

4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),¹⁷ which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Exchange systems are now capable of recognizing protected quotations with a sub-penny component in its round-lot market and can accommodate away market executions in sub-pennies, in compliance with SEC Rules 611 and 612. The Commission finds that it is appropriate to waive the 30-day operative delay for this proposed rule change because the "Sub-penny trading" condition no longer serves any purpose and waiving the delay should allow the Exchange to immediately come into full compliance with Regulation NMS with respect to sub-pennies. For these reasons, the Commission designates the proposed rule change as operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 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-NYSE-2008-117 on the subject line.

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. NYSE has satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's effect on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2008-117. 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-117 and should be submitted on or before December 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-27404 Filed 11-18-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58928; File No. SR-NYSE-2008-109]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Clarify Amendments to "Other Securities" Initial Listing Standard

November 10, 2008.

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 October 31, 2008, New York Stock Exchange LLC ("NYSE" 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

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

The Exchange proposes 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 amendment would clarify that companies that are not listed on the Exchange that 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.

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 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 IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁹ 17 CFR 200.30-3(a)(12).

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 proposes to amend Section 703.19 of the Manual, the Exchange's initial listing standards for "Other Securities."³ The proposed amendment would clarify that companies that are not listed on the Exchange that 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.

The Exchange has long required that unlisted companies wishing to list securities under Section 703.19 must meet its initial common stock listing standards as set forth in Sections 102.01–102.03 and 103.01–05 of the Manual. While these sections contain common stock distribution requirements (such as the requirement of Section 102.01A that companies listing in connection with an IPO must have at least 400 round lot holders and 1.1 million publicly-held shares) and public float requirements (such as the requirement of 102.01B that IPOs must have a minimum float of \$60 million and all other companies must have a public float of \$100 million at the time of initial listing), the Exchange has not imposed these standards with respect to an issuer's common stock when it is only listing securities under Section 703.19. Rather, the Exchange has interpreted the requirement of Section 703.19 as being simply that the company must meet the financial requirements of one of the Exchange's initial listing standards as set forth in Section 102.01C (*i.e.*, the Earnings Test, the Valuation/Revenue Test, the Pure Valuation/Revenue Test and the Affiliated Company Test) or Section 103.01C [*sic*] (*i.e.*, the Earnings Test, the

Valuation/Revenue Test, the Pure Valuation/Revenue Test and the Affiliated Company Test). While the Exchange strongly believes that it needs to ensure that any company that lists its securities under Section 703.19 is of the financial caliber that is required of an NYSE company, it does not believe the common stock distribution and public float requirements are relevant to this qualitative analysis as these requirements are relevant solely with respect to the quality of the trading market in the common stock.

Recently, the Exchange amended its common stock initial listing standards in Section 102.01B and 103.01A to require listing applicants at the time of listing to have a closing price, or if listing in connection with an IPO, an IPO price of \$4 at the time of initial listing.⁴ The Exchange believes that the same rationale articulated above with respect to distribution and public float requirements applies in the case of this price requirement, *i.e.*, it is relevant to the quality of the trading market for the common stock but not to the qualitative analysis the Exchange performs with respect to a company wishing to list securities under Section 703.19.

To avoid any ambiguity in the application of Section 703.19 to companies that do not have their common stock listed on the Exchange, the Exchange proposes to replace the requirement that companies must meet the Exchange's initial common stock listing standards as set forth in Sections 102.01–102.03 and 103.01–05 of the Manual with a more narrowly-tailored requirement that such companies must meet one of the financial standards in Section 102.01C or, if applicable, in the case of 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, as it is a remnant from a much earlier version of the rule and is a source of confusion.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange

believes that the proposed amendment is consistent with the protection of investors and the public interest in that the Exchange will continue to apply stringent eligibility requirements to securities listed under Section 703.19.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would 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

(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–NYSE–2008–109 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–2008–109. This file number should be included on the subject line if e-mail is used. To help the

³ 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).

⁴ See Securities Exchange Act Release No. 27597 [*sic*] (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17).

⁵ 15 U.S.C. 78f(b)(5).

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 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-2008-109 and should be submitted on or before December 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58934; File No. SR-NYSE-2008-98]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt an Additional Initial Listing Standard for Operating Companies

November 12, 2008.

I. Introduction

On October 1, 2008, the 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")¹ and Rule 19b-4 thereunder,² a proposed rule change amending Section 102.01C of the Exchange's Listed Company Manual ("Manual") to adopt an additional initial listing standard under which companies may qualify to list on the Exchange. On October 10, 2008, the proposed rule change was published for comment in the **Federal Register**.³ On November 10, 2008, NYSE filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange has proposed to amend Section 102.01C of the Manual to adopt an additional initial listing standard under which companies may qualify to list on the Exchange. The Exchange has also proposed to apply the continued listing standard applicable under Section 802.01B to companies listed under the Earnings Test to companies listed under the proposed new initial listing standard.

The proposed new standard (the "Assets and Equity Test") is an additional alternative standard under which companies may qualify to list, and will not replace any of the existing initial listing standards set forth in Section 102.01C. Companies qualifying to list under the proposed new standard will have to meet the same holder, publicly-held share and trading volume requirements as set forth in Section 102.01A as companies that list under the existing initial listing standards. Further, like companies that list under the existing initial listing standards in Section 102.01C, companies that list under the proposed standard must meet the same market value of publicly-held shares requirements⁵ and \$4 stock price requirement in Section 102.01B. Under the proposed standard, in addition to these other requirements, a company at the time of listing would be required to have, at a minimum, (i) \$75 million in total assets, (ii) \$50 million in stockholders' equity and (iii) \$150

million of total market capitalization.⁶ The new standard also states that in considering the listing under the Assets and Equity Test of companies transferring from other markets, the Exchange will consider whether the company's business prospects and operating results indicate that the company's market capitalization value is likely to be sustained or increase over time.

Under the proposed rule, while companies that list under the Assets and Equity Test will not be required to have any minimum operating history prior to listing, companies that would otherwise have been considered for listing under Section 102.06 of the Manual—the Exchange's Acquisition Company standard (*i.e.*, "SPACs")—will not qualify for listing under the Assets and Equity Test. SPACs will continue to be listed only under Section 102.06. The continued listing standards, in Section 802.01B of the Manual, which currently apply to companies that qualify to list under the Earnings Test is proposed to be extended to companies that qualify to list under the new Assets and Equity Test. Such companies will be considered to be below compliance standards if their average global market capitalization over a consecutive 30 trading-day period is less than \$75 million and, at the same time, total stockholders' equity is less than \$75 million. In addition, the holder, publicly-held share and trading volume requirements of Section 802.01A, the \$25 million global market capitalization requirement in Section 802.01B, the \$1.00 minimum stock price requirement in Section 802.01C, Section 802.01D ("Other Criteria"), and Section 802.01E ("SEC Annual Report Timely Filing Criteria") will also apply to companies qualifying under the Assets and Equity Test.

As discussed in more detail below, similar to recently adopted provisions under Section 102.01C, companies may apply to list under the Assets and Equity Test that have not previously had their common equity securities registered under the Act but which have

⁶ The total assets and stockholders equity that the Exchange will use for qualification purposes will be taken from the company's most recent balance sheet included in an SEC filing, in each case as adjusted pursuant to Sections 102.01C(I)(3)(a) (adjusting for the use of offering proceeds) and (b) (adjusting for the effects of acquisitions and dispositions) as applicable. In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the \$150 million global market capitalization requirement based upon the completion of the offering (or distribution).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58740 (October 6, 2008), 73 FR 60382 ("Notice").

⁴ Amendment No. 1 shows how Section 802.01B would be effected by changes proposed in SR-NYSE-2008-97. Because Amendment No. 1 is technical in nature, the Commission is not required to publish the amendment for comment.

⁵ Section 102.01B requires either \$60 million market value in the case of IPOs or \$100 million market value for all other companies.

⁶ 17 CFR 200.30-3(a)(12).