

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58487; File No. SR-NYSE-2008-59)

September 8, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving 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

I. Introduction

On July 22, 2008, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a 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. The proposed rule change was published for comment in the Federal Register on August 4, 2008.<sup>3</sup> The Commission received one comment in support of the proposal.<sup>4</sup> This order approves the proposed rule change.

II. Description of the Proposal

Section 802.02 of the NYSE’s Listed Company Manual (the “Manual”) currently 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 continued listing standards. This section further provides that if the company fails to issue the press release during the allotted 45 days, the Exchange will issue the requisite press release. Similarly, Section 802.03 of the Manual currently requires a non-U.S. company to issue a press release within 90 days of

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 58235 (July 28, 2008), 73 FR 45262.

receiving written notification from the Exchange that it has fallen below the Exchange's listing standards. In addition, if the company fails to issue the press release during the allotted time, the Exchange will issue the required press release.

The Exchange proposes to amend Section 802.02 of the Manual to provide that a U.S. company must disclose receipt of written notification that it has fallen below the Exchange's listing standards by issuing a press release within the amount of time allotted by the SEC for companies to disclose such an occurrence, but in any event, no later than four business days after receipt of notification from the Exchange.<sup>5</sup> Further, the amended rule would provide that the Exchange will issue a press release on the subject itself if the company has not acted within this allotted period. The Exchange notes that Commission rules currently require companies to file a Form 8-K within four business days of being notified by the Exchange that it does not satisfy a rule or standard for continued listing on the Exchange.<sup>6</sup> The Exchange, therefore, believes that the current time period in its own rules of 45 days is too long in light of the much earlier public notice required by the Form 8-K rule.

The Exchange also proposes to amend Section 802.03 of the Manual to 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. Further, if the company does not issue a press

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<sup>4</sup> See email from R. Cameron Brewer, dated August 23, 2008.

<sup>5</sup> 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.

<sup>6</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.

release within that 30-day period, the Exchange will do so. The Exchange notes that, 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. As such, the Exchange proposes to reduce from 90 days 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 with Exchange listing standards.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.<sup>8</sup>

The Commission believes that it is appropriate for the NYSE to align the timing requirement in Section 802.02 of the Manual for issuance of a press release when a company has received notice that it has fallen below the Exchange's continued listing standards with the Commission's timing requirement for providing notification of such event on the Form 8-K. The Commission believes that this change will ensure that a company issues a press release no later than the date it is currently required to file a Form 8-K providing notice of such event. The

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission notes that the amended rule provides that the company must issue a press release within the time period allotted by SEC rules, but in any event, no longer than four business days after notification. The Commission believes that reducing the time period from 45 days to 4 days within which companies must issue a press release is consistent with the protection of investors and the public interest because it will provide investors with earlier press release notification that the company has fallen out of compliance with Exchange listing requirements and avoids any confusion by conforming the time periods in the NYSE rules with current Commission requirements.

Further, the Commission believes that it is appropriate for the NYSE to reduce from 90 days to 30 days the period within which non-U.S. companies must issue a press release regarding a notification by the Exchange of noncompliance with the Exchange's listing standards. The Commission believes that this change should still allow companies sufficient time to make the required disclosure, while at the same time providing investors with a more timely notification of important news that the company does not satisfy a rule or standard for continued listing on the Exchange. The Commission notes that non-U.S. companies that do not qualify as foreign private issuers would have to comply with the amended disclosure for domestic companies pursuant to Section 802.02.<sup>9</sup>

The Commission also believes that it is appropriate for the Exchange to issue a press release itself in the event that a company has not acted within the new time periods required by this proposed rule change. This will ensure that investors are provided notification of a company's non-compliance in a timely fashion, regardless of a company's failure to meet the timing requirements of these rules. The Commission notes that the existing rule being amended

herein did allow the Exchange to make such disclosure under the longer time periods. This proposal will permit a continuation of this authority, but with the updated time periods.<sup>10</sup>

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-2008-59) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Acting Secretary

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<sup>9</sup> See supra note 5.

<sup>10</sup> The Commission also notes that nothing in this proposal affects a company's obligations to disclose material news in a timely fashion. See Section 202.05 of the Manual.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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