

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59139; File No. SR-NYSE-2008-109]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Clarify Amendments to "Other Securities" Initial Listing Standards

December 22, 2008.

#### I. Introduction

On October 31, 2008, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Section 703.19 of the Exchange's Listed Company Manual (the "Manual"), the Exchange's initial listing standards for "Other Securities." The proposed rule change was published in the **Federal Register** on November 19, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposed to amend Section 703.19 of the Manual<sup>4</sup> to state that companies whose securities that are not listed on the Exchange and wish to list securities under Section 703.19 must meet one of the Exchange's financial original listing standards for equity listings, but need not meet any of the other initial listing requirements set forth in Section One of the Manual.

Currently, a company who wishes to list securities on the NYSE but whose securities do not fall under the traditional listing standards for common stock, preferred stock, debt securities, warrants, or under parts of the Manual, may list such securities under Section 703.19 of the Manual. In order to list

these securities, they must meet the following criteria. First, if the company currently has securities listed on NYSE, the company must be in good standing.<sup>5</sup> If the company does not have securities listed on NYSE, the company must meet the initial common stock listing standards set forth in Sections 102.01 to 102.03 and 103.01 to 103.05 of the Manual. Second, equity securities must have at least (1) One million securities outstanding; (2) 400 holders; and (3) \$4 million in market value and debt securities must have a minimum public market value of \$4 million.

The Exchange proposes to change the requirement for companies that do not have securities listed on NYSE to meet the Exchange's initial common stock listing standards as set forth in Sections 102.01 to 102.03 and 103.01 to 103.05 of the Manual. As proposed, such companies must meet one of the financial standards in Section 102.01C and for foreign companies, Section 103.01B.

The Exchange also proposes to remove the sub-heading "Earnings/Net Tangible Assets" from the second paragraph of Section 703.19.

#### III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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 development and enforcement of adequate standards governing the initial listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that

have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.

Under the proposal, companies with securities that are not listed on NYSE and who wish to list securities under Section 703.19 must now meet one of four financial listing standards under Section 102.01C of the Manual.<sup>9</sup> Under the proposal, companies who are foreign private issuers must meet one of three financial listing standards under Section 103.01B of the Manual.<sup>10</sup> The Exchange represented that it has not imposed the other standards in Sections 102.01 to 102.03 or Sections 103.01 to 103.05, as the Exchange has applied these other standards to the common stock.

The Commission notes that, as proposed, the numerical listing standards under proposed Section 703.19 would be similar to the numerical listing standards for "other securities" on other exchanges.<sup>11</sup> The Commission also notes that the proposed change would apply only for companies whose securities are not otherwise listed on the Exchange. In addition, the Commission notes that Section 703.19 currently provides public float and distribution listing standards.

Furthermore, the Commission believes that the proposal to remove the obsolete sub-heading "Earnings/Net Tangible Assets" from Section 703.19 should eliminate any potential confusion.

The Commission believes the proposed rule change is reasonable and should continue to provide for the listing of securities with sufficient depth and liquidity to maintain fair and orderly markets. Accordingly, the Commission believes that the changes are consistent with the requirements of the Act.

<sup>9</sup> Section 102.01C of the Manual lists four different financial standards for companies to qualify for listing on the Exchange: (1) Earnings Test; (2) Valuation/Revenue Test; (3) Affiliated Company Test; or (4) Assets and Equity Test.

<sup>10</sup> Section 103.05B of the Manual lists three different financial standards for companies who are foreign private issuers to qualify for listing on the Exchange: (1) Earnings Test; (2) Valuation/Revenue Test; or (3) Affiliated Company Test.

<sup>11</sup> See e.g., Nasdaq Marketplace Rule 4420(f), Section 107 of the Amex Company Guide, and NYSE Arca Rule 5.2(j)(1).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 58928 (November 10, 2008), 73 FR 69706 ("Notice").

<sup>4</sup> Section 703.19 was adopted to provide the Exchange with the flexibility to list securities that could not be readily categorized under the Exchange's traditional listing standards for common and preferred stocks, debt securities and warrants. Section 703.19 was intended to provide flexibility to enable the Exchange to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. Section 703.19 is not intended to accommodate the listing of securities that raise significant new regulatory issues, which would require a separate filing with the Commission. See Securities Exchange Act Release No. 28217 (July 18, 1990) 55 FR 30056 (July 24, 1990) (SR-NYSE-90-30).

<sup>5</sup> See Section 703.19 of the Manual. If the company is an affiliate of a NYSE-listed company, the NYSE-listed company must be in good standing.

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

<sup>7</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSE-2008-109) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59143; File No. SR-NYSE-2008-135]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Extend to March 27, 2009, the Operative Date of New York Stock Exchange Rule 2 Requirement That NYSE-Only Member Organizations Apply for and Be Approved as a Member of the Financial Industry Regulatory Authority, Inc.

December 22, 2008.

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 22, 2008, 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 extend to March 27, 2009, the operative date of New York Stock Exchange ("NYSE" or the "Exchange") Rule 2 requirement that NYSE-only member organizations apply for and be approved as a member of the Financial Industry Regulatory Authority, Inc. ("FINRA").

#### 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 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 Exchange is proposing to extend to March 27, 2009, the grace period for NYSE-only member organizations to apply for and be approved as a FINRA member, as required by NYSE Rule 2.

In connection with the consolidation of NASD and NYSE Regulation member firm regulation operations into FINRA, which closed on July 30, 2007, the Exchange amended NYSE Rule 2 to require NYSE member organizations to also be FINRA members.<sup>4</sup> In connection with those rule changes, the Commission approved a 60-day grace period within which NYSE-only member organizations must apply for and be approved for FINRA membership. In that rule filing, NYSE-only member organizations were defined as those member organizations that were not NASD members as of the date of the closing of the FINRA transaction. This grace period began on October 12, 2007, the date of Commission approval of the Exchange's rule filing. In furtherance of the consolidation, FINRA adopted NASD IM-1013-1 to enable eligible NYSE member organizations to become FINRA members through an expedited process (the "FINRA Waive-in application process").<sup>5</sup>

At the close of the 60-day grace period, all but two of the former NYSE-only member organizations had applied for and been approved as FINRA members. On December 12, 2007, the Exchange filed for an extension of the grace period to June 30, 2008 for those

two firms.<sup>6</sup> On June 30, 2008, the Exchange filed for another extension of the grace period to December 31, 2008.<sup>7</sup> In that filing, the Exchange noted that those two firms had unique member qualification issues and were ineligible to participate in the FINRA Waive-in application process. As of December 19, 2008, one of those two firms has been approved as a FINRA member. With respect to the other firm, because the Exchange is working on a rule filing to amend Rule 2 to permit a broker dealer to be an NYSE member organization without a FINRA membership, the Exchange believes that the grace period should be further extended so that the remaining firm does not have to re-apply for Exchange membership if the proposed change to Rule 2 is approved. Accordingly, the NYSE proposes to extend the grace period to March 27, 2009 for the firm that was an NYSE member organization as of July 30, 2007, but not a FINRA member.

###### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, 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.

##### 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

The foregoing rule change is being filed for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>9</sup> of the

<sup>6</sup> See Securities Exchange Act Release No. 34-56953 (Dec. 12, 2007), 72 FR 71990 (Dec. 19, 2007) (SR-NYSE-2007-115).

<sup>7</sup> See Securities Exchange Act Release No. 34-58096 (July 3, 2008), 73 FR 39764 (July 10, 2008) (SR-NYSE-2008-54).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

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

<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.

<sup>4</sup> See Securities Exchange Act Release No. 34-56654 (Oct. 12, 2007), 72 FR 59129 (Oct. 18, 2007) (SR-NYSE-2007-67).

<sup>5</sup> See Securities Exchange Act Release No. 34-56653 (Oct. 12, 2007), 72 FR 59127 (Oct. 18, 2007) (SR-NASD-2007-56).