

In addition, the NYSE notes that it has requested an exemption from certain provisions of the Intermarket Trading System Plan and NYSE Rule 15A to allow the NYSE to implement the Reg. NMS Compliance aspects of the Phase IV rollout prior to the Trading Phase Date.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act¹⁰ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder¹² because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹³ NYSE has requested that the Commission waive the 30-day operative

delay and designate the proposed rule change effective immediately. The Commission hereby grants the request.¹⁴ The Commission believes that such waiver is consistent with the protection of investors and the public interest because immediate effectiveness of the proposed rule change will assist the Exchange in its efforts to ensure that its member organizations honor better-priced quotations of other ITS participants when they send ISOs to the Exchange for execution.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁵

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-2007-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-08. 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. 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-2007-08 and should be submitted on or before February 28, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55198; File No. SR-NYSE-2006-116]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Annual Report Timely Filing Requirements

January 30, 2007.

I. Introduction

On December 14, 2006, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to 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 to amend Section 802.01E of its Listed Company Manual ("Manual") to end, as of December 31, 2007, the Exchange's discretion to continue the listing of certain companies that are twelve months late in filing their annual reports with the Commission. The proposed rule change was published for public comment in the **Federal Register** on December 28, 2006.³ The Commission received no comment letters regarding the proposed rule

⁹ See Letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated January 26, 2007.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to 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. NYSE has satisfied the pre-filing requirement.

¹⁴ For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ See 15 U.S.C. 78s(b)(3)(C).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 54977 (December 20, 2006), 71 FR 78249.

change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Section 802.01E of the Manual to end, as of December 31, 2007, the Exchange's discretion to continue the listing of certain companies that are twelve or more months late in filing their annual reports⁴ with the Commission.

Section 802.01E of the Manual provides that if a company fails to timely file a periodic annual report with the Commission, the Exchange will monitor the company and the status of the filing. If the company fails to file the annual report within six months from the filing due date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month period depending on the company's specific circumstances; but in any event if the company does not file its periodic annual report by the end of the one year period ("Initial Twelve-Month Period"), the Exchange will begin suspension and delisting procedures in accordance with the procedures in Section 804.00 of the Manual.

Section 802.01E states that, in certain unique circumstances, a listed company that is delayed in filing its annual report beyond the Initial Twelve-Month Period may have a position in the market (relating to both the nature of its business and its very large publicly held market capitalization) such that its delisting from the Exchange would be significantly contrary to the national interest and the interests of public investors. In such a case, where the Exchange believes that the company remains suitable for listing given, among other factors,⁵ its relative financial health and compliance with the NYSE's quantitative and qualitative listing standards, and where there is a reasonable expectation that the company will be able to resume timely filings in the future, the Exchange may forebear, at its sole discretion, from commencing suspension and delisting, notwithstanding the company's failure to file within the time periods specified in Section 802.01E of the Manual.

The Exchange has determined that it is unnecessary for the Exchange to retain the discretion to allow companies

to continue to be listed beyond the Initial Twelve-Month Period after December 31, 2007. Therefore, under this proposed amendment, the Exchange's discretion to allow a company to continue to be listed beyond the Initial Twelve-Month Period set forth in Section 802.01E of the Manual shall expire on December 31, 2007. If, prior to December 31, 2007, the Exchange had determined to continue listing a company beyond the Initial Twelve-Month Period under the circumstances specified in Section 802.01E of the Manual as described above,⁶ and the company fails to file its periodic annual report by December 31, 2007, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Manual.

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 national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ which requires an Exchange to have rules that are designed to promote just and equitable principles of trade, 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.⁸

Specifically, the Commission believes that eliminating the Exchange's discretion to continue the listing of certain companies that are twelve months late in filing their annual reports will encourage listed companies to file any late annual reports as quickly as practicable. This should benefit the public interest and protect investors by helping to assure that investors receive up to date financial information about listed companies. Eliminating the Exchange's discretion to not commence delisting of a company past the Initial 12 Month Period ensures that companies cannot continue to trade on the Exchange for extended periods of time without making publicly available their required annual reports.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the

proposed rule change (SR-NYSE-2006-116) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55216; File No. SR-NYSE-2006-109]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Relating to NYSE Regulation, Inc. Policies Regarding Exercise of Power To Fine NYSE Member Organizations and Use of Money Collected as Fines

January 31, 2007.

On December 6, 2006, the New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to adopt internal procedures for NYSE Regulation, Inc. ("NYSE Regulation") to assure the proper exercise by NYSE Regulation of its power to fine member organizations of the Exchange and the proper use by NYSE Regulation of the funds so collected. The proposed rule change was published for comment in the **Federal Register** on December 29, 2006.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁴ and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ which requires that the rules of the exchange provide for the equitable allocation of reasonable dues,

¹⁰ 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. 55003 (December 22, 2006), 71 FR 78497 ("Notice").

⁴ 15 U.S.C. 78f.

⁵ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(4).

⁴ The term "annual report" used herein refers to the filing of Forms 10-K, 10-KSB, 20-F, 40-F or N-CSR.

⁵ See Section 802.01E of the Manual for a complete list of the factors that the Exchange must consider when determining whether to continue listing a company beyond the Initial Twelve-Month Period.

⁶ See *supra* note 5 and accompanying text.

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78s(b)(2).