

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59854; File No. SR-NYSEArca-2009-29)

May 1, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. that Suspends NYSE Arca's Stock Price Continued Listing Standard

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 17, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "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 Exchange. 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, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to amend its rules governing NYSE Arca, LLC (also referred to as the "NYSE Arca Marketplace") by suspending through June 30, 2009, the application of its price criteria for capital and common stock set forth in NYSE Arca Equities Rule 5.5(b)(2). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In recent months, the U.S. and global equities markets have experienced extreme volatility and a precipitous decline in trading prices of many securities. In response to these unusual market conditions, the NYSE and NASDAQ have suspended the application of their respective dollar price continued listing requirements.³ NYSE Arca proposes to suspend through June 30, 2009, its own dollar price requirement as set forth in NYSE Arca Equities Rule 5.5(b)(2). This proposed suspension will provide temporary relief to companies in response to the extreme volatility and a precipitous decline in trading prices of many securities experienced in the U.S. and global equities markets, which the Commission had acknowledged constituted a

³ See Securities Exchange Act Release No. 59510 (March 4, 2009), 74 FR 10636 (March 11, 2009) (SR-NYSE-2009-21), which suspends the NYSE's dollar price continued listing requirement set forth in Section 802.01C of the Listed Company Manual through [sic] June 30, 2009 (the "NYSE Amendment"). See Securities Exchange Act Release 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR-NASDAQ-2008-082) for the suspension of NASDAQ's bid price and market value of publicly held shares through January 16, 2009 (the "NASDAQ Amendment"). See, also, Securities Exchange Act Release 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009), extending the application of the NASDAQ Amendment to April 19, 2009. See, also, SR-NASDAQ-2009-026 (filed March 18, 2009), proposing to further extend the application of the NASDAQ Amendment through July 19, 2009. NASDAQ's continued listing requirements relating to bid price are set forth in NASDAQ Marketplace Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in NASDAQ Marketplace Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). NASDAQ's continued listing requirements relating to market value of publicly held shares are set forth in NASDAQ Marketplace Rules 4310(c)(7), 4320(e)(5), 450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1).

threat to the fair and orderly functioning of the securities markets and could lead to a crisis of confidence among investors regarding the viability of companies whose stock prices have declined significantly.⁴

Under the proposed suspension of the Exchange's stock price continued listing standard, companies will not be notified of new events of noncompliance with the price requirement during the suspension period. Companies that are in a compliance period at the time of commencement of the suspension⁵ will still be deemed to have regained compliance during the rule suspension period if, at the expiration of their respective six-month cure periods established prior to the commencement of the rule suspension, they have a \$1.00 closing share price on the last trading day of the period and a \$1.00 average share price based on the preceding 30 trading days. In addition, any company that is in a compliance period at the time of commencement of

⁴ See, e.g., Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) ("The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.").

⁵ The Exchange notes that there is currently one company in a compliance period for noncompliance with the dollar price requirement and there are not currently any companies in the Exchange's delisting appeal process that have been sent a delisting notification for noncompliance with the dollar price continued listing requirement. The Exchange also notes that it would continue to identify companies in a compliance period as below compliance for price, including by continuing to append an indicator to the company's stock ticker to identify it as being below compliance for price and including the company on a list of companies that are below compliance for price posted to the Exchange's website, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

the rule suspension can return to compliance during the suspension if at the end of any calendar month during the suspension such company has a \$1.00 closing share price on the last trading day of such month and a \$1.00 average share price based on the 30 trading days preceding the end of such month.⁶ Any company that is in a compliance period at the time of commencement of the rule suspension that does not regain compliance during the suspension period will recommence its compliance period upon reinstatement of the stock price continued listing standard and receive the remaining balance of its compliance period.⁷ Following the temporary rule suspension, any new events of noncompliance with the Exchange's stock price continued listing standard would be determined based on a consecutive 30 trading-day period commencing on July 1, 2009.

The proposed suspension of the Exchange's price continued listing requirement will enable companies to remain listed in the current difficult market conditions with the prospect of a future recovery in their stock prices enabling them to comply with the applicable listing requirements upon the standards' reinstatement. During the period between now and June 30, 2009, the Exchange will consider whether it is appropriate to propose further revisions to its continued listing requirements.

The Exchange notes that this filing is based on a NYSE filing, pursuant to which the NYSE responded to the current market conditions by temporarily suspending its dollar price

⁶ A company would continue to be subject to delisting for failure to comply with other listing requirements.

⁷ For example, if a company is four months into its compliance period for noncompliance with the price continued listing standard when the suspension starts and the company does not regain compliance during the suspension, the company would have an additional two months starting on July 1, 2009, to regain compliance.

continued listing requirements through [sic] June 30, 2009.⁸ The NYSE dollar price test (as set forth in Section 802.01C of the Listed Company Manual) is identical to NYSE Arca's price test set forth in NYSE Arca Equities Rule 5.5(b)(2).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁹ of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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 proposed rule change is designed to remove uncertainty regarding the ability of certain companies to remain listed on NYSE Arca during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open 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.

⁸ The Commission notes that NYSE suspended its dollar price continued listing requirement until June 30, 2009, not through June 30, 2009. Accordingly, as stated in NYSE's filing, following the temporary suspension, any new events of noncompliance with the NYSE's stock price continued listing standard will be determined based on a consecutive 30 trading-day period commencing on June 30, 2009. See NYSE Amendment, supra note 3. In contrast, NYSE Arca's suspension will be through June 30, 2009, and following the temporary rule suspension, any new events of noncompliance with the Exchange's stock price continued listing standard would be determined based on a consecutive 30 trading-day period commencing on July 1, 2009.

⁹ 15 U.S.C. 78f(b).

¹⁰ 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

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ 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.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE Arca to immediately implement a temporary measure, through June 30, 2009, to suspend its \$1.00 price continued listing requirement to respond to recent market volatility and conditions. The Commission notes

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

that this will provide certain companies with immediate relief from receiving a non-compliance or delisting notification, or from being delisted, as a result of the current market conditions. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance period will resume at the same stage and receive the remaining balance of their compliance periods if they remain non-compliant with these standards. This will ensure that the temporary suspension addresses the concerns to companies and investors caused by the current market conditions, and that may result in a company's securities becoming non-compliant with the \$1.00 price requirement, or unable to cure such a deficiency, due to these market conditions. The Commission also notes that the proposed rule change is substantially similar to the recent Nasdaq and NYSE filings to suspend their respective \$1.00 price continued listing requirements, and thus, raises no new regulatory issues.¹⁵ For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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:

¹⁵ See supra note 3.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-NYSEArca-2009-29 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-NYSEArca-2009-29. 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, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the 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-NYSEArca-2009-29 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.¹⁷

Elizabeth M. Murphy
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).