that reduces rates for market makers based on the level of business they bring to the Exchange.[8] This proposed rule change targets a particular segment in which the Exchange seeks to garnish greater order flow. The Exchange further believes that the rebate currently in place for QCC and Solicitation orders is reasonable because it is designed to give Members who trade a minimum of 100,000 contracts in QCC and Solicitation orders on the Exchange a benefit by way of a lower transaction fee. As noted above, once a Member reaches an established volume threshold, all of the trading activity in the specified order type by that Member will be subject to the corresponding rebate.

The Exchange also believes that its rebate program for QCC and Solicitation orders is equitable because it would uniformly apply to all Members engaged in QCC and Solicitation trading in all option classes traded on the Exchange.

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

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[9] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 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 email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–70 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–ISE–2011–70. This file number should be included on the subject line if email 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 Web site viewing and printing 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–ISE–2011–70 and should be submitted on or before December 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–29392 Filed 11–14–11; 8:45 am]

BILLING CODE 8011–01–P

[8] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65710; File No. SR–NYSEAmex–2011–55]

Self-Regulatory Organizations; NYSE Amex LLC; Notice and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 2, Amending Section 101 of the NYSE Amex Company Guide To Adopt Additional Listing Requirements for Companies Applying To List After Consummation of a ''Reverse Merger'' With a Shell Company, November 8, 2011

I. Introduction

On July 22, 2011, NYSE Amex LLC (''NYSE Amex'' 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 adopting additional listing requirements for a company that has become an Act reporting company by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger''). The proposed rule change was published for comment in the **Federal Register** on August 10, 2011.[3] On September 21, 2011, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved to November 8, 2011.[4] The Commission received two comment letters on the proposal.[5] NYSE Amex filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65033 (August 4, 2011), 76 FR 49522 (''Notice'').

[4] *See* Securities Exchange Act Release No. 65369 (September 21, 2011), 76 FR 59763 (September 27, 2011).

[5] *See* Letter from David Feldman, Partner, Richardson and Patel LLP dated August 29, 2011 (''Feldman Letter'') and Letter to Elizabeth M. Murphy, Secretary, Commission, from WestPark Capital, Inc. dated August 31, 2011 (''WestPark Letter''). In addition, the Commission received five comment letters on a substantially similar proposal by Nasdaq, three of which were filed by parties that did not specifically comment on the NYSE Amex

Amendment No. 1 to the proposed rule change on November 4, 2011, which was later withdrawn.[6] NYSE Amex filed Amendment No. 2 to the proposed rule change on November 8, 2011.[7] This order approves the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Original Proposal

The Exchange proposes to adopt more stringent listing requirements for companies that become public through a Reverse Merger, to address significant regulatory concerns including accounting fraud allegations that have arisen with respect to Reverse Merger companies. In its filing, the Exchange noted that the Commission has taken direct action against Reverse Merger companies. In addition, the Exchange noted that the Commission has suspended trading in, and revoked the securities registration of, a number of Reverse Merger companies.[8] The Exchange also stated that the Commission recently brought an enforcement proceeding against an audit firm relating to its work for Reverse Merger companies [9] and issued a bulletin on the risks of investing in Reverse Merger companies, noting potential market and regulatory risks related to investing in such companies.[10]

In response to the concerns noted above, the Exchange proposed to adopt additional listing requirements for Reverse Merger companies.[11] Specifically, NYSE Amex proposed to prohibit a Reverse Merger company from applying to list until the combined entity has traded in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, for at least one year following the filing of all required information about the Reverse Merger transaction, including audited financial statements, with the Commission. The Reverse Merger company would also be required to timely file with the Commission all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of all required information about the Reverse Merger transaction and satisfying the one-year trading requirement. Further, NYSE Amex proposed to require that the Reverse Merger company maintain on both an absolute and an average basis for a sustained period a minimum stock price equal to the stock price requirement applicable to the initial listing standard under which the Reverse Merger company is qualifying to list. Finally, the Exchange proposed an exception from the requirements of the rule if the Reverse Merger company is listing in connection with an initial firm commitment underwritten public offering where the proceeds to the company will be at least $40 million.

III. Comment Summary

As stated previously, the Commission received two comment letters on the proposal.[12] However, a related proposal by Nasdaq received five comment letters.[13] The Commission is treating the thee comment letters submitted on the Nasdaq filing, for which a comparable letter was not submitted on the NYSE Amex filing, as also being applicable to the NYSE Amex filing since the NYSE Amex and Nasdaq filings address the same substantive issues.[14] Two of the commenters objected broadly to the proposed additional listing requirements for Reverse Merger companies,[15] while three commenters suggested discrete changes to the proposal.[16]

One commenter who objected broadly to NYSE Amex's proposal expressed the view that it could have a ''chilling effect of discouraging exciting growth companies from pursuing all available techniques to obtain the benefits of a public listed stock and greater access to capital.'' [17] The commenter further noted, in response to Nasdaq's justifications for the proposed rule change, that virtually all of the suggestions of wrongdoing involve Chinese companies that completed reverse mergers, but that a number of other Chinese companies that completed full traditional initial public offerings face the very same allegations, so that focusing on the manner in which these companies went public may not be appropriate. Rather than imposing a seasoning requirement, the commenter suggests the Exchange review regulatory histories and financial arrangements with promoters, and refrain from listing companies where the issues are great. In any event, the commenter recommends an exception from the seasoning requirement for a company coming to the Exchange with a firm commitment underwritten public offering. In addition, the commenter expressed concern that the requirement to maintain a $4 trading price for 30 days

filing. (*See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (June 14, 2011) (SR–NASDAQ–2011–073)). The comment letters received on the Nasdaq filing, for which a counterpart was not received on the NYSE Amex filing are: Letter to Elizabeth M. Murphy, Secretary, Commission, from Locke Lord LLP dated October 17, 2011 (''Locke Lord Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from James N. Baxter, Chairman and General Counsel, New York Global Group dated October 17, 2011 (''New York Global Group Letter''); and Letter to Elizabeth M. Murphy, Secretary, Commission, from David A. Donohoe, Jr., Donohoe Advisory Associates LLC dated October 18, 2011 (''Donohoe Letter''). Two of the comment letters submitted on the Nasdaq filing specifically referenced this proposal by NYSE Amex. However, the Commission believes all of the filings submitted on the Nasdaq filing are applicable to this filing. Since the comment letters received on the Nasdaq filing either specifically reference the NYSE Amex filing, or discuss issues directly related to this filing, the Commission has included them in its discussions of this filing.

[6] Amendment No. 1, dated November 4, 2011, was withdrawn on November 8, 2011.

[7] *See* Amendment No. 2, dated November 8, 2011. Amendment No. 2 replaces Amendment No. 1 in its entirety. In Amendment No. 2, NYSE Amex made several changes to the proposed rule change. The changes proposed by NYSE Amex include: (i) Amending the proposed price requirement to make is applicable for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days; (ii) added a new exception from certain requirements contained in the rule for companies that conducted their reverse merger a substantial length of time before applying to list; and (iii) other additional changes to clarify the rule and harmonize it with a similar proposal by Nasdaq.

[8] *See* Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 (''Schapiro Letter''), at pages 3–4.

[9] *See* Schapiro Letter at page 4.

[10] *See* ''Investor Bulletin: Reverse Mergers'' 2011–123.

[11] In addition to the specific additional listing requirements contained in the proposal, the Exchange included language in the proposed rule that states that the Exchange may ''in its discretion impose more stringent requirements than those set forth above if the Exchange believes it is warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that are not subject to transfer restrictions, if the Reverse Merger Company has not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company has disclosed that it has material weaknesses in its internal controls which have been identified by management and/or the Reverse Merger Company's independent auditor and has not yet implemented an appropriate corrective action plan.''

[12] *See* Feldman Letter and WestPark Letter.

[13] As is stated above in note 5, two of the comment letters submitted on the Nasdaq proposal are substantially similar to comment letters received on the NYSE Amex proposal. *See* Feldman Letter and WestPark Letter. Three of the comment letters submitted on the Nasdaq proposal were not also submitted on the NYSE Amex proposal. *See* Locke Lord Letter; New York Global Group Letter; and Donohoe Letter. Two of the comment letters submitted on the Nasdaq filing specifically reference the NYSE Amex filing. *See* Locke Lord Letter and Donohoe Letter.

[14] In instituting disapproval proceedings for the Nasdaq proposal, the Commission stated that the NYSE and NYSE Amex had filed similar proposals designed to address the same concerns as the Nasdaq proposal.

[15] *See* Feldman Letter and New York Global Group Letter.

[16] *See* WestPark Letter; Donohoe Letter; and Locke Lord Letter.

[17] *See* Feldman Letter.

prior to the listing application is unfair, and unrealistic to expect companies to achieve in the over-the-counter markets, and suggested it be eliminated.[18]

The other commenter that objected broadly to the proposal believed that the proposal would harm capital formation and hinder small companies' access to the capital markets.[19] The commenter expressed the view that no objective research or hard data has been published that supports the notion that Reverse Merger companies bear additional scrutiny, and that the Commission should not approve the proposal until an independent and comprehensive study concludes that (i) Exchange listed reverse merger companies tend to fail more often than IPO companies, thus necessitating the additional scrutiny, (ii) the proposed six to twelve month ''seasoning'' for reverse merger companies will indeed deter corporate frauds, and (iii) the exchanges do not already have sufficient rules in place to discourage corporate frauds in both reverse merger and IPO companies.[20] Based on its research, the commenter believes that more Chinese companies have been delisted that have gone public through an IPO than through a Reverse Merger, and that they were delisted more than three years after they became public, which is well beyond the seasoning period.[21]

A third commenter expressed support for the proposed rule change's objective to protect investors from potential accounting fraud, manipulative trading, abusive practices or other inappropriate behavior on the part of companies, promoters and others.[22] The commenter, however, recommended that, in order to avoid unnecessary burdens on smaller capitalization issuers, the proposed rule change be modified to exclude Form 10 share exchange transactions from the reverse merger definition, or provide an exception for a reverse merger company listing in connection with a firm commitment underwritten public offering.[23] This commenter also recommended that NYSE Amex consider requiring companies listing on the Exchange to engage a recognized independent diligence firm to conduct a forensic audit and issue a forensic diligence report prior to approval of the listing application.[24]

Another commenter, while it did not believe the Exchange had presented a sufficient rationale or data to support the need for a Reverse Merger seasoning period, agreed that a reasonable seasoning period for Reverse Merger companies could be beneficial, and was of the view that the six-month seasoning period proposed by Nasdaq was preferable to the one-year seasoning period proposed by NYSE and NYSE Amex.[25] The commenter also believed that Nasdaq's proposed requirement that a Reverse Merger company maintain the requisite stock price for at least 30 of the 60 trading days immediately preceding the filing of the listing application was lacking because, among other things, it would not apply to the period during which the listing application was under review.[26] In addition, this commenter expressed support for an underwritten public offering exception, regardless of size, from the proposed rule's additional listing requirement.[27]

A fifth commenter also expressed the view that there should be an exception where the securities issued in the Reverse Merger were registered with the Commission, so that the additional listing standards would be directed toward those transactions that have not been subjected to full Commission review.[28] This commenter also suggested that, if a Reverse Merger company is controlled by a non-U.S. person, the control person should be required to execute a consent to service of process in the U.S.[29]

IV. NYSE Amex Amendment No. 2 and Response to Comments

In Amendment No. 2, NYSE Amex proposed several changes to more effectively align its proposal with that of Nasdaq. NYSE Amex amended its proposal to require that a Reverse Merger company ''maintain a closing stock price equal to the stock price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to the filing of the initial listing application'' and prior to listing. In addition, NYSE Amex amended the requirement that a Reverse Merger company provide all required reports to clarify that such reports must include ''all required'' audited financial statements.

Amendment No. 2 also proposes a new exception to the Reverse Merger rules and clarifies that all other listing requirements are applicable to all Reverse Merger companies, even those Reverse Merger companies that can take advantage of either of the two exceptions being proposed under the new rules. As noted above, as proposed, the rule provides that a Reverse Merger company would not be subject to the requirements of the rule if, in connection with the listing, it completes a firm commitment underwritten public offering where the proceeds to the company will be at least $40 million and the offering is occurring subsequent to or concurrently with the Reverse Merger. Amendment No. 2 additionally proposes that the Reverse Merger company would not be subject to the requirement that it maintain a closing stock price equal to the stock price requirement applicable to the initial listing standard under which the Reverse Merger company is qualifying to list for at least 30 of the most recent 60 days prior to each of the filing of the initial listing application and the date of the Reverse Merger company's listing, if it has satisfied the one-year trading requirement and has filed at least four annual reports with the Commission which each contain all required audited financial statements for a full fiscal year commencing after filing the required information.[30] The amended rule language states that a Reverse Merger company must comply with all applicable listing requirements. Applicable listing standards include, but are not limited to, the corporate governance requirements set forth in Chapter 8 of the NYSE Amex Company Guide (''Guide'') and the applicable distribution, stock price and market value requirements of Sections 102(a) and 102(b) of the Guide. In either case, the language makes clear that companies that fall under the exceptions must also comply with all other listing requirements.

Finally, NYSE Amex made several technical changes in Amendment No. 2, including those to conform its language more closely to that of the Nasdaq proposal.

On November 7, 2011, NYSE Amex responded to the comments received on

[18] *Id.*

[19] *See* New York Global Group Letter.

[20] *Id.*

[21] *Id.*

[22] *See* WestPark Letter.

[23] *Id.*

[24] *Id.*

[25] *See* Donohoe Letter.

[26] *Id.*

[27] *Id.*

[28] *See* Locke Lord Letter.

[29] *Id.*

[30] Amendment No. 2 also proposes that, to be eligible for this exception, such companies be required to (i) Comply with the stock price requirement of Section 102(b) of the Guide at the time of the filing of the initial listing application and the date of the Reverse Merger company's listing and (ii) not be delinquent in its filing obligations with the Commission.

the proposal.[31] One commenter expressed concern, in commenting on the similar NYSE proposal, that the proposal might not provide investors with sufficient protections in relation to listed Reverse Merger companies and noted and welcomed the NYSE's ability to exercise its discretion to apply additional or more stringent criteria to a Reverse Merger company. In response, NYSE Amex noted that the same discretion is included in the NYSE Amex proposal. The NYSE Amex further noted that it does not believe that it is necessary at this time to adopt any additional general requirements for all companies that would be considered for listing under the proposed rules. The Exchange also stated that the proposed approach, in its belief, strikes an appropriate balance by providing discretionary authority to the Exchange to apply additional or more stringent criteria,[32] while also providing transparency as to the factors that would prompt the imposition of such criteria. NYSE Amex believes that it is appropriate to apply those new requirements for a period of time, while closely monitoring the performance of Reverse Merger companies that list under the new rules. If at any time it becomes apparent that there are significant continuing investor protection or regulatory concerns associated with the listing of Reverse Merger companies, NYSE Amex will consider the desirability of adopting additional more stringent requirements.

NYSE Amex noted that the Commission received two negative comment letters in relation to its filing. Both commenters supported the proposed rule's exception for Reverse Merger companies listing in conjunction with an underwritten public offering, but argued that the transaction size requirement should either be eliminated from the proposal or set at a far lower level. The Exchange believes that the substantial offering size requirement provides a significant regulatory benefit. One of the commenters argued that the requirement that a Reverse Merger Company must trade in another market for at least a year prior to listing is unnecessary. As noted in the filing, significant regulatory concerns have arisen with respect to a number of reverse merger companies in recent times. NYSE Amex believes that a ''seasoning'' period prior to listing should provide greater assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company, and for any concerns that would preclude listing eligibility to be identified. NYSE Amex believes that the elimination of the one year trading requirement would significantly weaken the value of the seasoning period in that less scrutiny would generally be present. The other commenter argued that the rule should not apply to a Reverse Merger company which resulted from a merger between an operating company and a new shell company with no prior business operations. Based on the Exchange's experience with the listing of Reverse Merger companies, the Exchange believes that it is appropriate to apply the proposed rules to all Reverse Merger companies, regardless of whether the shell company into which the operating company merged had ever had any previous business operations.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing and whether Amendment No. 2 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 email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–55 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–NYSEAmex–2011–55. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. 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–NYSEAmex–2011–55, and should be submitted on or before December 6, 2011.

VI. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 2, and finds that it is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange,[33] and, in particular, Section 6(b)(5) of the Act,[34] which, among other things, requires 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.

The development and enforcement of meaningful listing standards for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly

[31] *See* Email from John Carey, Chief Counsel, NYSE Regulation Inc., to Sharon Lawson, Senior Special Counsel, Commission and David Michehl, Special Counsel, Commission dated November 7, 2011.

[32] *See supra,* note 11.

[33] 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).

[34] 15 U.S.C. 78f(b)(5).

markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.

NYSE Amex proposed to make more rigorous its listing standards for Reverse Merger companies, given the significant regulatory concerns, including accounting fraud allegations, that have recently arisen with respect to these companies. As noted above, Nasdaq and NYSE filed similar proposals for the same reasons.[35] Among other things, the proposals seek to improve the reliability of the reported financial results of Reverse Merger companies by requiring a pre-listing ''seasoning period'' during which the post-merger public company would have produced financial and other information in connection with its required Commission filings. The proposals also seek to address concerns that some might attempt to meet the minimum price test required for exchange listing through a quick manipulative scheme in the securities of a Reverse Merger company, by requiring that minimum price to be sustained for a meaningful period of time.

The Commission believes the proposed one-year seasoning requirement for Reverse Merger companies that seek to list on the Exchange is reasonably designed to address concerns that the potential for accounting fraud and other regulatory issues is more pronounced for this type of issuer. As discussed above, these additional listing requirements will assure that a Reverse Merger company has produced and has filed with the Commission at least one full year of all required audited financial statements following the Reverse Merger transaction before it is eligible to list on NYSE Amex. The Reverse Merger company also must have filed all required Commission reports since the consummation of the Reverse Merger, which should help assure that material information about the issuer has been filed with the Commission and that the issuer has a demonstrated track record of meeting its Commission filing and disclosure obligations. In addition, the requirement that the Reverse Merger company has traded for at least one year in the over-the-counter market or on another exchange could make it more likely that analysts have followed the company for a sufficient period of time to provide an additional check on the validity of the financial and other information made available to the public.

Although certain commenters expressed concern that the proposal might inhibit capital formation and access by small companies to the markets, the Commission notes that the enhanced listing standards apply only to the relatively small group of Reverse Merger companies—where there have been numerous instances of fraud and other violations of the federal securities laws—and merely requires those entities to wait until their first annual audited financial statements are produced before they become eligible to apply for listing on the Exchange. While fraud and other illegal activity may occur with other types of issuers, as noted by certain commenters, the Commission does not believe this should preclude NYSE Amex from taking reasonable steps to address these concerns with Reverse Merger companies.

The Commission also believes the proposed requirement for a Reverse Merger company to maintain the specified minimum share price for a sustained period, and for at least 30 of the most recent 60 trading days, prior to the date of the initial listing application and the date of listing, is reasonably designed to address concerns that the potential for manipulation of the security to meet the minimum price requirements is more pronounced for this type of issuer. By requiring that minimum price to be maintained for a meaningful period of time, the proposal should make it more difficult for a manipulative scheme to be successfully used to meet the Exchange's minimum share price requirements.

In addition, the Commission believes that the proposed exceptions to the enhanced listing requirements for Reverse Merger companies that (1) Complete a substantial firm commitment underwritten public offering in connection with its listing,[36] or (2) have filed at least four annual reports containing all required audited financial statements with the Commission following the filing of all required information about the Reverse Merger transaction, and satisfying the one-year trading requirement, reasonably accommodate issuers that may present a lower risk of fraud or other illegal activity. The Commission believes it is reasonable for the Exchange to conclude that, although formed through a Reverse Merger, an issuer that (1) Undergoes the due diligence and vetting required in connection with a sizeable underwritten public offering, or (2) has prepared and filed with the Commission four years of all required audited financial statements following the Reverse Merger, presents less risk and warrants the same treatment as issuers that were not formed through a Reverse Merger. Nevertheless, the Commission expects the Exchange to monitor any issuers that qualify for these exceptions and, if fraud or other abuses are detected, to propose appropriate changes to its listing standards.

The Commission notes that certain commenters suggested the Exchange impose specific additional requirements on Reverse Merger companies that seek an exchange listing, such as the completion of an independent forensic diligence report on the issuer, the execution of a consent to service of process in the U.S. by foreign controlling persons, and additional more stringent standards in addition to the proposed seasoning period. Although there may be merit in these or other potential ways to enhance listing standards for Reverse Merger companies, the Commission believes that the additional listing standards proposed by the Exchange should help prevent fraud and manipulation, protect investors and the public interest, and are otherwise consistent with the Act.

The Commission also notes that several of the changes proposed by the Exchange in Amendment No. 2 were clarifying in nature and designed to make its proposal consistent with the proposals submitted by Nasdaq and NYSE.

For the reasons discussed above, the Commission believes that NYSE Amex's proposal will further the purposes of Section 6(b)(5) of the Act by, among other things, helping prevent fraud and manipulation associated with Reverse Merger companies, and protecting investors and the public interest.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[37] for approving the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of notice in the **Federal Register.** As noted above, the changes made in Amendment No. 2 harmonize the proposed rule change with similar proposals by Nasdaq and NYSE that have been subject to public comment, in addition to providing clarifying language consistent with the

[35] *See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (June 14, 2011) and Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (August 10, 2011).

[36] The Commission notes that several commenters supported an exception for issuers with underwritten public offerings. *See* WestPark Letter; Donohoe Letter; and Locke Lord Letter.

[37] 15 U.S.C. 78s(b)(2).

intent of the original rule proposal. In addition, the Commission believes it is in the public interest for NYSE Amex to begin applying its enhanced listing standards as soon as practicable, in light of the serious concerns that have arisen with respect to the listing of Reverse Merger companies.

VII. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEAmex–2011–55), as amended, be, and hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–29440 Filed 11–14–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65709; File No. SR–NYSE–2011–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 2, Amending Sections 102.01 and 103.01 of the Exchange's Listed Company Manual Adopting Additional Listing Requirements for Companies Applying to List After Consummation of a ''Reverse Merger'' With a Shell Company

November 8, 2011.

I. Introduction

On July 22, 2011, 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 adopting additional listing requirements for a company that has become an Act reporting company by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger''). The proposed rule change was published for comment in the **Federal Register** on August 10, 2011.[3] On September 21, 2011, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved to November 8, 2011.[4] The Commission received one comment letter on the proposal.[5] NYSE filed Amendment No. 1 to the proposed rule change on November 4, 2011, which was later withdrawn.[6] NYSE filed Amendment No. 2 to the proposed rule change on November 8, 2011.[7] This order approves the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Original Proposal

The Exchange proposes to adopt more stringent listing requirements for companies that become public through a Reverse Merger, to address significant regulatory concerns including accounting fraud allegations that have arisen with respect to Reverse Merger companies. In its filing, the Exchange noted that the Commission has taken direct action against Reverse Merger companies. In addition, the Exchange noted that the Commission has suspended trading in, and revoked the securities registration of, a number of Reverse Merger companies.[8] The Exchange also stated that the Commission recently brought an enforcement proceeding against an audit firm relating to its work for Reverse Merger companies[9] and issued a bulletin on the risks of investing in Reverse Merger companies, noting potential market and regulatory risks related to investing in such companies.[10]

In response to the concerns noted above, the Exchange proposed to adopt additional listing requirements for Reverse Merger companies.[11] Specifically, NYSE proposed to prohibit a Reverse Merger company from applying to list until the combined entity has traded in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, for at least one year following the filing of all required information about the Reverse Merger transaction, including audited financial statements, with the Commission. The Reverse Merger company would also be required to timely file with the Commission all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of all required information about the Reverse Merger transaction and satisfying the one-year trading requirement. Further, NYSE proposed to require that the Reverse Merger company maintain on

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65034 (August 4, 2011), 76 FR 49513 (''Notice'').

[4] *See* Securities Exchange Act Release No. 65368 (September 21, 2011), 76 FR 59756 (September 27, 2011).

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from James Davidson, Hermes Equity Ownership Services Limited dated August 31, 2011 (''Hermes Letter''). In addition, the Commission received five comment letters on a substantially similar proposal by Nasdaq. (*See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (June 14, 2011) (SR–NASDAQ–2011–073)). The comment letters received on the Nasdaq filing are: Letter from David Feldman, Partner, Richardson and Patel LLP dated August 20, 2011 (''Feldman Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from WestPark Capital, Inc. dated September 2, 2011 (''WestPark Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from Locke Lord LLP dated October 17, 2011 (''Locke Lord Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from James N. Baxter, Chairman and General Counsel, New York Global Group dated October 17, 2011 (''New York Global Group Letter''); and Letter to Elizabeth M. Murphy, Secretary, Commission, from David A. Donohoe, Jr., Donohoe Advisory Associates LLC dated October 18, 2011 (''Donohoe Letter''). One of the comment letters submitted on the Nasdaq filing specifically referenced this proposal by NYSE. However, the Commission believes all of the filings submitted on the Nasdaq filing are applicable to this filing. Since the comment letters received on the Nasdaq filing either specifically reference the NYSE filing, or discuss issues directly related to this filing, the Commission has included them in its discussions of this filing.

[6] Amendment No. 1, dated November 4, 2011, was withdrawn on November 8, 2011.

[7] *See* Amendment No. 2, dated November 8, 2011. Amendment No. 2 replaces Amendment No. 1 in its entirety. In Amendment No. 2, NYSE made several changes to the proposed rule change. The changes proposed by NYSE include: (i) Amending the proposed price requirement to make is applicable for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days; (ii) added a new exception from certain requirements contained in the rule for companies that conducted their reverse merger a substantial length of time before applying to list; and (iii) other additional changes to clarify the rule and harmonize it with a similar proposal by Nasdaq.

[8] *See* Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 (''Schapiro Letter''), at pages 3–4.

[9] *See* Schapiro Letter at page 4.

[10] *See* ''Investor Bulletin: Reverse Mergers'' 2011–123.

[11] In addition to the specific additional listing requirements contained in the proposal, the Exchange included language in the proposed rule that states that the Exchange may ''in its discretion impose more stringent requirements than those set forth above if the Exchange believes it is warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that are not subject to transfer restrictions, if the Reverse Merger Company has not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company has disclosed that it has material weaknesses in its internal controls which have been identified by management and/or the Reverse Merger Company's independent auditor and has not yet implemented an appropriate corrective action plan.''