

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61657; File No. SR-NYSE-2010-15)

March 5, 2010

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Making Permanent the Exchange's Pilot Program with respect to its Continued Listing Standards

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 26, 2010, 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. 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 make permanent an amendment to the continued listing requirements in Section 802.01B of the Exchange's Listed Company Manual (the "Manual") that is currently in effect on a pilot program basis (the "Pilot Program"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the adoption of the Pilot Program,<sup>4</sup> Section 802.01B(I) of the Manual provided that any company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I) (in the case of foreign private issuers) or pursuant to the requirements set forth under the Assets and Equity Test set forth in Section 102.01C(IV) or the "Initial Listing Standard for Companies Transferring from NYSE Arca" (the "NYSE Arca Transfer Standard") set forth in Section 102.01(C)(V) (the NYSE Arca Transfer Standard expired by its terms on August 31, 2009) was considered to be below compliance standards if such company's average global market capitalization over a consecutive 30 trading-day period was less than \$75 million and, at the same time, total stockholders' equity was less than \$75 million. Under the Pilot Program, companies that listed under the initial listing standards set forth in the immediately preceding sentence are considered to be below compliance standards if average global market capitalization over a

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<sup>4</sup> See Securities Exchange Act Release No. 59996 (May 28, 2009), 74 FR 26912 (June 4, 2009) (SR-NYSE-2009-48) (the "Pilot Program Notice").

consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million. The Pilot Program originally expired by its terms on October 31, 2009, but the Exchange extended its application for an additional five months, until February 28, 2010.<sup>5</sup> NYSE has filed an immediately effective proposed rule change to extend for a further four months, until June 30, 2010.<sup>6</sup> The Exchange now proposes to make the Pilot Program permanent.

For companies listed under the Earnings Test, the Pilot Program returned continued listing requirements to those in place prior to the adoption of the current requirements on June 9, 2005.<sup>7</sup> Consequently, prior to implementation of the Pilot Program, the Exchange had considerable historical experience with the continued listing of companies that had continued to trade on the Exchange with global market capitalization and stockholders' equity each below \$75 million but greater than \$50 million. In addition, the Exchange's experience under the Pilot Program has been very positive, as only one of the companies that was deemed back in compliance as a result of the adoption of the Pilot Program has subsequently fallen below the standard as amended by the Pilot Program as of the date of this filing and only two additional companies have been newly identified as being below the Pilot Program standard. Based on this experience, the Exchange believes that companies that exceed the continued listing

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<sup>5</sup> See Securities Exchange Act Release No. 60911 (November 2, 2009), 74 FR 57730 (November 9, 2010) (SR-NYSE-2009-109).

<sup>6</sup> See SR-NYSE-2010- . [sic] The Commission notes that this proposal was noticed for comment in Securities Exchange Act Release No. 61609 (March 1, 2010) (SR-NYSE-2010-13).

<sup>7</sup> See Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR-NYSE-2004-20). The Assets and Equity Test set forth in Section 102.01C(IV) and the NYSE Arca Transfer Standard set forth in Section 102.01C(V) were adopted subsequent to this amendment.

standards as amended by the Pilot Program are suitable for continued listing on the Exchange.

The Exchange believes that the continued listing standards as amended by the Pilot Program are at least as stringent as those of any other national securities exchange. Consequently, the Exchange believes that the Pilot Program is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. In addition, the Exchange notes that the Commission stated in the Pilot Program Notice<sup>8</sup> that it believed that the continued listing standards adopted under the Pilot Program met the requirements established in Exchange Act Rule 3a51-1(a)(2)(ii)<sup>9</sup> in that they were reasonably related to the initial listing standards set forth in paragraph (a)(20(i)[sic] of Exchange Act Rule 3a51-1 (the “Penny Stock Rule”).<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</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, and is

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<sup>8</sup> See the Pilot Program Notice at Note 5. [sic]

<sup>9</sup> 17 CFR 240.a51-1(a)(2)(ii). [sic]

<sup>10</sup> 17 CFR 240.a51-1. [sic]

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed permanent adoption of the Pilot Program is consistent with the investor protection objectives of the Act in that the continued listing standards under the Pilot Program are set at a high enough level that only companies that are suitable for continued listing on the Exchange will exceed the standards.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2010-15 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-2010-15. 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 Web site viewing and printing in the Commission's Public Reference Section, 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 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-2010-15 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  
Deputy Secretary

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