

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73821; File No. SR-NYSE-2014-65)

December 11, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Its Continued Listing Requirements In Relation to the Late Filing of a Company's Annual Report with the Securities and Exchange Commission As Set Forth in Section 802.01E of the Exchange's Listed Company Manual

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 December 4, 2014, 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 amend its continued listing requirements in relation to the late filing of a company's annual report with the Securities and Exchange Commission ("SEC" or "Commission") as set forth in Section 802.01E of the Exchange's Listed Company Manual (the "Manual"). 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.

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

---

<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.

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

The Exchange proposes to amend its continued listing requirements in relation to the late filing of a company's annual report with the SEC as set forth in Section 802.01E (the "Late Filer Rule") of the Manual. As amended, the Late Filer Rule will (i) expand the rule to impose a maximum period within which a company must file a late quarterly report on Form 10-Q in order to maintain its listing and (ii) clarify the Exchange's treatment of companies whose annual or quarterly reports are defective at the time of filing or become defective at some subsequent date.

In its current form, the Late Filer Rule deems a listed company to be delinquent in filing its annual report on Forms 10-K, 20-F, 40-F or N-CSR with the SEC if it fails to submit the filing by the date such report was required to be filed by the applicable form, or if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report. During the six-month period from the date of such delinquency, the Exchange monitors the company and the status of the delinquent annual report, including through contact with the company, until the filing delinquency is cured. If the company fails to cure such delinquency within the initial six-month period, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month period depending on the company's specific circumstances. If the Exchange determines that an additional trading period of up to six months is not appropriate, suspension and delisting procedures are commenced in accordance with the

procedures set out in Section 804.00 of the Listed Company Manual.

A company is not currently subject to the compliance periods set forth in the Late Filer Rule in connection with a failure to timely file a quarterly report on Form 10-Q with the SEC.<sup>4</sup> The Exchange now proposes to extend the application of the rule to the late filing of Form 10-Qs. As proposed, a company would be deemed to be a delinquent filer under the amended rule as of the due date (or extended due date if a Form 12b-25 is timely filed with the SEC) (the “Filing Due Date”) of the first 10-Q or annual report with respect to which a company incurs a delinquency (a “Late Filing Delinquency”).<sup>5</sup> The Exchange will also deem a company to have incurred a Late Filing Delinquency if it submits an annual report or Form 10-Q to the SEC by the applicable Filing Due Date, but such filing is deficient in some respect in meeting the requirements of the applicable SEC form and the Exchange determines in its sole discretion that such deficiency is material in nature.<sup>6</sup>

---

<sup>4</sup> While a company is not currently subject to the compliance periods in the Late Filer Rule in connection with the failure to timely file a Form 10-Q, such companies are subject to the Exchange’s late filer (or “.LF”) indicator process. The .LF indicator is appended to the company’s trading symbol as disseminated on the consolidated tape and to market data vendors and the company’s name is included on the late filer list on the Exchange’s website. The .LF indicator and web posting commence five days after the due date or extended due date (if applicable) of the first late annual report or Form 10-Q (unless the company has submitted the required report within that five day period) and continue until the company becomes current again with respect to all required periodic reports.

<sup>5</sup> The annual report or quarterly report on Form 10-Q that gives rise to a Late Filing Delinquency shall be referred to in the Late Filer Rule as amended as the “Delinquent Report.”

<sup>6</sup> The following is a non-exclusive list of elements that, if missing from a filing, would cause the Exchange to deem the company to have incurred a Late Filing Delinquency:

- the filing does not include required financial statements or a required audit opinion;
- a required financial statement audit opinion includes qualifying or disclaiming language or the auditor provides an adverse financial statement audit opinion;
- a required financial statement audit opinion is unsigned or undated;

In addition, the Exchange proposes to clarify its treatment of a company:

- that files its annual report without an audit report from its independent auditor for any or all of the periods included in such annual report (a “Required Audit Report” and the absence of a Required Audit Report, a “Required Audit Report Delinquency”);
- whose independent auditor withdraws a Required Audit Report or the company files a Form 8-K with the SEC pursuant to Item 4.02(b) thereof disclosing that it has been notified by its independent auditor that a Required Audit Report or completed interim review should no longer be relied upon (a “Required Audit Report Withdrawal Delinquency”); or
- that files a Form 8-K with the SEC pursuant to Item 4.02(a) thereof to disclose that previously issued financial statements should no longer be relied upon because of an error in such financial statements or, in the case of a foreign private issuer, makes a similar disclosure in a Form 6-K filed with the SEC or by other means (a “Non-Reliance Disclosure”) and, in either case, the company does not refile all required corrected financial statements within 60 days of the issuance of the Non-Reliance Disclosure (an “Extended Non-Reliance Disclosure Event” and, together with a Late Filing Delinquency, a Required Audit Report Delinquency and a Required Audit Report Withdrawal Delinquency, a “Filing Delinquency”).<sup>7</sup>

- 
- there is a discrepancy between the period end date for required financial statements and the date cited in the related audit report;
  - the company’s auditor has not conducted a SAS 100 review with respect to the company’s Form 10-Q;
  - required chief executive officer or chief financial officer certifications are missing;
  - missing Sarbanes-Oxley Act Section 404 required internal control report or auditor certification;
  - the filing does not comply with the applicable SEC XBRL requirements; or
  - the filing does not include signatures of officers or directors required by the applicable form.

In making this determination, the Exchange is simply applying its own rules and is not making any judgment as to the sufficiency of the filing in question for purposes of compliance with any requirement under SEC rules.

<sup>7</sup>

For purposes of the cure periods described herein, an Extended Non-Reliance Disclosure Event will be deemed to have occurred on the date of original issuance of the Non-Reliance Disclosure. If the Exchange believes that a company is unlikely to refile all required corrected financial statements within 60 days after a Non-Reliance Disclosure or that the errors giving rise to such Non-Reliance Disclosure are particularly severe in

Upon the occurrence of a Filing Delinquency, the Exchange will promptly (typically within five business days) send written notification to a company of its procedures relating to late filings. During the six-month period from the date of the Filing Delinquency (the “Initial Cure Period”), the Exchange will monitor the company and the status of the Delinquent Report and any subsequent annual report or quarterly report on Form 10-Q the company fails to file by the applicable Filing Due Date (a “Subsequent Report”), through contact with the company, until the Filing Delinquency is cured.<sup>8</sup> If the company fails to cure the Filing Delinquency within the Initial Cure Period, the Exchange may, in its sole discretion, allow the company’s securities to be traded for up to an additional six-month period (the “Additional Cure Period”) depending on the company’s specific circumstances. If the Exchange determines that an Additional Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Listed Company Manual. A company is not eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criterion. Notwithstanding the foregoing, however, the Exchange may in its sole discretion decide (i) not to afford a company any Initial Cure Period or Additional Cure Period, as the case may be, at all or (ii) at any time during the Initial Cure Period or Additional Cure Period, as the case may be, to truncate the Initial Cure Period or Additional Cure Period, as the case may be, and immediately commence suspension and delisting procedures if the company is subject to delisting pursuant to any other provision of the Listed Company Manual, including if the Exchange believes, in its

---

nature, the Exchange may, in its sole discretion, determine earlier than 60 days that the applicable company has incurred a Filing Delinquency as a result of such Non-Reliance Disclosure.

<sup>8</sup> Under the Late Filer Rule as amended, a company that has an uncured Filing Delinquency will not incur an additional Filing Delinquency if it fails to file a Subsequent Report by the applicable Filing Due Date. However, in order to cure its initial Filing Delinquency, no Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured.

sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted in accordance with Sections 802.01A, 802.01B, 802.01C or 802.01D of the Listed Company Manual. The Exchange may also commence suspension and delisting procedures if it believes, in its sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors, including, but not limited to, the following:

- whether there are allegations of financial fraud or other illegality in relation to the company's financial reporting;
- the resignation or termination by the company of the company's independent auditor due to a disagreement;
- any extended delay in appointing a new independent auditor after a prior auditor's resignation or termination;
- the resignation of members of the company's audit committee or other directors;
- the resignation or termination of the company's chief executive officer, chief financial officer or other key senior executives;
- any evidence that it may be impossible for the company to cure its Filing Delinquency within the cure periods otherwise available under the Late Filer Rule; and
- any past history of late filings.

In determining whether an Additional Cure Period after the expiration of the Initial Cure Period is appropriate, the Exchange will consider the likelihood that the Delinquent Report and all Subsequent Reports can be filed or refiled, as applicable, during the Additional Cure Period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the Delinquent Report and any Subsequent Reports to the market through press releases, and will also take the frequency and detail of such information into account in determining whether an additional trading period is appropriate.

If the Exchange determines that an Additional Cure Period is appropriate and the company fails to file the Delinquent Report and all Subsequent Reports by the end of such additional period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Section 804.00. In no event will the Exchange continue to trade a company's securities if (i) it has failed to cure its Filing Delinquency and (ii) is not current with all Subsequent Reports, on the date that is twelve months after its initial Filing Delinquency.

The Exchange proposes that the revised Late Filer Rule will become operative on March 1, 2015. Accordingly, the current provisions of Section 802.01E of the Manual will be applicable to any listed company that fails to timely file an annual report (Forms 10-K, 20-F, 40-F or N-CSR) prior to March 1, 2015. On or after March 1, 2015, any listed company that fails to timely file an annual report (Forms 10-K, 20-F, 40-F or N-CSR) or quarterly report on Form 10-Q will be subject to the amended provisions of Section 802.01E. Any listed company that is late as of March 1, 2015, in filing a Form 10-Q with a due date prior to that date will not be subject to the proposed amended rule with respect to that filing. However, any such company will be subject to the proposed amended rule with respect to any periodic report it does not file on a timely basis whose due date is on or after March 1, 2015.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</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

---

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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 Section 6(b)(5) because: (i) it strengthens the Exchange's continued listing requirements with respect to delinquent SEC filings by deeming companies delinquent if they fail to file their annual report or Form 10-Q on a timely basis and by subjecting companies to the late filer process if there are material inadequacies in their required annual or quarterly filings; and (ii) the more stringent requirements will encourage listed companies to submit timely and compliant periodic reports to the SEC.

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 purpose of the Act. The proposed rule change does not affect competition in any way, but rather simply seeks to protect investors by insuring that companies cannot remain listed for any extended period of time without appropriately filing their required periodic financial reports with the SEC.

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 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate 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 or disapprove 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-2014-65 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2014-65. 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 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-2014-65 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>11</sup> 17 CFR 200.30-3(a)(12).