

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58235; File No. SR-NYSE-2008-59)

July 28, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Reduce the Period Within Which Companies Must Issue a Press Release After the Exchange Notifies Them that They are Noncompliant with Exchange Listing Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 22, 2008, New York Stock Exchange LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) the proposed rule change as described in Items I, II, and III 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 proposes to amend Sections 802.02 and 802.03 of the Exchange’s Listed Company Manual (the “Manual”) to provide that the Exchange will require a U.S. company, upon receiving written notification that it has fallen below the Exchange’s listing standards, to issue a press release within the same amount of time as allotted by the SEC for the company to disclose such an occurrence, but in no event later than four business days after receipt of such notification, and will require a non-U.S. company to issue a press release within 30 days of receiving written notification from the Exchange that it has fallen below the Exchange’s listing standards. The text of the proposed rule change is available at <http://www.nyse.com>, the NYSE, and the Commission’s Public Reference Room.

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

<sup>2</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 Exchange 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 Exchange proposes to amend Sections 802.02 and 802.03 of the Manual to provide that the Exchange will require a U.S. company, upon receipt of written notification that it has fallen below the Exchange's listing standards, issue a press release within the amount of time allotted by the SEC for companies to disclose such an occurrence. The Exchange will also require a non-U.S. company to issue a press release within 30 days of receiving written notification that it has fallen below the Exchange's listing standard.

Currently, Section 802.02 of the Manual requires a U.S. company to issue a press release within 45 days of receiving written notification from the Exchange that it has fallen below the Exchange's listing standards. However, SEC rules require the company to file a Form 8-K giving notice of that event within four business days of being notified by the Exchange.<sup>3</sup> The Exchange believes that its own requirement is too long in light of the much earlier public notice

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<sup>3</sup> Item 3.01 of Form 8-K requires a registrant to file a Form 8-K within four business days of receipt of notice from the national securities exchange that maintains the principal listing for any class of the registrant's common equity that the registrant or such class of the registrant's securities does not satisfy a rule or standard for continued listing on the exchange.

required by the Form 8-K rule and that it is appropriate for the Exchange to issue a press release on the subject itself if the company has not acted within the period provided by Form 8-K and in any event no later than four business days after receipt of notification from the Exchange. The Exchange notes that companies that are incorporated in jurisdictions outside the United States but that do not qualify as foreign private issuers are treated as domestic companies for purposes of Section 802.02.

Currently, Section 802.03 of the Manual requires a non-U.S. company to issue a press release within 90 days of receiving written notification from the Exchange that it has fallen below the Exchange's listing standards. While foreign private issuers are not subject to the Form 8-K requirement imposed on domestic issuers, the Exchange believes that 90 days is an excessive period to give companies to make such a material disclosure. Based on our experience with these companies, 30 days would be more than sufficient. As such, the Exchange proposes to shorten from 90 to 30 days the period within which foreign private issuers must issue a press release with regard to a notification by the Exchange of noncompliance. If the issuer does not issue a press release within that 30-day period, the Exchange will do so.

While Sections 802.02 and 802.03 establish maximum time periods for the issuance of press releases, the Exchange believes that companies should issue their press releases concerning any notice of noncompliance they receive from the Exchange as soon as possible after receipt of such notification and should not wait until close to the end of the permitted period before doing so.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, 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. In particular, the Exchange believes that the proposed amendment protects investors and the public interest by ensuring the prompt disclosure of material information with respect to listed companies.

### 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 Exchange Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 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 Exchange consents, the Commission will:

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<sup>4</sup> 15 U.S.C. 78f(b)(5).

- (A) by order approve such 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 Exchange 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-2008-59 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.

All submissions should refer to File Number SR-NYSE-2008-59. 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 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-NYSE-2008-59 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>5</sup>

Florence E. Harmon  
Acting Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).