as the Nasdaq Global Market has a listing standard that permits the qualification of a company solely on the basis of a total market capitalization of \$75 million⁶ (in addition to the stock price, distribution, and market value of publicly-held shares requirements

⁶ See Nasdaq Marketplace Rule 5405(b)(3).

discussed in Footnote 5 above).⁷ The NYSE wishes to adopt the proposed new Global Market Capitalization Test to address this competitive disadvantage it faces in competing with Nasdaq for the listing of these r&d-focused companies.

The Exchange believes that by setting its market capitalization requirement under the proposed new standard at \$200 million (more than twice the \$75 million required by the comparable Nasdaq Global Market standard) it will ensure that companies listed under the new standard will be of a size that makes them suitable for trading on the Exchange. The Exchange believes that the substantial size of companies seeking to list under the proposed Global Market Capitalization Test in combination with the Exchange's aforementioned stock price, distribution, and market-value of publicly-held shares requirements will ensure that the Exchange provides listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. The Exchange notes that it has reviewed the IPOs that listed on Nasdaq over the last few years and that only a small number of those that were not qualified for listing on the NYSE would have been eligible for an NYSE listing under the proposed new standard. As such, the Exchange does not anticipate a significant increase in the number of qualified IPOs as a result of the proposed new standard and does not anticipate any meaningful reduction in the size and quality of companies listing on the Exchange as a consequence of the adoption of the proposed new standard.

As with all other listing applicants, the Exchange reserves the right to deny listing to any company seeking to list under the Global Market Capitalization Test if the Exchange determines that the listing of any such company is inadvisable or unwarranted in the opinion of the

⁷ See, *supra*, Footnote 4 for a discussion of the stock price, distribution, and market value of publicly-held shares requirements of the Nasdaq Global Market.

Exchange. Similarly, as with all companies applying to list on the Exchange, in determining the suitability for listing of any company seeking to list under the Global Market Capitalization Test, the staff of NYSE Regulation will carefully review the company's financial statements and its disclosures in its public filings, as well as conducting a background review of the company's officers, directors and significant shareholders. In particular, staff will review whether any company listing under the Global Market Capitalization Test has access to sufficient funds to carry out its business strategy as disclosed. As a consequence of its ability to consider these and other factors in addition to the market capitalization and other numerical requirements, the Exchange believes that it will be able to exercise informed discretion in listing companies under the proposed standard and that the adoption of the proposed standard is therefore consistent with the protection of investors. In reaching this conclusion, the Exchange also relied on the fact that the Nasdaq Global Market has been applying initial listing standards that are less stringent than the proposed Global Market Capitalization Test for a significant period of time and there is consequently a great deal of experience that demonstrates that companies listing under these lower standards are suitable for listing on a national securities exchange.

The Exchange's listing standards after adoption of the proposed Global Market Capitalization Test will exceed those established by Exchange Act Rule 3a51-1(a)(2) (the "Penny Stock Rule").⁸ Specifically, the Exchange notes that the \$200 million total market capitalization required by the proposed standard far exceeds the \$50 million total market capitalization option of the Penny Stock Rule. While, in the case of newly-public companies, this requirement in the proposed standard would be measured at a point in time rather than over a 90 consecutive day period prior to listing as provided in the Penny Stock Rule, the Exchange

⁸ 17 CFR 240.[sic]a51-1(a)(ii).

believes that the far greater amount required by the proposed standard makes it a far more stringent standard than that of the Penny Stock Rule notwithstanding the different approach to measurement.⁹ Further, Nasdaq currently has an initial listing standard that requires that a company only demonstrate a total market capitalization of \$75 million.¹⁰ In addition, the Exchange requires all initial listings, regardless of which standard they are listed under, to meet the stock price, distribution and market value of publicly-held shares requirements described in Footnote 5 above, all of which meet or exceed all of the Penny Stock Rule's remaining requirements. Companies listing under the Global Market Capitalization Test will also have to comply with all other applicable Exchange listing rules, including the Exchange's corporate governance requirements. The Exchange's continued listing standard set forth in Section 802.01B of the Manual that requires a listed company to maintain an average global market capitalization over a consecutive 30 trading-day period of at least \$50,000,000 or stockholders' equity of at least \$50,000,000 in order to remain in compliance with Exchange rules will be applicable to companies that list under the Global Market Capitalization Test.

⁹ The Exchange notes, however, that current publicly-traded companies seeking to list on the Exchange under the proposed Global Market Capitalization Test will be required to (i) demonstrate the proposed market capitalization for a period of at least 90 consecutive trading days prior to receipt of clearance to make application to list on the Exchange and (ii) maintain a closing price of at least \$4 per share for a period of at least 90 consecutive trading days prior to receipt of clearance to make application to list on the Exchange.

¹⁰ Further, the Exchange has reviewed the initial listing standards of the American Stock Exchange (the "Amex") as in effect at the time of the adoption of the National Securities Market Improvement Act of 1996 ("NSMIA") and notes that the Amex had an initial listing standard at that time permitting the listing of a company that had \$15 million in market capitalization, \$4 million in stockholders' equity and three years of operating history. While the proposed Global Market Capitalization Standard does not include any stockholders' equity or operating history requirements, its \$200 million market capitalization requirement is far greater than the \$15 million required by the Amex standard in effect at the time of adoption of NSMIA. As such, the Exchange believes that the proposed Global Market Capitalization Test does not set a new low for a named market under NSMIA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹¹ of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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 to the initial listing standards is consistent with the investor protection objectives of Section 6(b)(5). The Exchange has reached this conclusion because: (i) as described in the “Purpose” section above, the Exchange will continue to consider factors other than an applicant’s satisfaction of numerical criteria in exercising its discretion to list a company; and (ii) the Nasdaq Global Market has been applying initial listing standards that are less stringent than the proposed Global Market Capitalization Test for a significant period of time and there is consequently a great deal of experience that demonstrates that companies listing under these lower standards are suitable for listing on a national securities exchange. Further, the Exchange believes that the substantial size of companies seeking to list under the proposed Global Market Capitalization Test in combination with the Exchange’s stock price, distribution, and market-value of publicly-held shares requirements will ensure that the Exchange provides listed status only to bona fide companies that have or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule changes will expand the competition for the listing of equity securities of operating companies as they will enable the NYSE to compete for the listing of companies that are currently not qualified for listing on the NYSE but are qualified to list on other national securities exchanges.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁵

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁸ of the Act to determine whether the proposed rule change should be approved or 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. Please include File Number SR-NYSE-2014-52 on the subject line.

Paper comments:

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

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NSYE-2014-52. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2014-52 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.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30–3(a)(12).