

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57958; File No. SR-NYSE Arca-2008-56)

June 12, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 to Amend the Pilot Program for Initial and Continued Listing Standards, to Provide that Currently Traded Issuers Will Be Required to Meet Each of the \$5 Closing Price Requirement and the \$150 million Market Value of Listed Securities Requirement on the Basis of a 90 Trading Day Average of the Closing Price of the Company's Common Stock Prior to Applying for Listing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 28, 2008, NYSE Arca, Inc. ("NYSE Arca" or "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 substantially prepared by the Exchange. On June 5, 2008, the Exchange filed Amendment No. 1. The Commission is publishing this notice and order to solicit comments on the proposal, as modified by Amendment No. 1, from interested persons.

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

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to amend the initial listing standard for common stock set forth in NYSE Arca Equities Rule 5.2(c) to provide that currently traded issuers will be required to meet each of the \$5 closing price requirement and the \$150 million market value of listed securities requirement on the basis of a 90 trading day average of the closing price of the company's stock prior to applying for listing. In addition, a company will not qualify for listing unless (i) the closing price of its common stock is at least \$1 in each day of the 90 trading day period and (ii)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the company's closing price exceeds \$5 and its market value exceeds \$150 market value at the time it applies for listing.

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 Exchange 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 III below. The Exchange 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

The NYSE Arca Equities initial listing standards for equity securities are approved on a pilot basis ("Pilot Program").³ Under the Pilot Program, Rule 5.2(c) requires that issuers wishing to list their common stock must have a \$5 stock price and a market value of listed securities of \$150 million at the time they apply to list. In the case of issuers whose stock is publicly traded immediately prior to listing on the Exchange, the rule currently requires that the issuer must

³ Rule 5.2(c) exists in its current form pursuant to a Pilot Program. The Commission initially approved the Pilot Program for six months, until May 29, 2007. See Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR-NYSEArca-2006-85). The Pilot Program was subsequently extended for an additional six months, until November 30, 2007. See Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR-NYSEArca-2007-51). The Pilot Program was extended for an additional six months, until May 31, 2008. See Securities Exchange Act Release No. 56885 (December 3, 2007), 72 FR 69272 (December 7, 2007) (SR-NYSEArca-2007-123). The Pilot Program was most recently extended for an additional six months, until November 30, 2008. See Securities Exchange Act Release No. 57922 (June 4, 2008), 73 FR 33137 (June 11, 2008) (SR-NYSEArca-2008-55). This filing is being submitted as an amendment to the Pilot Program.

maintain a closing price for its stock of \$5 and a market value of listed securities of \$150 million for 90 consecutive trading days prior to applying for listing. The Exchange proposes to amend these requirements as part of the Pilot Program, to provide that such issuers must demonstrate a \$5 stock price and \$150 million in market value of listed securities on the basis of a 90 trading day average of the closing price of the common stock prior to applying for listing. In addition, a company will not qualify for listing unless (i) the closing price of its common stock is at least \$1 in each day of the 90 trading day period and (ii) the company's closing price exceeds \$5 and its market value exceeds \$150 market value at the time it applies for listing.

While this proposed amendment to the Pilot Program will allow an issuer to qualify for listing even though the closing price of its stock may be less than \$5 or the market value of its listed securities may be less than \$150 million for some days in the 90 trading day period, any such shortfalls will have to be offset by periods when the closing stock price exceeds \$5 or the market value of listed securities exceeds \$150 million by enough to enable the issuer to maintain the necessary average. As such, the Exchange believes that the amended methodology will continue to require companies to display on a sustained basis that they are of the appropriate size for listing on the Exchange.⁴

⁴ The Exchange notes that Nasdaq Global Market Standard 3 requires issuers whose stock is publicly traded immediately prior to listing to maintain a closing stock price of \$5 and a market value of listed securities of \$75 million for 90 consecutive trading days prior to applying for listing. While the proposed amendment may enable the Exchange to list issuers from time to time that would not meet its \$5 closing stock price or market value requirements for 90 consecutive days, the Exchange notes that its market value of listed securities requirement is twice that of the comparable Nasdaq standard and that the Exchange requires a public float of \$45 million, while the comparable Nasdaq standard requires a public float of only \$20 million. As such, the Exchange believes that its standard as amended is still substantially more stringent than Nasdaq Global Market Standard 3.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to 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 proposed amendment specifically seeks to remove impediments to and perfect the mechanisms of a free and open market by allowing NYSE Arca to compete with Nasdaq for listings of companies that may not currently be qualified to list on NYSE Arca, but would be qualified to list on the Nasdaq Global Market.

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

Written comments on the proposed rule change were neither solicited nor received.

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 such proposed rule change, or

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

(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-NYSEArca-2008-56 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-NYSEArca-2008-56. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00

pm. 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-NYSEArca-2008-56 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.⁷

Florence E. Harmon
Acting Secretary

⁷ 17 CFR 200.30-3(a)(12).