

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60653; File No. SR-NYSE-2009-89)

September 11, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 to Amend Certain Corporate Governance Requirements

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 26, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE filed Amendment No. 1 to the proposed rule change on September 10, 2009.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend certain of its corporate governance requirements set forth in Section 303A of the Listed Company Manual (the “Manual”). The text of the proposed rule change is available on the Exchange's Web site (<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 In Amendment No. 1, NYSE added a sentence to the purpose section describing where a copy of the proposed rule change may be obtained; clarified a sentence in the purpose section; revised the statutory basis section; and underlined a parenthetical in the proposed rule text to show new text.

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

On November 4, 2003, the U.S. Securities and Exchange Commission (the "SEC") approved Section 303A of the Listed Company Manual. This section imposed significant corporate governance requirements on the Exchange's listed companies and focused mainly on director independence and the duties of the audit, nomination and compensation committees of the board. The Exchange now proposes to amend Section 303A to clarify some of the disclosure requirements, to codify certain interpretations made since the rules were enacted, and to replace certain disclosure requirements by incorporating into the Exchange's rules the applicable disclosure requirements of Regulation S-K. In addition, the Exchange is proposing to eliminate the current requirements of Section 307.00 and redesignate Section 303A.14 as Section 307.

The proposed changes to Sections 303A and 307.00 will not take effect until January 1, 2010. Consequently, the existing text of these sections will remain in the Listed Company Manual through December 31, 2009 and will be removed immediately thereafter. Upon approval of this filing, the amended versions of those sections will also be included in the Listed Company Manual, with introductory text indicating that the revised text does not become operative until January 1, 2010.

The Exchange proposes to amend references to the “company” throughout Section 303A to the “listed company,” wherever the context makes that change appropriate.

The discussion below begins with a description of the proposed approach to corporate governance disclosures, as this approach is adopted consistently in numerous instances throughout Section 303A. There then follows a detailed section-by-section description of all of the other proposed changes.

Corporate Governance Disclosures:

On August 29, 2006, in connection with amendments to its executive compensation and related person disclosure, the SEC adopted Item 407 of Regulation S-K to consolidate director independence and related corporate governance disclosure requirements under a single item and update such disclosure requirements regarding director independence to reflect the SEC’s own disclosure requirements, as well as the principal U.S. markets’ listing standards.⁵ These rules duplicate some of the NYSE’s Section 303A corporate governance disclosure requirements. Indeed, in some instances, the SEC’s rules require more detailed disclosures than are currently required by Section 303A.

Since the adoption of Item 407, the Exchange has received numerous calls from listed companies requesting guidance from the Exchange on whether compliance with the disclosure requirements of Item 407 would also satisfy their obligations under Section 303A. For example, Section 303A.02(a) provides that the board of directors of a listed company may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Item 407(a)(3), on the other hand, requires that companies describe by specific category or type, any transactions, relationships or

⁵ See Securities Act Release No. 33-8732A (August 29, 2006).

arrangements (other than those disclosed pursuant to Item 404(a) of Regulation S-K) that were considered by the board of directors with respect to each director that is identified as independent. As a result, while Section 303A.02(a) would only require that companies disclose the categories of relationships that were per se deemed to be immaterial with respect to board independence, Item 407(a)(3) goes further, requiring that companies also disclose which directors had relationships that fall into the categorical standards utilized by the board in determining independence.

In an effort to avoid duplication and confusion, the Exchange is proposing to eliminate each disclosure requirement currently included in Section 303A that is also required by Item 407 and to incorporate directly into Section 303A the applicable disclosure requirement of Item 407. The Exchange believes that, since Item 407 requires duplicative or more specific disclosures than Section 303A, such elimination will facilitate compliance for listed companies, while providing investors with significant transparency on corporate governance. While this approach may appear to be redundant, the incorporation of certain requirements of Item 407 into Section 303A serves an important purpose in that companies whose Item 407 disclosure is deficient will be deemed to be out of compliance with Exchange rules. Consequently, the Exchange will be able to take actions against a noncompliant company, ranging from appending a below compliance (“BC”) indicator to the company’s ticker symbol to issuing a public reprimand letter and, in extreme cases, delisting.

The following are the disclosure items that will be eliminated and the provisions of Item 407 that will be added:

- The Section 303A.00 controlled company exemption disclosure requirement is replaced by a requirement that a controlled company that chooses to take

advantage of any or all of the available Section 303A controlled company exemptions must comply with the disclosure requirements in Instruction 1 to Item 407(a).

- The Section 303A.02(a) independent director disclosure requirement is replaced by a requirement that the listed company must comply with the disclosure requirements in Item 407(a).
- The Section 303A.05(b)(i)(C) compensation committee charter requirement to produce a compensation committee report is replaced by a requirement to prepare the disclosure required by Item 407(e)(5).
- The Section 303A.07(c)(i)(B) audit committee charter requirement to prepare an audit committee report is replaced by a requirement to prepare the disclosure required by Item 407(d)(3)(i).

The Exchange is also proposing to move the audit, compensation and nominating committee charter, corporate governance guidelines and code of business conduct and ethics website posting requirements to a new Website Posting Requirement section in each of the applicable subsections of Section 303A. The Website Posting Requirement section of Section 303A.07 will specify that closed-end funds are not subject to the requirement to post their audit committee charter on their website. This is consistent with the Exchange's current practice, as Section 303A.00 specifically exempts closed-end funds from the application of Section 303A.09.

The Exchange is proposing to change the disclosure regarding website postings to just require a listed company to disclose in its annual proxy statement or Form 10-K that the applicable charters, corporate governance guidelines and code of business conduct and ethics are available on the company's website, providing the company's website address. This will

conform the Exchange's disclosure requirements with respect to committee charters to the disclosure required by Instruction 2 to Item 407. The Exchange proposes to eliminate the requirement in Sections 303A.09 and 303A.10 that the listed company disclose that hard copies of the charters, guidelines and code are available in print upon request. The Exchange believes that it is unnecessary to require companies to provide physical copies of these documents upon request when they are readily accessible on the company's website.

Section 303A currently contains certain disclosure requirements that require listed companies to make the required disclosures in the company's annual proxy statement, or, if the company does not file an annual proxy statement, in the company's annual report filed with the SEC. The Exchange proposes to amend these requirements so that companies will have the option of either continuing to provide these disclosures in the annual proxy statement or annual report, as applicable, or making the disclosures on or through the company's website. If a company chooses to make the applicable disclosure on or through its website, it must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. The disclosure requirements amended [sic] as described in this paragraph are as follows:

- The disclosure requirement of Section 303A.02(b)(v) with respect to contributions made by the listed company to any tax exempt organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of \$1 million, or 2% of such tax exempt organization's consolidated gross revenues.

- The disclosure requirement of Section 303A.03 with respect to the identity of the director chosen to preside at executive sessions of non-management or independent directors or, if the same individual is not the presiding director at every meeting, the procedure by which a presiding director is selected for each executive session.
- The requirement of Section 303A.03 that listed companies must disclose a method for interested parties to communicate directly with the presiding director or the non-management or independent directors as a group.
- The disclosure requirement of Section 303A.07(a) with respect to the board's determination that the service of any audit committee member on more than three public company audit committees does not impair the ability of such audit committee member to serve effectively on the listed company's audit committee.

If a listed company makes a required Section 303A disclosure in its annual proxy statement, or if the company does not file an annual proxy statement, in its annual report filed with the SEC, it may incorporate such disclosure by reference from another document that is filed with the SEC to the extent permitted by applicable SEC rules.

Where a listed company has the option of making a required disclosure under Section 303A in an annual report filed with the SEC and is not a company required to file a Form 10-K, a new "Disclosure Requirements" subsection of Section 303A.00 provides that the provision shall be interpreted to mean the annual periodic disclosure form that the listed company does file with the SEC. For example, for a closed-end management company, the appropriate form would be the annual Form N-CSR. This approach is identical to that of the current "References to Form 10-K" subsection of Section 303A.00 which is being eliminated as part of the reorganization of

Section 303A.00. The reference in the “References to Form 10-K” subsection of Section 303A.00 to companies that are not required to file either an annual proxy statement or an annual periodic report with the SEC is not carried over into the new “Disclosure Requirements” section, as there are no companies that have disclosure obligations under Section 303A that are not subject to one of these filing requirements.

Section 303A.00 - Introduction:

Under the Exchange’s current rules, companies listing in conjunction with an initial public offering (“IPO”) are able to phase in their independent audit, nominating and compensation committees, but are required to have one independent director on each committee as of the date of listing. Market practice, however, is that a company does not normally appoint independent directors to its board in advance of the date it lists on the NYSE. Instead, the initial board meeting is held sometime after the listing date but prior to the date that the transaction closes.

In light of this practice, the Exchange proposes to amend the Introduction section of Section 303A to clarify its requirements by specifying that companies listing in conjunction with an IPO, spin-off or carve-out must be in compliance with the applicable provisions of the SEC’s audit committee requirements set forth in Rule 10A-3, which is incorporated into the Exchange’s corporate governance rules as Section 303A.06, as of the listing date. The Exchange proposes to define the listing date for these purposes as the date the company’s securities first trade on the Exchange (trading may be regular way or when issued). The Exchange is also proposing to require that a company listing in conjunction with its IPO, spin-off or carve-out have a majority of independent members on its audit committee within 90 days of the effective date of its

registration statement and a fully independent committee within one year of the effective date of its registration statement.

Section 303A.07(a) requires a company to have a minimum of three members on the audit committee as of the date of listing. As a result, companies on the NYSE that are not required to have a fully independent audit committee until one year from the listing date may be forced to appoint non-independent directors to the audit committee in order to satisfy the three-person minimum. The Exchange proposes in the Introduction section to clarify that companies listing in conjunction with an IPO, spin-off or carve-out may also phase in compliance with the three-person minimum on the following schedule: at least one member by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date. Alternatively, the company may choose to have non-independent directors on the audit committee subject to the independent director phase-in requirements as discussed below.

For purposes of Rule 10A-3, the SEC provides that a company is listing in conjunction with an IPO only to the extent that, immediately prior to the effective date of the registration statement relating to the IPO, the company is not “required to file” periodic reports with the SEC under the Act. The Exchange has been advised by the staff of the SEC that a company that voluntarily files reports under the Act may be considered an IPO and avail itself of the IPO transitions under Rule 10A-3. The Exchange proposes to clarify that a company that was required to file periodic reports with the SEC prior to listing is precluded from including non-independent directors on its audit committee during the phase-in period.

The Exchange also proposes to amend the Introduction section to clarify that companies listing in connection with an IPO must:

- satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.
- satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the earlier of the date the initial public offering closes or five business days from the listing date.
- have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the earlier of the date the initial public offering closes or five business days from the listing date, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

The Exchange proposes to amend the Introduction section to clarify that companies listing in conjunction with a carve-out or spin-off transaction must:

- satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.
- satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the date the transaction closes.
- have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the date the transaction closes, at least a

majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

In addition, the Exchange proposes to include sections detailing the compliance requirements applicable to a company that (i) lists upon emergence from bankruptcy; (ii) transfers from another market; (iii) ceases to be a controlled company; or (iv) ceases to be a foreign private issuer.

Companies that list upon emergence from bankruptcy will be able to phase in majority independent boards and independent nominating and compensation committees on the same schedule as companies listing in conjunction with an IPO. The applicable compliance dates, however, will run from the listing date. A company listing upon emergence from bankruptcy will be required to have a fully compliant audit committee at the time of listing unless an exemption is available to it under Rule 10A-3.

Currently, the rule provides that companies listing upon transfer from another market have one year from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. The Exchange proposes to amend this section to apply only to companies registered pursuant to Section 12(b) of the Act that transfer to the NYSE. If the other exchange had a substantially similar requirement and the company was afforded a transition period that had not expired, the company will have the same transition period as would have been available to it on the other exchange.

Companies registered pursuant to Section 12(g) of the Act that transfer to the NYSE would not have been subject to corporate governance standards at the time of transfer. Therefore, the Exchange believes that it would not be appropriate for such companies to have 12 months to comply with every aspect of the Exchange's corporate governance rules. Instead, the

Exchange proposes to treat such companies like a company listing in connection with an IPO. The applicable compliance dates, however, would run from the listing date and since such companies were required to file periodic reports with the SEC prior to listing, only independent directors would be permitted on the audit committee during the transition period.

Companies that cease to be controlled companies will be able to phase in majority independent boards and independent nominating and compensation committees on the same schedule as companies listing in conjunction with an IPO. The applicable compliance dates, however, will run from the date that the company's status changed.

The Exchange also proposes to clarify its requirements as to when a company is a controlled company. The Exchange's current rule defines a controlled company as a listed company of which more than 50% of the voting power is held by an individual, group or another company. Since Section 303A was approved in 2003, the Exchange has had a number of inquiries as to what constitutes a "group" for purposes of the controlled company definition. It also came to the Exchange's attention that some companies were claiming to be owned by a "group" where a shareholder agreement existed relating only to the disposition of assets. The Exchange proposes, therefore, to make it clear that, in order to be deemed a controlled company, more than 50% of the voting power for the election of directors must be held by an individual, group or another company.

When a foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC), it may become subject to a number of requirements under Section 303A that it was not previously subject to if its home country practice differed from the applicable requirements of Section 303A. Depending upon the type of issuer, these may include the requirement to have independent nominating and compensation

committees and a majority of independent directors. In addition, the company's directors may be required to meet the Section 303A.02 definition of independence, including with respect to their existing audit committee members. The Exchange proposes to modify its rules to take into consideration recent changes in Rule 3b-4⁶ of the Act which enables a foreign private issuer to test its eligibility once a year. Specifically, the Exchange proposes to require a company that ceases to be a foreign private issuer to be in compliance with the domestic company requirements of Section 303A as follows:

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within six months of the date it fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4. Under SEC Rule 240.3b-4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (the "Determination Date").
- The company must satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, within six months of the Determination Date.
- The company must have fully independent nominating and compensation committees as required by Sections 303A.04 and 303A.05, if applicable, within six months of the Determination Date.
- The company's audit committee members must be in compliance with the independence requirements of Section 303A.02, if applicable, within six months of the Determination Date.

⁶ 17 CFR 240.3b-4.

- The company must comply with the three-person audit committee requirement of Section 303A.07(a) within six months of the Determination Date.
- The company must comply with the shareholder approval requirements of Section 303A.08 by the Determination Date, subject to the provisions in Section 303A.08 under the heading “Ongoing Transition Period for a Foreign Private Issuer Whose Status Changes.”

Prior to the amendment of Sections 203.01 and 103 in August 2006,⁷ Section 203.01 required listed companies to distribute to their shareholders each year an annual report containing audited financial statements. Section 103 permitted foreign private issuers to distribute a summary annual report in fulfillment of their obligations under Section 203.01. As amended, Sections 203.01 and 103 no longer require the physical distribution of annual reports. Instead, companies are required to post their annual report filed with the SEC on or through their website. The Exchange proposes to conform Section 303A to these amendments by eliminating from Section 303A all references to annual reports previously required under Section 203.01 and summary annual reports previously permitted under Section 103.

The Exchange also proposes to revise the Introduction section to more clearly specify which issuers are required to comply with Section 303A.08 and to delete the section relating to effective dates due to the fact that the rules are fully applicable, other than for the specified transition periods. The Exchange notes that it proposes to clarify that closed-end funds are subject to Section 303A.08. The fact that Section 303A.00 does not currently appear to require closed-end funds to comply with Section 303A.08 results from an oversight on the part of the

⁷ See Securities Exchange Act Release No. 54344 (August 21, 2006); 71 FR 51260 (August 29, 2006) (SR-NYSE-2005-68).

Exchange.

The Exchange is adding a reference in the “Preferred and Debt Listings” subsection of the Introduction section to specify that, except as otherwise provided by Rule 10A-3 under the Act, Section 303A does not apply to securities listed under Section 703.22 (“Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities”) of the Listed Company Manual. Section 703.22 had not yet been adopted at the time that Section 303A.00 was adopted. Securities listed under Section 703.22 are debt securities and, as companies listing only debt securities on the Exchange are generally not subject to Section 303A, the Exchange believes it is consistent to adopt the same approach with issuers of securities listed under Section 703.22. In addition, the Exchange proposes to move the reference to securities listed under Section 703.21 (“Equity-linked Debt Securities”) from the “Other Entities” subsection of the Introduction section to the “Preferred and Debt Listings” subsection, as securities listed under Section 703.21 are debt securities and are more properly subject to the corporate governance requirements applicable to debt securities. To the extent that Rule 10A-3 applies to the issuer of a security listed under either Section 703.21 or Section 703.22, such issuer will be required to comply with Sections 303A.06 and 303A.12(b). The Exchange also proposes to delete the reference to Section 703.16 (“Investment Company Units”, more commonly referred to as “Exchange-Traded Funds” or “ETFs”) in the “Other Entities” subsection as ETFs are covered by the “Closed-End and Open-End Funds” subsection of the Introduction section.

The “Closed-End and Open-End Fund” subsection of the “Introduction” section is amended to clarify the requirements applicable to closed-end funds. Closed-end funds must comply with the requirements of Sections 303A.06, 303A.07(a), 303A.07(b), 303A.08 and 303A.12 with the following exceptions:

- A closed-end fund is not required to comply with the director independence requirements of Section 303A.02 incorporated into Section 303A.07(a) (this exemption already exists in the current rule, but the Exchange is proposing to move the requirement to comply with the director independence requirements of Section 303A.02 from its current position in Section 303A.07(b) to Section 303A.07(a), requiring a conforming change in the “Closed-End and Open-End Fund” subsection of the “Introduction” section. A similar conforming change is required in the paragraph discussing Business Development Companies).
- Closed-end funds are not required to comply with the Disclosure Requirements in Section 303A.07(a), when a director serves on multiple boards in the same fund complex as such service will be counted as one board for purposes of Section 303A (this exemption is already in the “Closed-End and Open-End Fund” subsection of the “Introduction” section).
- A closed-end fund is not required to make the audit committee charter required by Section 303A.07(b) available on or through its website (this specifies the existence of an exemption that is implicit in the current rule).

Section 303A.02 – Independence Requirements:

The Exchange proposes to revise the General Commentary to Section 303A.02(b) to clarify that references to a listed company or any other company relevant to the independence standards of Section 303A.02(b) include any parent or subsidiary in a consolidated group with such company.

The Exchange proposes to delete the “Transition Rule” subsection of Section 303A.02(b) as the transition period has ended.

Section 303A.03 - Requirement for meetings of non-management directors:

The Exchange's current rule requires that listed companies hold regular meetings of non-management directors and recommends that companies schedule a meeting of independent directors at least once a year. Some companies have expressed a preference to holding regular executive sessions of just independent directors. The Exchange believes that allowing companies to hold regular executive sessions of independent directors satisfies the original intention of the rule, so the Exchange proposes to revise the Commentary accordingly.

The Exchange is also proposing to clarify the fact that all interested parties, not only shareholders, must be able to communicate their concerns regarding the listed company to the presiding director, or the non-management or independent directors as a group.

Section 303A.05 – Requirements for Compensation Committees:

The current responsibilities designated to the compensation committee include the review and approval of corporate goals, objectives, and the CEO's performance as they relate to CEO compensation. The committee also makes recommendations to the board regarding compensation of non-CEO executive officers.

The Exchange proposes to update the current requirement for the compensation committee to produce a report to reflect the disclosure required by Item 407(e)(5) of Regulation S-K regarding compensation of executive officers.

Section 303A.06 – Requirements for Audit Committees:

In an effort to highlight listed companies' disclosure requirements, the Exchange proposes to revise the Commentary to Section 303A.06 to specifically point out that Rule 10A-3 requires disclosure of reliance on certain exceptions contained in that rule.

Section 303A.07 – Duties of the Audit Committee:

The Exchange is proposing to combine the Section 303A.07(a) requirement for a listed company to have an audit committee comprised of minimum of three members with the Section 303A.07(b) requirement that such audit committee members must meet the independence standards set forth in Section 303A.02 and, in the absence of an applicable exemption, Rule 10A-3 and to renumber the remaining parts of Section 303A.07.

In addition, Section 303A.07(a) currently requires that, if an audit committee member simultaneously serves on the audit committees of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve to three or less, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and must disclose such determination. The current language has led to some confusion that disclosure is only required to the extent that the listed company does not limit the number of audit committees on which its audit committee members serve to three or less. The Exchange proposes to amend the language to make clear that the mandated disclosure is required to the extent that an audit committee member simultaneously serves on the audit committees of more than three public companies.

Section 303A.07 requires that a company's audit committee charter must provide that the audit committee will meet to review and discuss the company's financial statements and must review the company's specific Management's Discussion and Analysis disclosures. Closed-end funds, however, are not subject to the requirement to provide this disclosure. The Exchange proposes to add language to the Commentary to make clear that, if a closed-end fund chooses to voluntarily include a "Management's Discussion of Fund Performance" in its Form N-CSR, its audit committee is required to meet to review and discuss it. The Exchange also intends to

clarify that telephonic conference calls constitute meetings for purposes of Section 303A.07 if allowed by applicable corporate law, but that polling directors is not allowed in lieu of a meeting.

The Exchange proposes to update the current requirement for the audit committee to produce a report to reflect the disclosure required by Item 407(d)(3)(i).

Section 303A.08 – Shareholder Approval of Equity Compensation Plans:

The Exchange proposes to revise the “Transition Rules” section of this item to specify that the effective date of this listing standard was June 30, 2003 and to eliminate references to transitional provisions that are no longer relevant in light of the expiration of the specified transition periods.

To the extent that a listed foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC) and as a result of such change in status becomes subject to Section 303A.08 for the first time, such company will be granted a limited transition period with respect to discretionary plans and formula plans that do not comply with Section 303A.08 that were in place prior to the date that its status changed so that additional grants may be made after the date that its status changed without shareholder approval. This transition period will end upon the later to occur of:

- six months after the date as of which the company fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4. Under SEC Rule 240.3b-4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (the “Determination Date”); and
- the first annual meeting after the Determination Date, but, in any event no later than one year after the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this

transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the Determination Date, and would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the company's status changed are made only from the shares available immediately before the Determination Date, in other words, based on formulaic increases that occurred prior to the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the date that the company's status changed, and would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the company's status changed are made only from the shares available immediately before the date that the company's status changed, in other words, based on formulaic increases that occurred prior to the date that the company's status changed.

Section 303A.10 – Code of Business Conduct and Ethics:

Section 303A.10 requires that listed companies disclose any waiver of the code of business conduct and ethics granted to executive officers and directors. The Exchange proposes to specify that the waiver must be disclosed to shareholders within four business days of such determination and that disclosure must be made by distributing a press release, providing website disclosure, or by filing a current report on Form 8-K with the SEC. This proposed approach

varies slightly from the guidance currently provided by Question G-1 of the NYSE's Frequently Asked Questions on Section 303A, which provides that the waiver must be disclosed to shareholders within two to three business days of the board's determination. The Exchange is proposing a four-day period to be uniform with the requirements of Item 5.05 of Form 8-K regarding disclosure of waivers from codes of ethics and will revise the answer in the FAQs accordingly.

Section 303A.11 – Foreign Private Issuer Disclosure:

Section 303A.11 requires that foreign private issuers disclose the significant differences between the corporate governance practices followed by the company in its home country and the requirements of Section 303A applicable to U.S. companies. Currently, companies have a choice to make that disclosure either in their annual report to shareholders or on their corporate websites. Under Item 16G of Form 20-F (which became effective for filings relating to fiscal years ending on or after December 15, 2008), foreign private issuers that file their annual report on Form 20-F are now required to include the disclosure of significant differences in the Form 20-F. Therefore, to avoid confusing and duplicative requirements, the Exchange proposes to require foreign private issuers that are required to file an annual report on Form 20-F with the SEC to include the statement of significant differences in that annual report. All other foreign private issuers will have the choice to either (i) include the statement of significant differences in an annual report filed with the SEC or (ii) make the statement of significant differences available on or through the company's website. If the statement of significant differences is made available on or through the company's website, the company must disclose that fact in its annual report filed with the SEC and provide the website address.

Section 303A.12 – Certification Requirements:

Currently, Section 303A.12(a) requires that listed companies disclose that they filed the CEO certification required by the NYSE and any certifications required by the SEC in the following year's annual report. This requirement has caused significant confusion due to the fact that it relates to filings that were made in the previous year. The Exchange proposes to eliminate this disclosure requirement in light of several factors. First, the Exchange notes that at the time the Section 303A.12(a) disclosure requirement was adopted, the SEC had not yet amended the exhibit requirements of Form 10-K to require that the SEC certification be included as an exhibit to the company's annual report filed with the SEC. The Exchange also notes that with respect to disclosure on whether a company submitted a qualified annual written affirmation to the NYSE during the previous year, investors now have timely notification of all material non-compliance with the NYSE's listing standards due to the SEC's amended requirements relating to Form 8-K filings (Item 3.01 of Form 8-K requires registrants to file a Form 8-K disclosing any noncompliance with Exchange rules and any action or response that, at the time of filing, the registrant has determined to take regarding its noncompliance, within four business days of either (i) notification by the Exchange of the registrant's noncompliance with an Exchange rule or (ii) notification by the registrant to the Exchange that the registrant is aware of a material noncompliance with an Exchange rule). In addition, the NYSE has a program of appending a below compliance ("BC") indicator to the ticker symbol of an issuer that is non-compliant with the Exchange's corporate governance standards. In light of the above, the Exchange has reevaluated the benefit of its current disclosure requirements and believes that disclosure regarding the previous year's compliance is unnecessary.

The Exchange is also proposing to revise Section 303A.12(b) to specify that listed companies must notify the Exchange in writing after any executive officer of the listed company

becomes aware of any non-compliance with Section 303A, as opposed to requiring notification in the event of “material non-compliance” as provided by the current rule.

Section 303A.14 – Website requirement:

Listed companies have expressed confusion regarding the placement within Section 303A of the requirement contained in Section 303A.14 that each listed company must maintain a publicly-accessible website. As a result, the Exchange proposes to redesignate Section 303A.14 as Section 307.00 and to clarify in the commentary that this requirement applies to companies subject to website posting requirements under any applicable provision of the Listed Company Manual, rather than just Section 303A. Section 307 will specify that companies’ websites must be accessible from the United States, must clearly indicate in the English language the location of the documents on the website that are required to be posted and such documents must be printable in the English language.

Section 307.00:

Section 307.00 of the Listed Company Manual sets out guidance regarding related party transactions. As this guidance is duplicative of Section 314 (“Related Party Transactions”) and is therefore redundant, the Exchange proposes to eliminate Section 307.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁸ that an exchange have rules that are 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, in general, to protect investors and the public interest. The Exchange believes the proposed amendments are consistent with the

⁸ 15 U.S.C. 78f(b)(5).

protection of investors and the public interest, as they simply apply existing principles of Section 303A to situations not currently covered by the rules, clarify existing interpretations of Exchange rules and harmonize Exchange disclosure requirements with those of the Commission and, therefore, do not substantively lessen the Exchange's regulatory requirements for 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 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 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

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 self-regulatory organization consents, the Commission will:

- (A) by order approve the 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 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-2009-89 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-2009-89. 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 Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at 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-2009-89 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).