

be submitted on or before March 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59510; File No. SR-NYSE-2009-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Temporarily Suspend Its Price Continued Listing Standard and Extend the Period of the Temporary Lowering of Its Average Global Market Capitalization Continued Listing Standard

March 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2009, New York Stock Exchange, LLC (the "NYSE" or the "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 Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)<sup>3</sup> under the Exchange Act. 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 (i) suspend until June 30, 2009, the application of its price criteria for capital and common stock set forth in Section 802.01C of the Exchange's Listed Company Manual (the "Manual"), and (ii) extend until the same date the temporary lowering of the average market capitalization requirement of Section 802.01B of the Manual. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary 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 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 IV below. The NYSE 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

In recent months, the U.S. and global equities markets have experienced extreme volatility and a precipitous decline in trading prices of many securities. As a consequence of these market conditions, the Exchange has experienced an unusually high number (as compared to historical levels) of listed companies having stock prices that have either fallen below the Exchange's \$1.00 price requirement for capital and common stock set forth in Section 802.01C of the Manual (*i.e.*, the average closing price of their stock has fallen below \$1.00 over a consecutive 30 trading day period)<sup>4</sup> or having an average closing stock price that is below \$2.00. In response, the Exchange

<sup>4</sup> Section 802.01C provides that a company will be considered to be below compliance standards if the average closing price of a security as reported on the consolidated tape is less than \$1.00 over a consecutive 30 trading day period. Once notified, the company must bring its share price and average share price back above \$1.00 by six months following receipt of the notification. A company is not eligible to follow the cure procedures outlined in Sections 802.02 and 802.03 with respect to this criteria. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. In the event that at the expiration of the six-month cure period, both a \$1.00 share price and a \$1.00 average share price over the preceding 30 trading days are not attained, the Exchange will commence suspension and delisting procedures. Notwithstanding the foregoing, if a company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds \$1.00 per share, and the price remains above the level for at least the following 30 trading days.

proposes to suspend the application of the stock price requirement of Section 802.01C until June 30, 2009. This proposed suspension will provide temporary relief to companies in response to the extreme volatility and a precipitous decline in trading prices of many securities experienced in the U.S. and global equities markets, which the Commission had acknowledged constituted a threat to the fair and orderly functioning of the securities markets and could lead to a crisis of confidence among investors regarding the viability of companies whose stock prices have declined significantly.<sup>5</sup>

Under the proposed suspension of the Exchange's stock price continued listing standard, companies will not be notified of new events of noncompliance with the price requirement during the suspension period. Companies that are in a compliance period at the time of commencement of the suspension<sup>6</sup> will still be deemed to have regained compliance during the rule suspension period if, at the expiration of their respective six-month cure periods established prior to the commencement of the rule suspension, they have a \$1.00 closing share price on the last trading day of the period and a \$1.00 average share price based on the preceding 30 trading days. In addition, any company that is in a compliance period at the time of commencement of the rule suspension can return to compliance during the suspension if at the end of any calendar month during the suspension such company has a \$1.00 closing share price on the last

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) ("The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.").

<sup>6</sup> The Exchange notes that there are not currently any companies in the Exchange's delisting appeal process that have been sent a delisting notification for noncompliance with the dollar price continued listing requirement. The Exchange also notes that it would continue to identify companies in a compliance period as below compliance for price, including by continuing to append an indicator to the company's stock ticker to identify it as being below compliance for price and including the company on a list of companies that are below compliance for price posted to the Exchange's Web site, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

trading day of such month and a \$1.00 average share price based on the 30 trading days preceding the end of such month.<sup>7</sup> Any company that is in a compliance period at the time of commencement of the rule suspension that does not regain compliance during the suspension period will recommence its compliance period upon reinstatement of the stock price continued listing standard and receive the remaining balance of its compliance period.<sup>8</sup> Following the temporary rule suspension, any new events of noncompliance with the Exchange's stock price continued listing standard would be determined based on a consecutive 30 trading-day period commencing on June 30, 2009.

In response to the current unusual market conditions, the Exchange previously adopted a policy (by means of an immediately effective rule filing<sup>9</sup>) providing that, through April 22, 2009, its average global market capitalization continued listing requirement will apply only to companies (including limited partnerships and real estate investment trusts ("REITs")) whose average global market capitalization over a consecutive 30 trading-day period falls below \$15 million.<sup>10</sup> The Exchange notes that it remains the case that an unusually high number (as compared to historical levels) of listed companies have market capitalizations close to or below \$25 million over a consecutive 30 trading-day period. The Exchange considers it unlikely that the market conditions giving rise to this phenomenon will pass prior to April 22, 2009, the current end date of the temporary lowering of the Exchange's market capitalization requirements. Consequently, the Exchange proposes to extend the period for which its market capitalization continued listing standard

is lowered until June 30, 2009. This will also have the benefit of conforming the end dates of the suspension of the dollar stock price continued listing requirement and the easing of the market capitalization continued listing requirement, avoiding confusion in communicating these policies to listed companies and facilitating any extension of both policies in a single filing.

The proposed suspension of the Exchange's price continued listing requirement and the proposed extension of the period of application of the temporary lower market capitalization requirement will each enable companies to remain listed in the current difficult market conditions with the prospect of a future recovery in their stock prices enabling them to comply with the applicable listing requirements upon the standards' reinstatement. During the period between now and June 30, 2009, the Exchange will consider whether it is appropriate to propose further revisions to these requirements.

The Exchange notes that this filing is based in part on a NASDAQ filing, pursuant to which NASDAQ responded to the current market conditions by temporarily suspending its bid price and market value of publicly held shares continued listing requirements through April 19, 2009.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>12</sup> of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>13</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 proposed rule change is designed to remove uncertainty regarding the ability of certain companies to remain listed on the NYSE during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open 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 Exchange Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its 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 Commission has determined to waive this requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>7</sup> A company would continue to be subject to delisting for failure to comply with other listing requirements.

<sup>8</sup> For example, if a company is four months into its compliance period for noncompliance with the price continued listing standard when the suspension starts and the company does not regain compliance during the suspension, the company would have an additional two months starting on June 30, 2009, to regain compliance.

<sup>9</sup> See Securities Exchange Act Release No. 59299 (January 27, 2009), 74 FR 5709 (January 30, 2009) (SR-NYSE-2009-06).

<sup>10</sup> Section 802.01B of the Manual provides that the Exchange will promptly delist any company (including limited partnerships and REITs) if it is determined that the company has an average global market capitalization over a consecutive 30 trading-day period of less than \$25 million, regardless of the original listing standard under which it listed. A company is not eligible to utilize the cure procedures set forth in Sections 802.02 and 802.03 with respect to this criterion and instead is immediately subject to the Exchange's delisting procedures set forth in Section 804 of the Manual.

<sup>11</sup> See Securities Exchange Act Release 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR-NASDAQ-2008-082) for the suspension of NASDAQ's bid price and market value of publicly held shares through January 16, 2009. See also Securities Exchange Act Release 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009), extending the suspension of these requirements to April 19, 2009. NASDAQ's continued listing requirements relating to bid price are set forth in NASDAQ Marketplace Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in NASDAQ Marketplace Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). NASDAQ's continued listing requirements relating to market value of publicly held shares are set forth in NASDAQ Marketplace Rules 4310(c)(7), 4320(e)(5), 450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1).

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE to immediately implement a temporary measure, until June 30, 2009, to suspend its \$1.00 price continued listing requirement for capital and common stock to respond to recent market volatility and conditions. The Commission notes that this will provide certain companies with immediate relief from receiving a non-compliance or delisting notification, or from being delisted, as a result of the current market conditions. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance period will resume at the same stage and receive the remaining balance of its compliance period if they remain non-compliant with these standards. This will ensure that the temporary suspension addresses the concerns to companies and investors caused by the current market conditions, and that may result in a company's securities becoming non-compliant with the \$1.00 price requirement, or unable to cure such a deficiency, due to these market conditions. The Commission also notes that the proposed rule change is substantially similar to a recent Nasdaq filing to suspend its bid price test, and thus, raises no new regulatory issues.<sup>18</sup> In addition, the Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest because it will allow NYSE to immediately conform the end dates of the suspension of the \$1.00 price requirement and the temporary lowering of the average market capitalization requirement of Section 802.01B of the Manual,<sup>19</sup> preventing any confusion over the end dates of these temporary modifications to the continued listing standards due to market conditions. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>20</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

#### 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 Exchange 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-2009-21 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-2009-21. 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, on official business days between the hours of 10 a.m. and 3 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-2009-21 and should be submitted on or before April 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59522; File No. SR-NYSEArca-2008-134]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Rule 10.16, Sanctioning Guidelines

March 5, 2009.

#### I. Introduction

On December 11, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 NYSE Arca Rule 10.16 ("Rule 10.16" or "Sanctioning Guidelines"). The proposed rule change was published for comment in the **Federal Register** on December 30, 2008.<sup>3</sup> The Commission received no comments on the proposed rule change. On February 13, 2009, NYSE Arca filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the proposed rule change, as amended.

#### II. Description

Rule 10.16 sets forth (1) general principles that apply to all determinations of sanctions in options market-related disciplinary proceedings, (2) a list of principal considerations to use to determine sanctions, and (3) a set of suggested fines and non-monetary penalties for violations of specific options rules of the Exchange ("Specific Sanctioning Guidelines"). The Sanctioning Guidelines are used by various Exchange bodies (hereafter "adjudicators") to help determine appropriate remedial sanctions in disciplinary proceedings. The Exchange proposes to make the following

<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. 59117 (December 18, 2008), 73 FR 79964.

<sup>4</sup> Amendment No. 1 makes minor, non-substantive changes to the description of the proposed rule change and to the proposed rule text. Because Amendment No. 1 is non-substantive in nature, the Commission is not publishing it for comment.

<sup>18</sup> See *supra* note 11.

<sup>19</sup> See *supra* note 9.

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>21</sup> 17 CFR 200.30-3(a)(12).