

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65264; File No. SR-NYSE-2011- 44)

September 6, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 501.00 of the Listed Company Manual to Expand the Waiver Provision to Apply to Foreign Issuers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on August 22, 2011, New York Stock Exchange LLC (“NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I and II below, which items have been prepared primarily by NYSE.<sup>2</sup> NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b-4(f)(6) thereunder so that the proposed rule change was effective upon filing with the Commission.<sup>3</sup> 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

NYSE proposes to amend Section 501.00 of the NYSE’s Listed Company Manual (“Manual”) to expand the waiver provision so that it applies to all “foreign issuers” that otherwise qualify for the waiver rather than just to “foreign private issuers.”

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

In its filing with the Commission, 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

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

<sup>2</sup> The text of the proposed rule change is attached as Exhibit 5 to NYSE’s filing, which is available at [www.nyse.com](http://www.nyse.com).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b-4(f)(6).

below. NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

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

1. Purpose

Section 501.00 of the Manual provides that all securities listed on NYSE (with the exception of securities which are specifically permitted to be book-entry only) must be eligible for a direct registration system ("DRS") operated by a securities depository.<sup>5</sup> When Section 501.00 was initially adopted, NYSE recognized that the laws or regulations of certain foreign countries might make it impossible for companies or listing applicants incorporated in those countries to comply with the DRS eligibility requirement of Section 501.00. Consequently, the current rule contains a provision providing that NYSE would waive the application of Section 501.00 to any listed company that is a "foreign private issuer"<sup>6</sup> that submits to NYSE a letter from an independent home country counsel certifying that a home country law or regulation prohibits such compliance. NYSE now proposes to amend the waiver provision to extend its

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<sup>4</sup> The Commission has modified the text of the summaries prepared by NYSE.

<sup>5</sup> Section 501.01 of the Manual provides that a "securities depository" means a clearing agency, as defined in Section 3(a)(23) of the Securities Exchange Act of 1934, that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of that Act.

<sup>6</sup> The term "foreign private issuer" as used in Section 501.00 has the meaning set forth in Securities Exchange Act Rule 3b-4. Under Rule 3b-4, the term "foreign private issuer" means any foreign issuer other than a foreign government except for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (a) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States and (b) Any of the following: (i) the majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States.

application to all “foreign issuers” as that term is used in Securities Exchange Act Rule 3b-4,<sup>7</sup> rather than only to “foreign private issuers.” NYSE believes this amendment is necessary because the same legal or regulatory impediments to DRS eligibility exist for a “foreign issuer” that is incorporated in a foreign jurisdiction but that does not qualify for “foreign private issuer” status exists for a “foreign private issuer” incorporated in the same jurisdiction that is currently eligible to use the waiver provision in Section 501.00. Absent this extension of the scope of the waiver provision, the DRS eligibility requirement would render it impossible for a “foreign issuer” to list if it was not a “foreign private issuer” but was incorporated in a foreign jurisdiction whose law or regulation made compliance with Section 501.00 impossible.

NYSE rules provide limited exemptions with respect to corporate governance practices and interim earnings reporting for “foreign private issuers.”<sup>8</sup> NYSE does not intend to expand the scope of such relief to “foreign issuers” that do not qualify for “foreign private issuer” status. However, NYSE believes that the proposed amendment to Section 501.00 is appropriate in light of the specific and discrete problem faced by “foreign issuers” that are not “foreign private issuers” but that are prohibited by home country law or regulation from becoming DRS eligible.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Act of 1934, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

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<sup>7</sup> For purposes of Securities Exchange Act Rule 3b-4, the term “foreign issuer” means any issuer which is a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

<sup>8</sup> Section 103.00 of the Manual.

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

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

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. NYSE believes that the proposed amendment is also consistent with the investor protection objectives of the Act in that it will provide a very limited exception to the DRS eligibility requirement of Section 501.00 that will be available only to “foreign issuers” that provide a letter from home country counsel certifying that compliance with that requirement is prohibited by home country law or regulation.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

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

No written comments relating to the proposed rule change have been solicited or received. NYSE will notify the Commission of any written comments received by NYSE.

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

NYSE has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, 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

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

<sup>12</sup> 17CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE has requested that the Commission waive the 30-day delayed operative date so that the proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6) thereunder and also become operative on the same date. NYSE believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed change is of a limited scope consistent with relief currently applicable to foreign private issuers and because it would facilitate a prompt listing of securities on NYSE that may otherwise be subject to conflicts based on the listing company's home country law or regulation.<sup>16</sup>

The Commission has determined that waiving the 30-day operative delay of NYSE's proposal is consistent with the protection of investors and the public interest because we concur with NYSE's assessment that the amendment is of a limited scope consistent with relief currently applicable to foreign private issuers and that it would facilitate a prompt listing of securities on NYSE that may otherwise be subject to conflicts based on the listing company's home country

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<sup>13</sup> 15 U.S.C. 78(b)(3)(A)(iii).

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

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> NYSE's justification for the waiver of the 30-day operative delay was modified in part based on a telephone call with John Carey, Chief Counsel, NYSE, and Susan Petersen, Special Counsel, Commission (September 2, 2011).

law or regulation.<sup>17</sup> Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change to be operative upon filing with the Commission.

At any time within sixty days of the filing of such 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2011-44 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-2011-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>17</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. See 15 U.S.C. 78c(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NYSE and on NYSE's website, [www.nyse.com](http://www.nyse.com). 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-2011-44 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Elizabeth M. Murphy  
Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).