

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61912; File No. SR-NYSE-2010-15]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Making Permanent the Exchange's Pilot Program With Respect to Its Continued Listing Standards

April 15, 2010.

#### I. Introduction

On February 26, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), 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> a proposal to make permanent an amendment to the continued listing requirements in Section 802.01B of the Exchange's Listed Company Manual (the "Manual") that is currently in effect on a pilot program basis (the "Pilot Program"). The proposed rule change was published for comment in the *Federal Register* on March 12, 2010.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to make its Pilot Program permanent. Prior to the adoption of the Pilot Program,<sup>5</sup> Section 802.01B(I) of the Manual provided that any company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I) (in the case of foreign private issuers) or pursuant to the requirements set forth under the Assets and Equity Test set forth in Section 102.01C(IV) or the "Initial Listing Standard for Companies Transferring from NYSE Arca" (the "NYSE Arca Transfer Standard") set

forth in Section 102.01(C)(V) (the NYSE Arca Transfer Standard expired by its terms on August 31, 2009) was considered to be below compliance standards if such company's average global market capitalization over a consecutive 30 trading-day period was less than \$75 million and, at the same time, total stockholders' equity was less than \$75 million. Under the Pilot Program, companies that listed under the initial listing standards set forth in the immediately preceding sentence are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million.

The Pilot Program originally expired by its terms on October 31, 2009, but the Exchange extended its application for an additional five months, until February 28, 2010.<sup>6</sup> NYSE filed an immediately effective proposed rule change to extend the Pilot Program for a further four months, until June 30, 2010.<sup>7</sup> This order approves the Pilot Program on a permanent basis.

#### III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>8</sup> and, in particular, the requirements of Section 6 of the Act.<sup>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an initial public offering will 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. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

The Commission believes that the proposal to make permanent the Pilot Program is reasonable and consistent with the Act, and furthers investor protection and the public interest. Under the proposal, companies that initially listed under the Earnings Test, Assets and Equity Test, or NYSE Arca Transfer Standard are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million. The Commission notes that for companies listed under the Earnings Test, the Pilot Program returned continued listing requirements to those in place prior to the higher standards adopted on June 9, 2005.<sup>11</sup> Thus, even prior to implementation of the Pilot Program, the Exchange had had considerable historical experience with the continued listing of companies that had continued to trade on the Exchange with global market capitalization and stockholders' equity each below \$75 million but greater than \$50 million. In addition, the Exchange represents that its experience under the Pilot Program has been very positive, as only one of the companies that was deemed back in compliance as a result of the adoption

<sup>6</sup> See Securities Exchange Act Release No. 60911 (November 2, 2009), 74 FR 57730 (November 9, 2010) (SR-NYSE-2009-109).

<sup>7</sup> See Securities Exchange Act Release No. 61609 (March 1, 2010), 75 FR 10336 (March 5, 2010) (SR-NYSE-2010-13).

<sup>8</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>11</sup> See Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR-NYSE-2004-20). The Assets and Equity Test set forth in Section 102.01C(IV) and the NYSE Arca Transfer Standard set forth in Section 102.01C(V) were adopted subsequent to this amendment.

<sup>12</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. 61657 (March 5, 2010), 75 FR 11970.

<sup>5</sup> See Securities Exchange Act Release No. 59996 (May 28, 2009), 74 FR 26912 (June 4, 2009) (SR-NYSE-2009-48) (the "Pilot Program Notice").

of the Pilot Program has subsequently fallen below the standard as amended by the Pilot Program as of the date of this filing and only two additional companies have been newly identified as being below the Pilot Program standard.

The Commission notes that the continued listing standards as amended by the Pilot Program are at least as stringent as those of any other national securities exchange. In addition, the Exchange notes that the Commission stated in the Pilot Program Notice<sup>12</sup> that it believed that the continued listing standards adopted under the Pilot Program met the requirements established in Exchange Act Rule 3a51-1(a)(2)(ii)<sup>13</sup> in that they were reasonably related to the initial listing standards set forth in paragraph (a)(2)(i) of Exchange Act Rule 3a51-1 (the "Penny Stock Rule").<sup>14</sup>

Based on the above, the Commission believes that permanent adoption of the Pilot Program is appropriate and that the continued listing standards, although lower than the standards in place prior to the Pilot Program, should help to ensure that listed companies continue to have adequate depth and liquidity to maintain fair and orderly markets for the protection of investors. Consequently, the Commission believes that the Pilot Program is consistent with the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NYSE-2010-15) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Elizabeth M. Murphy,**

Secretary.

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#### DEPARTMENT OF STATE

[Public Notice: 6969; Forms DS-3036, DS-3037, and DS-7000; OMB No. 1405-0147]

#### 60-Day Notice of Proposed Information Collection: Recording, Reporting, and Data Collection Requirements Under 22 CFR Part 62, the Exchange Visitor Program—Student and Exchange Visitor Information System (SEVIS)

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Recording, Reporting, and Data Collection Requirements Under 22 CFR Part 62 (DS-7000), the Exchange Visitor Program Application (Form DS-3036); and Update of Information on Exchange Visitor Program Sponsor (Form DS-3037).

- *OMB Control Number:* 1405-0147.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Designation, ECA/EC/D.

- *Form Number:* Forms DS-3036, DS-3037 and DS-7000.

- *Respondents:* U.S. government and public and private organizations wishing to become Department of State designated sponsors authorized to conduct exchange visitor programs, and Department of State designated sponsors.

- *Estimated Number of Respondents:* 191,810 (DS-3036—150; DS-3037—1460; DS-7000—190,200).

- *Estimated Number of Responses:* 1,623,447 (DS-3036—150; DS-3037—2920; DS-7000—1,620,377).

- *Average Hours per Response:* DS-3036—8 hours; DS-3037—20 minutes; DS-7000—45 minutes.

- *Total Estimated Burden:* 1,323,260 (DS-3036—1200 hours; DS-3037—973 hours; DS-7000—1,321,087).

- *Frequency:* On Occasion.

- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

**DATES:** The Department will accept comments from the public up to 60 days from April 22, 2010.

**ADDRESSES:** You may submit comments by any of the following methods:

- Persons with access to the Internet may also view this notice and provide

comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.

- *E-mail:* [JExchanges@State.gov](mailto:JExchanges@State.gov)
- *Mail (paper, disk, or CD-ROM submissions):* U.S. Department of State, ECA/EC/D, SA-5, Floor 5, 2200 C Street, NW., Washington, DC 20522-0505, ATTN: **Federal Register** Notice Response.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

#### FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, ECA/EC/D, SA-5, Floor 5, Department of State, 2200 C Street, NW., Washington, DC 20522-0505, who may be reached on 202-632-2805 or at [JExchanges@State.gov](mailto:JExchanges@State.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

#### Abstract of Proposed Collection

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. The forms have been revised to clarify language used and remove unnecessary data collection.

#### Methodology

Access to Forms DS-3036 and DS-3037 are found in the Student and Exchange Visitor Information System (SEVIS).

<sup>12</sup> See the Pilot Program Notice at Note 5.

<sup>13</sup> 17 CFR 240.3a51-1(a)(2)(ii).

<sup>14</sup> 17 CFR 240.3a51-1(a)(2)(i).

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).