

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68065; File No. SR-NYSE-2012-52)

October 18, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 102.01 and 103.00 of the Exchange's Listed Company Manual to Permit the Consideration of Stockholders and Trading Volume in the Company's Home Country Market or Primary Trading Market Outside the United States, Provided Such Market is a Regulated Stock Exchange, When Determining the Qualification for Initial Listing Under Section 102.01 of a Company From Outside North America

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 October 5, 2012, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 amend Sections 102.01 and 103.00 of the Exchange's Listed Company Manual (the "Manual") to permit the consideration of stockholders and trading volume in the company's home country market or primary trading market outside the United States, provided such market is a regulated stock exchange, when determining the qualification for initial listing under Section 102.01 of a company from outside North America. The text of the proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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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

The Exchange proposes to amend Sections 102.01 and 103.00 of the Manual to permit the consideration of stockholders and trading volume in the company’s home country market or primary trading market outside the United States, provided such market is a regulated stock exchange, when determining the qualification for initial listing under Section 102.01 of a company from outside North America.

Section 102.01A of the Manual sets forth the Exchange’s minimum initial listing requirements with respect to distribution for companies seeking to list under the Exchange’s “domestic” initial listing standards.<sup>4</sup> A note included in Section 102.01B provides that, when considering a listing application from a company organized under the laws of Canada, Mexico or the United States (“North America”), the Exchange will include all North American holders and North American trading volume in applying the minimum stockholder and trading volume requirements of Section 102.01A. By comparison, Section 103.00 specifies that, when a

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<sup>4</sup> While Section 102.01 makes reference to “domestic” companies, Section 103.00 specifies that non-U.S. companies can qualify for listing under either the “domestic” standards set forth in Section 102.01 or the Alternate Listing Standards for foreign companies set forth in Section 103.

company from outside North America seeks to list under the domestic criteria in Section 102.01B, the Exchange will consider only stockholders and trading volume in the United States.

The Exchange proposes to amend Sections 102.01B and 103.00 to provide that, in connection with the listing of any issuer from outside North America, the Exchange will have the discretion, but will not be required, to consider holders and trading volume in the company's home country market or primary trading market outside the United States in determining whether a company is qualified for listing under Section 102.01, provided such market is a regulated stock exchange.<sup>5</sup> The proposed amended rule text specifies that, in exercising this discretion, the Exchange would consider all relevant factors including: (i) whether the information was derived from a reliable source, preferably either a regulated securities market or a transfer agent that was subject to governmental regulation; (ii) whether there existed efficient mechanisms for the transfer of securities between the company's non-U.S. trading market and the United States; and (iii) the number of shareholders and the extent of trading in the company's securities in the United States prior to the listing.

The Exchange notes that it has been its experience that where there is a liquid market for a company's securities in its home country or primary trading market and where it is relatively easy to transfer securities between the home country or primary trading market and the United

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<sup>5</sup> Consistent with the existing text of Section 102.01B, in the case of a security that would list as an American Depositary Receipt ("ADR"), the Exchange would adjust share data so that the company's shareholders and trading volume would be analyzed on an ADR-equivalent basis. For example, assume that a Mexican company has ADRs trading in the United States and ordinary shares trading in Mexico, with each ADR representing 10 ordinary shares. If the company were to apply to list its U.S.-traded ADRs on the NYSE, the Exchange would divide the Mexican share volume by 10 in determining whether the combined ADR/share volume meets the requirements of the listing criteria. For Companies that have multiple series of shares or ADR's the Exchange will include the volume only in the specific ordinary shares and overlying ADRs that would be listed on the exchange.

States, a liquid trading market can develop quickly on the Exchange even if there are relatively few U.S. holders at the time of original listing. Brazil is an example of a country whose companies sometimes list on the Exchange without a concurrent U.S. initial public offering and where a liquid trading market quickly develops in the United States.

Currently, the only option for listing qualification available to a company from outside North America which is unable to comply with the U.S.-only distribution requirements of Section 102.01B<sup>6</sup> [sic] is to qualify under the Alternate Listing Standards for foreign companies set forth in Section 103. The Alternate Listing Standards were adopted at a time when the listing of foreign companies on U.S. exchanges was still relatively uncommon. At that time, the Exchange's domestic listing standards required applicants to have 2,000 round lot holders in the United States, or, in the case of North American companies, within North America. As stated in Section 103.00, the Exchange recognized that the domestic distribution requirements then in effect were "a major obstacle for many large non-U.S. companies which otherwise fulfill many times over the normal size and earnings requirements for listing on the Exchange." As the Alternate Listing Standards were designed for the listing of large foreign companies with a large shareholder base and an exchange listing in their home country, the 5,000 worldwide round lot holder requirement of Section 103.01 was not unduly burdensome. However, since the adoption of the Alternate Listing Standards there have been two significant changes. First, the NYSE amended its distribution standards in Section 102.01B<sup>7</sup> [sic] so that companies listing under the domestic standards typically now list on the basis of a 400 round lot holder requirement. Consequently, the disparity between the 5,000 round lot holder requirement of the Alternate

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<sup>6</sup> The Commission notes that Section 102.01A of the Exchange's Listed Company Manual contains the distribution requirements.

<sup>7</sup> See id.

Listing Standards and the current domestic distribution requirements is far greater than when the Alternate Listing Standards were initially adopted. Second, many of the foreign companies which now apply to list are significantly smaller than the large foreign companies for which the Alternate Listing Standards were designed. Consequently, the significant disparity between the domestic and international shareholder requirements is further highlighted by the fact that many of the smaller foreign companies now seeking to list on the Exchange have far fewer shareholders than was typical for the large companies for which the international distribution requirements were designed.

In addition to the difficulty many foreign listing applicants experience in meeting the distribution requirements under the Alternate Listing Standards, it has also been the Exchange's experience in recent years that many foreign companies that apply to list on the NYSE are able to meet the financial requirements to list under one or more of the domestic listing standards, but are not large enough to meet the market capitalization and financial requirements of the Alternate Listing Standards. The proposed amendments address this anomaly, as they would permit the listing of foreign companies which meet one of the domestic financial listing standards and which, while they would not meet any of the domestic distribution standards based solely on shareholders or trading volume in the United States, would be able to meet those requirements on the basis of their aggregate shareholder base and trading volume in both the United States and the company's home country market or primary trading market outside the United States, provided such market is a regulated stock exchange.

The Exchange notes that the Nasdaq Global Market requires applicants for initial listing to have 400 round lot holders, but do not specify that this requirement can only be met on the

basis of holders in the United States.<sup>8</sup> Consequently, the Nasdaq Global Market has the discretion to qualify companies on the basis of their worldwide holders. The Exchange also notes that its distribution standards as amended would continue to be as stringent as, or more stringent than, those of other listing markets.<sup>9</sup> Consequently, the Exchange does not believe that the proposed amendments raise any novel regulatory issues or give rise to any investor protection concerns.

Section 103.00 contains the following text:

Domestic listing requirements call for minimum distribution of a company's shares within the United States, or in the case of North American companies, within North America. This is a major obstacle for many large non-U.S. companies which otherwise fulfill many times over the normal size and earnings requirements for listing on the Exchange. The principal Alternate Listing Standards focus on worldwide rather than U.S. or North American distribution of a non-U.S. company's shares.

As the foregoing would no longer be accurate after adoption of the proposed amendments, the Exchange proposes to delete this text in its entirety.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>11</sup> in general, and furthers the objectives of

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<sup>8</sup> See Nasdaq Marketplace Rule 5405(a). The Exchange also notes that Nasdaq Marketplace Rule 5215(b) provides that, when listing an ADR, the underlying security will be considered when determining annual income from continuing operations, publicly held shares, market value of publicly held shares, stockholders' equity, round lot or public holders, operating history, market value of listed securities, and total assets and total revenue.

<sup>9</sup> See note 8 *supra*.

<sup>10</sup> 15 U.S.C. 78f(b).

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. The Exchange believes that the proposed amendments are consistent with the protection of investors and the public interest because the Exchange's holders and trading volume requirements exist to ensure that there will be a liquid trading market in a listing applicant's stock and the factors the Exchange will consider in exercising its discretion to include in its calculations shareholders and trading volume from the company's home country market or primary trading market will enable the Exchange to exercise this discretion only in cases where the Exchange is comfortable that a liquid trading market will develop on the NYSE after listing. In that regard, the Exchange notes that the proposed amendment is consistent with the concern underlying its distribution standards that there should be a liquid trading market for NYSE listed securities, as it has been its experience that where there is a liquid market for a company's securities in its home country or primary trading market and where it is relatively easy to transfer securities between the home country or primary trading market and the United States, a liquid trading market can develop quickly on the Exchange even if there are relatively few U.S. holders at the time of original 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.

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<sup>11</sup> 15 U.S.C. 78a.

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 the Act.<sup>16</sup>

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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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 this requirement.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2012-52 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-2012-52. 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 website (<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 website viewing and printing 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 available publicly. All submissions should refer

to File Number SR-NYSE-2012-52 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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