SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59996; File No. SR–NYSE–2009–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending the Exchange's Continued Listing Standards on a Pilot Program Basis

May 28, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 12, 2009, New York Stock Exchange LLC (''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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend certain of the continued listing requirements in Section 802.01B of the Exchange's Listed Company Manual (the ''Manual'') on a pilot program basis (the ''Pilot Program'') through October 31, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and http://*www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 802.01B(I) of the Manual provides 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'' set forth in Section 102.01C(V) (the ''NYSE Arca Transfer Standard'') will be considered to be below compliance standards if 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. The Exchange proposes to amend this requirement on a Pilot Program basis through October 31, 2009, to provide that companies that listed under the initial listing standards set forth in the immediately preceding sentence will only be 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. For companies listed under the Earnings Test, this rule change returns continued listing requirements to those in place prior to the adoption of the current requirements on June 9, 2005.[4] Companies that are below compliance with the current continued listing requirements will be deemed to have returned to compliance at the time of effectiveness of this filing, unless they are below the levels established under the Pilot Program.

In 2005, when the Exchange effectively amended its continued listing standards for companies that listed under the Earnings test, there were very few companies that were below the requirements at that time and there was an expectation that very few companies would fall below compliance with those requirements for the then foreseeable future in light of relatively stable market and economic conditions. As such, the heightened continued listing standards were considered a reasonable response to the financial environment at that time and did not lead to any meaningful increase in the number of companies that fell below compliance. Conditions in the capital markets have changed considerably over the last year, with a dramatic decline in stock prices and market capitalizations of many listed companies and an increase in market volatility. As such, a far greater number of companies have fallen below the continued listing standards in the last eighteen months than at any time since the effective date of the amendment to the continued listing standards in 2005. Many companies have fallen below $75 million in total market capitalization and it seems likely that the stock prices of many of these companies will have difficulty returning to their pre-recession level for a considerable period of time. Consequently, the Exchange believes that a $50 million market capitalization requirement is more appropriate under current market conditions than the current $75 million requirement.

Similarly, a large number of listed companies have recorded—or are expected to soon record—significant write downs in the value of their assets or significant impairment charges. It is reasonable to assume that it will take many of these companies a long time to raise their stockholders' equity back to pre-recession levels. The Exchange notes that companies that list under the Earnings Test and the NYSE Arca Transfer Standard are not subject to any stockholders' equity requirement at the time of initial listing, while companies that list under the Assets and Equity Test must demonstrate $50 million in stockholders' equity. Yet, companies that listed under any of these standards that have suffered a significant diminution in market capitalization are required to have $75 million in stockholders' equity to avoid becoming noncompliant or to cure an event of noncompliance, notwithstanding the fact that they were required to demonstrate a lower level of stockholders' equity—or none at all—at the time of original listing. In light of that fact, the Exchange believes that a stockholders' equity requirement of $50 million is more appropriate as an element in its continued listing standard under current market conditions.

Because the continued listing standards proposed under the Pilot Program are the same as those that were previously in place for companies that listed under the Earnings Test, the Exchange has considerable experience with the continued listing of companies that have continued to trade on the Exchange with global market capitalization and stockholders' equity

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *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.

each below $75 million, but without triggering the continued listing standard proposed under the Pilot Program. Based on that experience, the Exchange believes that companies that exceed the proposed continued listing standard are suitable for continued listing on the Exchange. The Exchange notes that (i) under the Earnings Test, companies can list on the basis of positive sustained earnings history and a $60 million IPO public float ($100 million for a transfer), (ii) under the Assets and Equity Test, companies can list on the basis of $150 million in global market capitalization, $75 million in total assets and $50 million in total stockholders equity and a $60 million IPO public float ($100 million for a transfer) and (iii) under the NYSE Arca Transfer Standard, companies can list on the basis of $75 million in global market capitalization and $20 million in aggregate market value of publicly-held shares, with no minimum requirement as to stockholders' equity. Any significant diminution in the market capitalization of a company listing under any of these standards that did not have significant stockholders' equity could quickly lead to such company being below compliance. The Exchange believes that continued listing standards need to be established at a level that appropriately corresponds to initial listing standards in the context of current market and economic conditions, so that companies do not move rapidly from initial listing qualification to being below compliance. The Exchange believes that the proposed continued listing standards under the Pilot Program will achieve this objective, given the current financial environment.

The Exchange notes that the continued listing standards to be adopted under the Pilot Program are higher than those of any other national securities exchange. Consequently, the Exchange believes that the Pilot Program is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. In addition, because the continued listing standards under the Pilot Program are the same as those that were in place on January 8, 2004, the adoption of the Pilot Program does not affect the status of NYSE listed securities under Exchange Act Rule 3a51–1(a) (the ''Penny Stock Rule'').[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] 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 Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that the proposed continued listing standards are set at a high enough level that only companies that are suitable for continued listing on the Exchange will exceed the requirements of the continued listing standards.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] 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.

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, on a pilot basis, new continued listing standards. The Commission notes that the new continued listing standards will apply to companies qualified to list under: (i) the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I); (ii) the Assets and Equity Test set forth in Section 102.01C(IV); or (iii) the ''Initial Listing Standards for Companies Transferring from NYSE Arca'' as set forth in Section 102.01C(V). The Commission also notes that the standards being adopted under the Pilot Program are identical, for those companies qualifying under the Earnings Test, to those in effect on the Exchange prior to the adoption of the current standards in 2005.[12] The Commission further notes that the continued listing standards proposed under the Pilot Program are higher than similar standards currently in place on other exchanges. In addition, the Commission notes that these continued listing standards are being adopted on a pilot basis and absent a proposed rule change by NYSE to either extend the pilot period or make these changes permanent, the new listing standards will expire after October 31, 2009. The pilot period will allow the NYSE and

[5] 17 CFR 240.a51–1(a). The Commission notes that the listing standards of the Exchange are no longer included in the ''grandfather'' exception. *See* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17). As a result of losing this exception, the Exchange is required to satisfy the requirements of Exchange Act Rule 3a51–1(a)(2). The Commission believes that the continued listing standards to be adopted under the Pilot Program meet the requirements established in Exchange Act Rule 3a51–1(a)(2)(ii) in that they are reasonably related to the initial listing standards set forth in paragraph (a)(2)(i) of Exchange Act Rule 3a51–1. The Commission notes that the $50 million in total stockholders' equity requirement contained in the Pilot Program exceeds the $5 million contained in Exchange Act Rule 3a51–1(a)(2)(i)(A). The Commission further notes that the $50 million in average global market capitalization over a 30 trading-day period is reasonably related to the $50 million in market value of listed securities for 90 consecutive days prior to initial listing contained in Exchange Act Rule 3a51–1(a)(2)(i)(A).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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 Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR–NYSE–2004–20).

the Commission to assess how the lower standards have worked should the NYSE wish to extend the pilot. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[13]

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 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–2009–48 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–2009–48. 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–2009–48 and should be submitted on or before June 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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[13] 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).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6651]

U.S. Department of State Advisory Committee on Private International Law: Working Group I of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services

A study group of the Advisory Committee reviews and provides comments on an initiative by the United Nations Commission for International Trade Law (UNCITRAL) to revise the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services (Model Procurement Law), and it's Guide to Enactment, available at *http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model.html*. The UNCITRAL Model Procurement Law is not intended to be applied by the United States, but it is cited and relied upon in many other nations as a model procurement code.

The UNCITRAL Working Group, tasked with making recommendations for an updated model law, has focused on new practices and technological developments; in particular, those resulting from the use of electronic communications in public procurement. These topics have included the use of electronic means of communication in the procurement process, publication of procurement-related information, the procurement technique known as the electronic reverse auction, abnormally low tenders, and the method of contracting known as framework agreements. The Working Group also decided that the Model Law and the Guide should take into account the question of conflicts of interest. In this regard, the United Nations Convention Against Corruption, which entered into force in December 2005, specifically calls for anti-corruption measures in procurement to address conflicts of interest. See also Report of Working Group I (Procurement A/CN.9/668) on the work of its fifteenth session (New York, 2–6 February 2009) available at *http://www.uncitral.org/uncitral/en/commission/working_groups/1Procurement.html*.

It is possible that a revised model procurement law will be presented for final review by UNCITRAL in 2009. The issue has been placed on the agenda of the Commission for its June 29–July 17 session in Vienna. The UNCITRAL Working Group has recommended that the Model Law be considered for adoption by UNCITRAL in advance of the completion of an updated Guide to Enactment. UNCITRAL has also scheduled a Working Group meeting from May 26th through 29th, 2009, to work on the recommendations.

In order to assist the U.S. Delegation at the Annual UNCITRAL Commission meeting in July, a public meeting to review and discuss the current status of the proposed reforms will be held on June 17, 2009.

Time and Place: The public meeting will take place at The George Washington University Law School, Dean Conference room, 2000 H Street, NW., Washington, DC on June 17, 2009 from 10 a.m. to 12 noon EDT.

Public Participation: Comments may be submitted prior to or after the meeting to the Office of Private International Law, U.S. Department of State, 2430 E Street, NW., Washington, DC 20037–2851, attn: Michael Dennis, or by facsimile to 202–776–8482, or by electronic e-mail to *DennisMJ@State.gov*. Persons wishing to attend the meeting should call Trisha Smeltzer at 202–776–8423 or contact by e-mail at *SmeltzerTK@state.gov*. Any requests for reasonable accommodations should be made as soon as possible; requests made after June 10th will be considered but might not be possible to fill.

Dated: May 20, 2009.

Michael Dennis,

Attorney-Adviser, Office of Private International Law, Department of State.

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