SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58212; File No. SR-NYSEArca-2008-56)

July 23, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Pilot Program Expiring on November 30, 2008 for Listing Standards to Provide that Currently Traded Issuers Will Be Required to Meet Each of the $5 Per Share Closing Price Requirement and the $150 Million Market Value of Listed Securities Requirement on the Basis of a 90 Trading Day Average of the Closing Price of the Issuer's Common Stock Prior to Applying for Initial Listing

I. Introduction

On May 28, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with 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 its pilot program for listing standards expiring on November 30, 2008 ("Pilot")[3] for initial listing standards applicable to currently traded issuers. The proposed rule change, as modified by Amendment No. 1, was published in the Federal Register on June 20, 2008.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

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

2 17 CFR 240.19b-4.

3 The Commission initially approved the Pilot for six months, until May 29, 2007. See Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR-NYSEArca-2006-85). The Pilot was subsequently extended for an additional six months, until November 30, 2007. See Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR-NYSEArca-2007-51). The Pilot was then extended for an additional six months, until May 31, 2008. See Securities Exchange Act Release No. 56885 (December 3, 2007), 72 FR 69272 (December 7, 2007) (SR-NYSEArca-2007-123). The Pilot was most recently extended for an additional six months, until November 30, 2008. See Securities Exchange Act Release No. 57922 (June 4, 2008), 73 FR 33137 (June 11, 2008) (SR-NYSEArca-2008-55).

4 See Securities Exchange Act Release No. 57958 (June 12, 2008), 73 FR 35184.

II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(c) to provide that a currently traded issuer will be required to, among other things, have: (1) met each of the $5 closing price requirement[5] and the $150 million market value of listed securities requirement[6] on the basis of a 90 trading day average of the closing price of the issuer's common stock prior to applying for listing on the Exchange; (2) at least $5 closing price and $150 market value at the time it applies for listing;[7] and (3) a closing price of at least $1 per share in each day of the 90 trading day period.[8]

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 and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires that an exchange have rules designed, among other things, 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, to protect investors and

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5 See proposed NYSE Arca Equities Rule 5.2(c)(ii).

6 See proposed NYSE Arca Equities Rule 5.2(c)(vi).

7 See proposed NYSE Arca Equities Rules 5.2(c)(ii) and 5.2(c)(vi).

8 See proposed NYSE Arca Equities Rule 5.2(c)(iii).

9 15 U.S.C. 78f(b)(5).

the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers.[10]

The development and enforcement of adequate standards governing the initial listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.

Under the proposal, issuers with currently listed securities on other markets would have to meet the proposed standards to list their common stock on the Exchange. First, instead of meeting the closing price per share of $5 or more for 90 consecutive trading days prior to applying for listing, the closing price per share must be met over a 90 trading day average prior to applying for listing. In addition, instead of meeting the market value of listed securities of $150 million or more for 90 consecutive trading days prior to applying for listing, the market value of listed securities must be met over a 90 trading day average prior to applying for listing. Second, the common stock must have at least $5 closing price and the $150 million market value at the time the issuer applies for listing. Finally, the issuers must have closing price per share of $1 or more for 90 consecutive trading days prior to applying for listing.

Originally, the Commission approved the Pilot's initial listing standards, with three alternative listing standards, based on similarity to the Nasdaq Global Market initial listing

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[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

standards.[11] The Exchange subsequently amended the Pilot's initial listing standards to eliminate two alternative listing standards and, among other things, increase the market value of listed securities from $75 million to $150 million.[12] The Nasdaq Global Market – Entry Standard 3, which forms the foundation of the Exchange's Pilot initial listing standards, requires, among other things, a currently traded issuer to have a market value of listed securities of $75 million for 90 consecutive trading days and a bid price per share of $5 or more.[13] The Commission notes that the proposed initial listing standards are substantially similar to the Nasdaq Global Market initial listing standards.[14] The Exchange's proposed market value of listed securities requirement, albeit calculated differently, remains higher than Nasdaq's comparable standard.[15]

The Commission notes that under the proposal, while the closing price could fall below $5 per share during the 90 trading day period before applying for listing, it cannot fall below $1 per share. In addition, the closing price must be at least $5 per share at the time the issuer applies to list on the Exchange. The Commission believes that the combination of the $1 per share floor and $5 per share at the time of applying to list should help to ensure that currently traded issuers have some meaningful minimum price history to qualify for listing. In addition, the Commission notes that under the proposal, while the market value could fall below $150 million during the 90 trading day period before applying for listing, it must be at least $150

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11 See Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR-NYSEArca-2006-85). See also Nasdaq Rule 4420(a)-(c).

12 See Securities Exchange Act Release No. 56606 (October 3, 2007), 72 FR 57982 (October 11, 2007) (SR-NYSEArca-2007-69).

13 See Nasdaq Rule 4420(c).

14 See Nasdaq Rule 4420(c).

15 In addition, the Commission notes that the Exchange requires a higher amount of public float ($45 million) versus the comparable Nasdaq standard ($20 million). See NYSE Arca Equities Rule 5.2(c)(iv) and Nasdaq Rule 4420(c)(2).

million at the time the issuer applies to list. The Commission believes that the proposed market value requirements are sufficient to demonstrate meaningful depth and liquidity for these securities.

Based on the above, the Commission believes the proposed rule change is reasonable and should continue to provide only for the listing of securities with sufficient depth and liquidity to maintain fair and orderly markets. Accordingly, the Commission believes that the changes are consistent with the requirements of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change, as modified by Amendment No. 1 (SR-NYSEArca-2008-56) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon
Acting Secretary

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16 15 U.S.C. 78s(b)(2).

17 17 CFR 200.30–3(a)(12).