

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60612; File No. SR-NYSE-2009-88)

September 2, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Modify the Cure Provisions under its Dollar Stock Price Continued Listing Standard

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Exchange Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 21, 2009, New York Stock Exchange LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission the proposed rule changes as described in Items I and II below, which items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)⁴ under the Act. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

The Exchange proposes to modify the cure provisions under the dollar stock price continued listing standard set forth in Section 802.01C of the Exchange’s Listed Company Manual (the “Manual”).

The text of the proposed rule change is available on the Exchange’s Website (<http://www.nyse.com>), at the Exchange’s Office of the Secretary and at the Commission’s Public Reference room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 17 CFR 240.19b-4(f)(6).

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 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

Under Section 802.01C of the Manual, a listed company is below compliance with the Exchange’s stock price continued listing standard if the average closing price of its stock has fallen below \$1.00 over a consecutive 30 trading day period) (the NYSE’s “dollar price continued listing standard”). Once notified, the company must bring its share price and average share price back above \$1.00 by six months following receipt of the notification. A company is not eligible to follow the cure procedures outlined in Sections 802.02 and 802.03 with respect to the dollar stock price continued listing standard. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. In order to cure an event of noncompliance under the dollar price continued listing standard, an issuer must have a \$1.00 closing share price on the last trading day of its six-month cure period and a \$1.00 average closing share price over the 30 trading-day period ending on the last trading day in the six-month

cure period. If the issuer fails to regain compliance in this manner, the Exchange will commence suspension and delisting procedures promptly after the expiration of the cure period.⁵

Due to the extreme volatility in the equity markets in the earlier part of 2009, the Exchange suspended the application of the dollar price continued listing standard until June 30, 2009.⁶ The suspension of the dollar price continued listing standard was subsequently extended to July 31, 2009.⁷ Under the suspension, any company that was in a compliance period at the time of commencement of the rule suspension could return to compliance if such company had a \$1.00 closing share price on the last trading day of any calendar month during the suspension and a \$1.00 average closing share price based on the 30 trading days preceding the end of such month. The Exchange now proposes to amend Section 802.01C to provide that this provision will become a permanent aspect of the rule after the expiration of the suspension period on July 31, 2009. Going forward, a company that has been notified by the Exchange that it is below compliance with the dollar price continued listing standard can regain compliance prior to the end of its six-month cure period if on the last trading day of any calendar month during that period the company has a closing share price of at least \$1.00 and has an average closing share price of at least \$1.00 over the 30 trading day period ending on the last trading day of that month. It has been the Exchange's experience that most companies that have utilized this early cure

⁵ Additionally, Section 802.01C provides that if a company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds \$1.00 per share, and the price remains above the level for at least the following 30 trading days.

⁶ See Securities Exchange Act Release No. 59510 (March 4, 2009), 74 FR 10636 (March 11, 2009)(SR-NYSE-2009-21).

⁷ See Securities Exchange Act Release No. 60273 (July 9, 2009), 74 FR 34606 (July 16, 2009) (SR-NYSE-2009-64. [sic])

provision during the period of the suspension have subsequently remained in compliance with the dollar stock price continued listing standard. Consequently, the Exchange no longer believes that there is any regulatory benefit to be derived from limiting companies to curing an event of noncompliance with the dollar price continued listing standard only at the very end of the six-month cure period. The Exchange believes that allowing companies to cure on the last trading day of any month during the cure period will not contribute to the retention of companies that are unsuitable for continued listing. The Exchange also believes that Nasdaq takes a similar approach to the proposed amendment in the cure provisions of its dollar price continued listing standard⁸ and, consequently, the Exchange does not believe that the proposed amendment raises any novel regulatory issues. The NYSE retains the right to delist a company at any time if it determines that doing so is in the public interest.

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)¹⁰ of the Act 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 similar to an existing rule of

⁸ See Nasdaq Marketplace Rule 5810(a)(3)(A), under which a company which is below compliance with Nasdaq's \$1.00 price requirement can regain compliance at any time during the 180-day compliance period by meeting the standard for any 10 consecutive trading days during the compliance period.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

Nasdaq and consequently does not raise any novel regulatory issues. Furthermore, companies that will qualify to cure their dollar price continued listing standard noncompliance under the proposed amendment will have maintained an average closing price of at least \$1.00 for 30 consecutive trading days, which evidences those companies' suitability for continued listing.

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.

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

Written comments were neither solicited nor received.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it 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)¹⁴

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 the five-day pre-filing requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6).

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 because the Exchange believes that: (i) doing so will avoid potential confusion and inconsistent treatment of companies that could arise if the Exchange was unable to apply this provision on August 31, after having applied such a provision during the temporary suspension period, and then doing so again on September 30 after the filing becomes operative, (ii) such a waiver will allow the Exchange to implement a standard substantially similar to that in place at Nasdaq, and (iii) the Commission has previously published for public comment the temporary suspension of the dollar price continued listing standard (which included the same early cure provision as proposed in this filing) and received no comments.

The Commission believes that waiving the 30-day operative delay¹⁵ is consistent with the protection of investors and the public interest. As noted by the NYSE, the proposal was previously published for comment and implemented during the temporary suspension of the dollar price continued listing standard.¹⁶ The Commission received no comments on this change. In addition, the proposal will avoid confusion as to the applicable compliance period and is not inconsistent with how NASDAQ applies its compliance period. For these reasons, the Commission believes it is appropriate to waive the 30-day operative delay, allowing the proposed rule change to become operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

¹⁵ 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. See 15 U.S.C. 78c(f).

¹⁶ See supra notes 6-7.

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. Please include File Number SR-NYSE-2009-88 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-NYSE-2009-88. 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 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-88 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

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).