

3 p.m. Eastern Time, the IPA will be required to (1) release all items held in pend or (2) invoke its right to refuse to pay.<sup>5</sup> If the IPA takes no action by 3 p.m. Eastern Time, the pending items will be released by DTC for normal processing.

All MP Pend requests will be time-stamped and will be immediately effective. Participants with MMI positions will be able to ascertain which MPs have been placed in pend status by the IPA.

Each time it uses the IPA MP Pend Function to create a pend request or make a change to its profile, the IPA will be required to represent and warrant that it has authority to submit the request appearing on the IPA's screen and that it will either release the items held in pend by 3 p.m. Eastern Time on the date of maturity or by such time communicate to DTC that it refuses to pay. Additionally, the IPA must acknowledge that it understands and agrees that all MPs will be released for normal processing if it does not communicate its intention to refuse to pay DTC by 3 p.m. Eastern Time. In extraordinary circumstances, DTC will maintain its ability to set the pend request based on an issuer acronym, product, program, base number, or globally for all IPAs or for individual IPAs. In all circumstances, the IPA will maintain its right to notify DTC of its refusal to pay.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>6</sup> which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>7</sup>

and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-DTC-2009-02) be, and hereby is, approved.<sup>9</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-7977 Filed 4-7-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59684; File No. SR-NYSE-2009-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Extend Until August 31, 2009, the Application of the NYSE Arca Transfer Standard

April 1, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 17, 2009, New York Stock Exchange LLC (the "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 Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)<sup>4</sup> under the Exchange Act. 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 Section 102.01C of the Listed Company Manual (the "Manual") to extend until August 31, 2009, the application of the special initial listing standard applicable only to companies that are listed on NYSE Arca, Inc. ("NYSE Arca").

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 15 U.S.C. 78a.

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

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 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 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 such statements.

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

###### 1. Purpose

Section 102.01C of the Manual includes an initial listing standard that is applicable only to companies that are listed on NYSE Arca, Inc. ("NYSE Arca") as of October 1, 2008 and that transfer to the Exchange on or before March 31, 2009 (the "NYSE Arca Transfer Standard").<sup>5</sup> The NYSE Arca Transfer Standard was adopted in connection with NYSE Euronext's business strategy of consolidating its equities listings on two of the three U.S. registered securities exchanges it owns—the NYSE and NYSE Alternext US LLC. As part of this transition, the Exchange wished to offer the opportunity to list on the NYSE to all suitable NYSE Arca companies. Most companies currently listed on NYSE Arca would meet the NYSE's continued listing requirements set forth in Section 802.01B of the Manual for companies listed under the Exchange's Earnings Test.<sup>6</sup> However, a number of these companies that meet the NYSE's continued listing standards do not qualify to list under any of the existing

<sup>5</sup> See Securities Exchange Act Release No. 58741 (October 6, 2008), 73 FR 60378 (October 10, 2008) (SR-NYSE-2008-97).

<sup>6</sup> Companies listed under the Earnings Test are considered to be below compliance standards if their average global market capitalization over a consecutive 30-trading-day period is less than \$75,000,000 and, at the same time, total stockholders' equity is less than \$75,000,000. In addition Section 802.01B requires all listed companies to maintain a minimum of \$25 million in global market capitalization and Section 802.01C requires all listed companies to maintain a \$1.00 minimum stock price.

<sup>5</sup> The IPA MP Pend Function differs from the MPSC in this regard. Under the MPSC system, IPAs are not required to release items or invoke their right to refuse to pay each day since the MPs not acted on are rolled over into the next business day's processing queue.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 15 U.S.C. 78q-1.

NYSE initial listing standards. In order to list these companies, the Exchange adopted the NYSE Arca Transfer Standard.<sup>7</sup>

At the time of initial adoption of the NYSE Arca Transfer Standard, the Exchange believed that all of the NYSE Arca companies that were suitable for NYSE listing would be able to transfer prior to March 31, 2009. However, due to the turbulent market conditions of recent months, a number of these companies have experienced significant reductions in their stock prices and, consequently, are not currently qualified for listing on the NYSE. Companies whose total market capitalization has fallen below \$75 million are particularly problematic, as the NYSE Arca Transfer Standard requires companies to exceed this threshold for at least 90 consecutive days prior to applying for listing. Any company whose total market capitalization is currently below \$75 million would not have sufficient time prior to March 31 to meet this requirement even if its total market capitalization exceeded \$75 million on the date of this filing. In light of the extraordinary market conditions, the Exchange proposes to extend from March 31 to August 31, 2009, the life of the NYSE Arca Transfer Standard. The Exchange believes that this extension will enable companies to transfer from NYSE Arca to the NYSE that, but for the overall decline in the equities markets, would have qualified to transfer during the life of the NYSE Arca Transfer Standard as initially adopted.

The Exchange believes it is appropriate to extend the time period during which it can apply the NYSE Arca Transfer Standard as a short-term listing standard applicable only to NYSE Arca companies. These companies listed on NYSE Arca on the assumption that it would exist as a permanent listing market and it is solely because of a business decision made by NYSE Euronext that these companies will need to transfer their listings. Many of these companies listed on NYSE Arca because of its association with the NYSE and in the expectation that they would ultimately switch their listing to the NYSE when they met the NYSE's listing standards. As such, the Exchange

believe that fairness dictates that it should seek to list these companies on the NYSE where such a listing is appropriate and in the interests of the investing public.

The NYSE will only list companies under the NYSE Arca Transfer Standard if it believes that those companies are suitable for trading on the NYSE. All of the companies that would be listed under the NYSE Arca Transfer Standard will far exceed the NYSE's continued listing standards at the time of initial listing and will be in compliance with NYSE Arca continued listing standards. In addition, the same staff in NYSE Regulation's Financial Compliance and Corporate Governance groups is responsible for ongoing compliance reviews of both NYSE and NYSE Arca companies. As such, the NYSE Regulation staff involved in making initial listing determinations on the NYSE is extremely familiar with the companies currently listed on NYSE Arca and is uniquely positioned to determine whether those companies are suitable for listing on the NYSE. The Exchange believes its depth of knowledge with respect to NYSE Arca companies makes it appropriate to list them on this one time basis under a less onerous standard than the Exchange applies to other listing applicants. Companies listing under the NYSE Arca Transfer Standard will be subject to the standard listing application and review process applicable to all listing applicants and, if Exchange staff determine that an NYSE Arca company is not suitable for listing on the NYSE—*notwithstanding its qualification under the numerical requirements of the NYSE Arca Transfer Standard*—the Exchange will not list that company.

The requirements of the NYSE Arca Transfer Standard exceed those established by Exchange Act Rule 3a51-1(a)(2) (the "Penny Stock Rule").<sup>8</sup> The NYSE Arca Transfer Standard's requirement that an applicant have \$75 million in global market capitalization for 90 days prior to transferring from NYSE Arca exceeds the \$50 million market capitalization for 90 days prior to listing option in the Penny Stock Rule, as well as the \$50 million market capitalization requirement of Rule 3a51-1(a)(2)(i)(B). In addition, companies listing under the NYSE Arca Transfer Standard will be required at the time of transfer to have a \$4 stock price, 400 round lot holders and 1.1 million publicly held shares, thereby meeting or exceeding all of the Penny Stock Rule's remaining requirements.

Companies listing under the NYSE Arca Transfer Standard will have to comply with all other applicable Exchange listing rules, including the Exchange's corporate governance requirements. As with all other listing applicants, the Exchange reserves the right to deny listing to any company seeking to list under the NYSE Arca Transfer Standard if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>10</sup> 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 protection of investors and the public interest in that the requirements of the NYSE Arca Transfer Standard are sufficiently stringent that the proposed amendment will not lead to the listing of any companies that are not suited for listing on the NYSE. In addition, the proposal applies for a limited period to a small number of companies that are subject to unique and disadvantageous circumstances.

### *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 Exchange Act.

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

Written comments were neither solicited nor received.

## **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

<sup>7</sup> Companies transferring from NYSE Arca under the NYSE Arca Transfer Standard are required to have \$75 million in total market capitalization for 90 consecutive days prior to applying for listing and \$20 million in market value of publicly-held shares (but not the \$100 million market value of publicly-held shares requirement of Section 102.01B). Such companies have to meet the holders, publicly-held shares and trading volume requirements set forth in Section 102.01A and the \$4 stock price requirement of Section 102.01B.

<sup>8</sup> 17 CFR 240.3a51-1(a)(ii).

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

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

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<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> 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 would allow the exchange to keep in place, without interruption, the operation of the NYSE Arca Transfer Standard.

The Commission expects that the Exchange will deny listing to any company seeking to list pursuant to the proposed rule change if the Exchange determines that the listing of any such company is not in the interests of the Exchange or the public interest. In accordance with the terms of the proposed rule, the Exchange will apply this standard only for the very narrow category of companies, listed on NYSE Arca as of October 1, 2008, that transfer to the Exchange on or before August 31, 2009. Since NYSE Regulation's Financial Compliance and Corporate Governance groups are responsible for ongoing compliance reviews of both NYSE and NYSE Arca companies, the Commission believes the Exchange should be sufficiently familiar with companies seeking to transfer to be able to determine if any such company is an appropriate transfer candidate. The Commission expects the NYSE to only list those NYSE Arca transfers which they believe, through their past expertise reviewing these companies,

are suitable for trading on the NYSE and the maintenance of fair and orderly markets. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>15</sup>

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 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-32 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-2009-32. 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-2009-32 and should be submitted on or before April 29, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-7870 Filed 4-7-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59685; File No. SR-NYSEAmex-2009-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Modify Its Annual Report Distribution Requirements

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 23, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)<sup>3</sup> under the Exchange Act. 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 the requirements of the Company Guide with respect to the distribution of annual reports. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 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.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> 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).

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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).