

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58398; File No. SR-NYSE-2008-069)

August 20, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC ; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Waiving Compliance with DRS Participation Rules for Foreign Private Issuers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on July 30, 2008, the New York Stock Exchange LLC (“NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

NYSE proposes to amend Section 501.00 of its Listed Company Manual to waive application of this section to any listed company that is a foreign private issuer and that submits a letter from an independent home country counsel certifying that a home country law or regulation prohibits compliance.<sup>2</sup>

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

In its filing with the Commission, NYSE 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

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

<sup>2</sup> Changes to the rule text can be found at [www.nyse.com](http://www.nyse.com).

below. NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

1. Purpose

Currently, Section 501.00 of NYSE's Listed Company Manual ("Manual") requires that all listed equity securities must be eligible for participation in a direct registration system operated by a securities depository. As the laws of certain countries may prohibit compliance with this rule, NYSE believes it is appropriate to waive its application to foreign private issuers upon provision of a letter from independent counsel confirming that such a prohibition exists.

Accordingly, NYSE proposes to amend Section 501.00(A) of its Manual to waive application of that section to any listed company that is a foreign private issuer and that submits to NYSE a letter from an independent home country counsel certifying that a home country law or regulation prohibits such compliance. All other foreign private issuers will be required to comply with Section 501.00.

NYSE also proposes to further modify Section 501.00(A) and to eliminate Section 501.00(B) to remove text relating to transition periods that have since expired.

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 prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments

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<sup>3</sup> The Commission has modified the text of the summaries prepared by NYSE.

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

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. NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act because it requires foreign private issuers to comply with the same requirement as U.S. companies that listed equity securities must be eligible for participation in a direct registration system unless the foreign private issuer is prohibited from doing so under its home country laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE 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.

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

No written comments relating to the proposed rule change have been solicited or received. NYSE will notify the Commission of any written comments received by NYSE.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(6)<sup>6</sup> thereunder because it does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. A proposed rule change filed under Rule 19b-4(f)(6) normally does not become

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

operative prior to the 30<sup>th</sup> day after the date of filing.<sup>7</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>8</sup>

The NYSE has requested that the Commission waive the 30-day operative delay so that the proposed rule change may take effect and become operative upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder. Waiver of the 30-day operative delay will enable NYSE to list foreign private issuers whose home country laws prohibit them from complying with Section 501.00 of the Manual. NYSE notes that Nasdaq already has a comparable exception to its direct registration system eligibility requirement. As such, waiving the operative delay eliminates a potential competitive disadvantage that the NYSE currently faces in competing for listings.

For the foregoing reasons, the Commission believes that this rule filing qualifies for immediate effectiveness under paragraph (f)(6) of Rule 19b-4<sup>11</sup> and that waiving the 30-day

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<sup>7</sup> See 17 CFR 240.19b-4(f)(6)(iii).

<sup>8</sup> In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization 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 NYSE has satisfied this requirement.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

operative delay is consistent with the protection of investors and the public interest.

Accordingly, the Commission hereby designates the proposal as operative upon filing.<sup>12</sup>

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

#### 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-2008-069 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-2008-069. 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

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<sup>12</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NYSE and on NYSE's Web site, [www.nyse.com](http://www.nyse.com). 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-2008-069 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>13</sup>

Florence E. Harmon  
Acting Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).