

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60763; File No. SR-NYSE-2009-94)

October 1, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Modify its Requirements with Respect to Quarterly Earnings Releases

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 16, 2009, New York Stock Exchange, LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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)<sup>3</sup> under the Exchange Act. 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 Section 203.02 of the Listed Company Manual to provide that companies can disseminate their quarterly earnings releases by means of any Regulation Fair Disclosure (“Regulation FD”) compliant method (or combination of methods). This filing also amends Section 203.01 to provide that the press release required under that section must be published in a manner consistent with the guidance provided in Section 202.06(C) for companies complying with the Exchange’s timely release policy by issuing a press release.

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

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.

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

Section 203.02 of the Listed Company Manual requires any listed company that is required to file interim financial statements with the SEC to release to the press an interim earnings release as soon as its interim financial statements are available. Section 203.02 refers the reader to Section 202.06 for an understanding of how to issue a quarterly earnings release in a manner consistent with the Exchange's immediate release policy. Section 202.06(A) explicitly states that annual and quarterly earnings releases are always subject to the immediate release policy.

The Exchange recently amended Section 202.06 to provide that listed companies can comply with the Exchange's immediate release policy by disseminating the information using

any method (or combination of methods) that constitutes compliance with Regulation FD.<sup>4</sup> The Exchange now proposes to amend Section 203.02 to harmonize its requirements with those of Section 202.06 as amended, by providing that companies can disseminate their quarterly earnings releases in compliance with the timely alert policy as recently amended. Consequently, companies will have the option of disseminating their quarterly earnings releases either by issuing a press release or by using any other method (or combination of methods) that constitutes compliance with Regulation FD. The Exchange believes that this is consistent with Nasdaq's approach to quarterly earnings releases under its immediate release policy.<sup>5</sup>

Section 203.01 requires any company that does not comply with the SEC's proxy rules to post to its website a prominent undertaking in the English language to provide all holders (including preferred stockholders and bondholders) the ability, upon request, to receive a hard copy of the company's complete audited financial statements free of charge and simultaneously issue a press release stating that its annual report has been filed with the SEC. This press release must also specify the company's website address and indicate that shareholders have the ability to receive a hard copy of the company's complete audited financial statements free of charge upon request. Section 203.01 currently provides that this press release must be published pursuant to the Exchange's press release policy. In order to clarify this requirement in light of the recent amendment to Section 202.06, the Exchange proposes to revise Section 203.01 to specify that the press release requirement of Section 203.01 may only be

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<sup>4</sup> See Securities Exchange Act Release No. 59823 (April 27, 2009), 74 FR 20516 (May 4, 2009) (SR-NYSE-2009-40).

<sup>5</sup> See Securities Exchange Act Release No. 46288 (July 31, 2002), 67 FR 51306 (August 7, 2002) (SR-NASD-2002-85) (the "Nasdaq Amendment").

complied with by issuing a press release in a manner consistent with the immediate release policy for press releases and not by any other means permitted by the immediate release policy.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Exchange Act in general and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>7</sup> 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 Exchange believes that the proposed amendment is consistent with the investor protection objectives of Exchange Act in that it harmonizes the Exchange's immediate release policies with respect to quarterly reporting with the SEC's requirements in Regulation FD and makes clear that the press release required by Section 203.01 in connection with the filing of a listed company's annual report must be disseminated in compliance with the press release policy of Section 202.06 and not by any other Regulation FD compliant method.

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 Exchange Act.

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

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<sup>6</sup> 15 U.S.C. 78f(b).

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

Written comments were neither solicited nor received.

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of Exchange Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of such proposed 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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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-2009-94 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-2009-94. 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, 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-2009-94 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).