

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57239; File No. SR-NYSE-2007-98)

January 30, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Reduce from Six Months to Three Months the Period for Which a Company's Average Global Market Capitalization Must Exceed the Levels Established by the Exchange's Pure Valuation/Revenue Test

I. Introduction

On October 29, 2007, the New York Stock Exchange LLC ("NYSE" 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 reduce from six months to three months the period for which the average global market capitalization of companies seeking to list on the Exchange must exceed the levels established by the Exchange's "pure valuation/revenue" test contained in Section 102.01C of the Exchange's Listed Company Manual (the "Manual"). On December 14, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on December 26, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Section 102.01C of the Exchange's Manual requires companies listing under the Exchange's "pure valuation/revenue" test to have a global market capitalization of \$750 million.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56976 (December 17, 2007), 72 FR 73055.

In the case of companies listing other than in connection with an initial public offering or a spin-off or upon emergence from bankruptcy, Section 102.01C provides that the market capitalization valuation will be determined on the basis of a six-month average.

The Exchange now proposes to reduce from six months to three months the period over which prospective companies seeking to list on the Exchange must have had an average global market capitalization that meets the required level of \$750 million. In addition, the Exchange proposes to amend the rule to specify that in considering the suitability for listing of a company pursuant to this standard, the Exchange will consider whether the company's business prospects and operating results indicate that the company's market capitalization value is likely to be sustained or increase over time.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,⁴ which requires, among other things, that the rules of a national securities exchange be 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 a national market system and, in general, to protect investors and the public interest.⁵

The Commission notes that the proposed rule change does not change the quantitative global market capitalization requirement under the Exchange's "pure valuation/revenue" test.

⁴ 15 U.S.C. 78f(b)(5).

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

This requirement will remain at \$750 million global market capitalization. Rather, the Exchange is shortening the time period over which the average global market capitalization of a prospective listed company must meet this level. The Commission notes that the proposed rule change requires the Exchange to look not only at the average three month market capitalization of the company but to also consider whether the company's market capitalization is likely to be sustained or increase over time based on the company's business prospects and operation results. The Commission therefore believes that the proposed rule change may allow the earlier listing of companies, but at the same time, it is designed to ensure that the Exchange does not list companies on the basis of a market capitalization valuation that is unlikely to be sustained. In this regard, the Commission expects that the Exchange will scrutinize companies to ensure that it will only list companies that should be able to continue to meet the market capitalization standard.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NYSE-2007-98), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

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Deputy Secretary

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).