

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

Nasdaq does not believe that the proposed rule change will result in 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*

Nasdaq neither solicited nor received written comments.

### **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 NASD 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.<sup>20</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-42 and should be submitted by June 18, 2002.

<sup>20</sup> Nasdaq has requested the Commission to find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after its publication in the **Federal Register**. See Amendment No. 2, *supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-13191 Filed 5-24-02; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45970; File No. SR-NYSE-2001-33]

### **Self-Regulatory Organizations; The New York Stock Exchange; Notice of Filing of Proposed Rule Change To Amend the Certification Requirements of the Listed Company Manual**

May 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 24, 2001, the New York Stock Exchange ("NYSE") filed with the Securities and Exchange Commission ("Commission") and on April 16, 2002, and May 7, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to amend Section 501 of the NYSE's Listed Company Manual ("Manual") to specify that a stock may be listed on the NYSE notwithstanding that is dematerialized or in book-entry-only form if the stock is included in the Direct Registration System ("DRS").

#### **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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by the NYSE.

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Section 5 of the NYSE's Manual deals with stock certificates requirements including when certificates must be distributed and what form stock certificates must take. Section 501.01 of the Manual currently requires a listed company to send stock certificates to record holders unless the stock distribution relates to a stock dividend reinvestment plan, stock dividend reinvestment purchase plan or a similar stock purchase plan, or the company's stock is included in DRS.

Over the years the NYSE has recognized changes in custom as the use of certificates has become less common with respect to certain securities such as corporate bonds and structured products (e.g., equity-linked notes). In the 1980s for example, the NYSE amended Section 501.02 to specify that bonds may be listed on a book-entry basis using a global certificate held by a depository.<sup>3</sup>

Even with respect to common stocks, the trend has been to emphasize immobilization of certificates and book-entry delivery and settlement of trades whenever possible. In 1993, uniform rules were adopted among the U.S. securities markets to specify that exchange members must settle all trades in "depository-eligible securities" on a book-entry basis (that is, without having to physically deliver certificates).<sup>4</sup> In 1995, the NYSE adopted a rule specifying that a security must be "depository eligible" prior to listing it on the exchange.<sup>5</sup> Depository eligibility does not preclude certification of a security but it does not require a certificate either. Accordingly, securities may be completely dematerialized, represented by a single global certificate held at the depository, or represented by traditional stock certificates. In each case, the important characteristic is that the securities involved can be held in or on behalf of a depository so that trades

<sup>3</sup> Securities Exchange Act Release No. 25872 (June 30, 1988), 53 FR 25,560 [File No. SR-NYSE-88-07] (order approving rule permitting the use of a single global certificate for bonds).

<sup>4</sup> NYSE Rule 226. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 [File Nos. SR-AMEX-93-07; SR-BSE-93-08; SR-MSE-93-03; SR-NASD-93-11; SR-NYSE-93-13; SR-PSE-93-04; and SR-PHLX-93-09] (order approving SRO rules requiring book-entry settlement of securities transactions).

<sup>5</sup> NYSE Rule 227. Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 [File No. SR-NYSE-95-19] (order approving adoption of Rule 227 requiring issuers' shares to be depository eligible).

may be settled by book-entry without physical delivery.

In 1996, the NYSE amended Section 501.01 of the Manual to rescind its policy requiring listed companies to provide certificates to record holders for all distributions and instead allow issuers to offer a choice of receiving certificates or holding their position in DRS.<sup>6</sup> Using DRS an investor is able to hold a book-entry position on the books of the issuer, to update stock ownership information directly with an issuer's transfer agent, and to electronically move his or her interest between the books of the issuer and his or her broker. While participation in DRS is optional for an issuer, the NYSE has to date taken the position that an investor must be able to obtain a traditional stock certificate upon request. As so construed, DRS did not afford the issuer the ability to completely dematerialize or utilize a global certificate with book-entry-only movement of securities positions.

In recent months, the NYSE has been approached by non-U.S. issuers that would like to list their ordinary shares on the NYSE but would prefer to use a book-entry-only format (*i.e.*, where shareholders would not have the option of obtaining certificates). In addition, under the laws of certain countries, corporate securities are required to be dematerialized. Traditionally non-U.S. companies have been able to dematerialize their ordinary shares outside the U.S. while utilizing American Depositary Receipt ("ADR") programs, which provide for the issuance of ADR certificates, in the U.S. For non-U.S. companies that desire to list ordinary shares in the U.S. as opposed to listing ADRs, it has become necessary to accommodate those non-U.S. companies' need or preference to dematerialize their shares or utilize a book-entry-only format.

Coincidentally, as the U.S. securities industry begins to prepare to change to a T+1 settlement cycle, there is a renewed focus on eliminating certificates from securities processing altogether, including a discussion within the industry of whether dematerialization should be mandated as it has been in certain other countries. Dematerialization has also assumed an increased urgency in the context of contingency planning following the September 11th tragedy.

The rule change proposes amend Section 501.01 to allow a listed

company to not send stock certificates to a record holder as long as the company's stock is included in DRS or is issued pursuant to a dividend reinvestment program, stock purchase plan, or similar plan. Non-equity securities that have traditionally been issued in book-entry-only form, such as bonds and derivatives, will continue to be covered by the specific rules applicable to them and will not be required to be in DRS in order to issue in book-entry only or in a dematerialized form.<sup>7</sup> The proposed rule change does not mandate book-entry-only or dematerialization. Rather, the NYSE believes the rule change will eliminate the need to issue the traditional stock certificate and will allow non-certificated equities to be listed on the NYSE, subject to the requirement of Rule 227 that the issue be "depository eligible."

The NYSE believes the proposed rule change recognizes the desirability of providing shareholders with the flexibility offered by DRS, which provides an alternative to the traditional choices of receiving a stock certificate or holding stock in "street name" through a broker-dealer. Under DRS the shareholder can be directly registered with the company but be spared the burden and expense of safeguarding a certificate. The NYSE also notes that the successful expansion of the DRS since its first implementation in the mid-1990s should readily accommodate non-U.S. companies trading ordinary shares in this country.

The NYSE believes that in accommodating book-entry-only or complete dematerialization of common stock it is aligning itself with the rules and policies of the other U.S. listing markets. The National Association of Securities Dealers Automated Quotations System ("NASDAQ") does not have rules requiring certification or dictating the format of issues that are certificated. The American Stock Exchange ("AMEX"), which had rules similar to the traditional NYSE rules, eliminated all those rules as part of a sweeping set of amendments intended to more closely align the AMEX and NASDAQ listing administration following the acquisition of the AMEX by the National Association of Securities Dealers in 1998. As a result, each of those markets is today fully able to accommodate a listing applicant that wishes to dematerialize or use a book-entry-only structure for its common stock.

The basis under the Act for this proposed rule change is the requirement

under Section 6(b)(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.<sup>8</sup>

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE 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*

The NYSE has neither solicited nor received written comments on the proposed rule change. The NYSE will notify the Commission of any written comments received by the NYSE.

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

Within thirty-five 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 ninety 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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

<sup>6</sup> Securities Exchange Act Release No. 37937 (November 8, 1996), 61 FR 58728 [File No. SR-NYSE 96-29] (order approving rule change requiring participating in DRS for certain stock distributions).

<sup>7</sup> Sections 703.16 and 501.11 of the Manual.

<sup>8</sup> 15 U.S.C. 78q-1.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2001-33 and should be submitted by June 18, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-13233 Filed 5-24-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. ("ZSCVII"), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financialings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to Worldwinner.com, Inc. ("Worldwinner"), 313 Washington Street, Suite 308, Newton, Massachusetts 02458. The financing is contemplated for marketing and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate ZSCVII, currently owns greater than 10 percent of Worldwinner, and therefore Worldwinner is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 20, 2002.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 02-13206 Filed 5-24-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. ("ZSCVII"), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financialings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to HydroCision, Inc. ("HydroCision"), 100 Burt Road, Suite G01, Andover, Massachusetts 01810. The financing is contemplated for product production and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital V, L.P., an Associate ZSCVII, currently owns greater than 10 percent of HydroCision, and therefore HydroCision is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 20, 2002.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 02-13207 Filed 5-24-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. ("ZSCVII"), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business

Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financialings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to Spherics, Inc. ("Spherics"), 300 Metro Center Boulevard, Suite 150, Warwick, Rhode Island 02886. The financing is contemplated for market expansion and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate ZSCVII, currently owns greater than 10 percent of Spherics, and therefore Spherics is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 20, 2002.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. 02-13208 Filed 5-24-02; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on February 6, 2001 [FR 66, page 9048]. No comments were received.

**DATES:** Comments must be submitted on or before June 27, 2002, to: Attention

<sup>9</sup> 17 CFR 200.30-3(a)(12).