

whether the proposed rule should be approved or disapproved.

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-149 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-NASDAQ-2013-149. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 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 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-NASDAQ-2013-149, and should be submitted on or before January 3, 2014.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71029; File No. SR-NYSE-2013-67]

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change to Amend the Quantitative Continued Listing Standards Applicable to Companies Listed Under Sections 102.01C and 103.01B of the Listed Company Manual**

December 9, 2013.

##### **I. Introduction**

On October 8, 2013, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the quantitative continued listing standards applicable to companies listed under one of the financial standards of Sections 102.01C and 103.01B of the Exchange's Listed Company Manual ("Manual"). The proposed rule change was published for comment in the **Federal Register** on October 25, 2013.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

##### **II. Description of the Proposal**

The Exchange proposes to amend the continued listing standards in Section 802.01B of the Manual. Under current Exchange initial listing rules, companies applying to list equity securities on the NYSE must meet one of the specific financial standards,<sup>4</sup> in addition to the other listing requirements set out in Section 102.00 for domestic companies and Section 103.00 for non-U.S. companies. Once listed, companies have to meet the Exchanges continued listing criteria set out in Section 802.01 of the

Manual. In addition to the other minimum continued listing requirements that apply to capital or common stock,<sup>5</sup> companies with such securities listed on the Exchange must also meet certain quantitative financial continued listing standards which correspond to the standard under which the securities were initially listed.<sup>6</sup> There are currently four different financial continued listing standards which apply to the capital or common stock of a listed company, depending under which standard it was originally listed under.<sup>7</sup>

A company that qualified to list under the Earnings Test or Assets and Equity Test, would be considered to be below compliance if over a consecutive 30 trading-day period, the average global market capitalization of its securities is less than \$50,000,000 and the total stockholders' equity is less than \$50,000,000.<sup>8</sup>

A company qualifying to list under the Valuation/Revenue with Cash Flow Test, would be considered to be below compliance if (A) over a consecutive 30 trading-day period, the average global market capitalization of its securities is less than \$250,000,000 and the total revenues are less than \$20,000,000 over the last 12 months (unless the listed company qualifies as an original listing under one of the other original listing standards) or (B) the average global market capitalization over a consecutive 30 trading-day period is less than \$75,000,000.

A company that qualified to list under the Pure Valuation/Revenue Test would be considered to be below compliance if (A) over a consecutive 30 trading-day period, the average global market capitalization of the company's securities is less than \$375,000,000 and

<sup>5</sup> See Section 802.01A of the Manual (distribution criteria for capital or common stock); Section 802.01C of the Manual (maintaining a stock price on a 30-day average basis of \$1.00 per share); and Section 802.01B (stating that "the Exchange will promptly initiate suspension and delisting procedures with respect to a company that is listed under any financial standard set out in Sections 102.01C or 103.01B if a company is determined to have average global market capitalization over a consecutive 30 trading-day period of less than \$15,000,000, regardless of the original standard under which it listed"). See also Section 802.01D of the Manual (listing other additional criteria for continued listing). The Commission notes that the Exchange has represented that the continued listing standards would apply to American Depositary Receipts.

<sup>6</sup> See Section 802.01B of the Manual.

<sup>7</sup> See Sections 802.01B(I), (II), (III) and (IV) of the Manual. The filing states that these continued listing standards apply to operating companies, however, the Commission notes that the Manual does not specifically refer to the term operating companies.

<sup>8</sup> See Section 802.01B(I) of the Manual.

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 70728 (October 25, 2013), 78 FR 64043.

<sup>4</sup> See Section 102.01C of the Manual (for domestic issuers) and Section 103.01B (for non-U.S. issuers). See also note 7, *infra*.

the total revenues are less than \$15,000,000 over the last 12 months (unless the listed company qualifies as an original listing under one of the other original listing standards<sup>9</sup> or (B) the average global market capitalization over a consecutive 30 trading-day period is less than \$100,000,000.<sup>10</sup>

Finally, listed companies that originally listed under the Affiliated Company Test would be considered to be below compliance if (A) the parent or affiliated company ceases to control the listed company, or the listed company's parent or affiliated company falls below the applicable continued listing standards and (B) over a consecutive 30 trading-day period, the average global market capitalization of the company's securities is less than \$75,000,000 and the total stockholders' equity is less than \$75,000,000.<sup>11</sup>

The Exchange proposes to delete these four current continued listing standards, and to use one continued listing standard, which is identical to the one currently applicable to companies listing under the Earnings Test and Assets and Equity Test. Under the proposal, a listed company will be considered to be below compliance if its average global market capitalization over a consecutive 30 trading-day period is less than \$50,000,000 and, at the same time, the stockholders' equity is less than \$50,000,000.

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5) of the Act,<sup>12</sup> which among other things, requires 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 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; and are not designed to permit unfair

discrimination between customers, issuers, brokers or dealers.<sup>13</sup>

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. 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 or, in the case of an IPO, will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

The Exchange proposes to delete the current four separate tracks of continued listing standards and replace them with one continued listing standard applicable to all operating companies listing their capital or common stock, regardless of the initial listing standard that the company originally qualified for listing under. Listed companies would still be required to meet, and comply with, other standards, such as the distribution criteria,<sup>14</sup> price criteria,<sup>15</sup> and the minimum market capitalization requirement.<sup>16</sup> The Exchange stated its belief that it would be fairer to use a single continued listing standard that would apply to all operating companies (for the listing of their capital or common stock), since under the current rules a listed security may be below its applicable continued listing standards and deemed non-compliant or delisted notwithstanding that it would have remained compliant if another continued listing standard applied. The Exchange noted that this creates the anomalous result that two companies that have identical quantitative characteristics would be treated differently based on how it originally qualified to list, which could have been

many years ago. According to the Exchange, the approach of assigning different quantitative continued listing requirements to companies that originally listed under different listing standards was adopted in 2004<sup>17</sup> and the quality of listed companies has not been enhanced by this approach. The Exchange represented that a review of data over a period of five years indicates that all of the securities that were delisted under the current applicable standard would have been delisted under the proposed standard, or the other applicable minimum listing criteria.<sup>18</sup> We note that under the Exchange's proposal, the additional minimum listing criteria is remaining unchanged and will continue to apply.<sup>19</sup>

After careful consideration, the Commission finds that the proposal is consistent with the requirements of the Act. The Commission believes that the proposal is not designed to permit unfair discrimination between issuers since under the proposal, all operating companies listing common or capital stock on the Exchange will be subject to the same financial continued listing standards. To the extent other types of listed securities, such as debt, and other types of issuers, such as trusts and partnerships, have different continued listing standards, these differences are based on the different type, and characteristics of those securities and issuers, and those differences currently exist and have been previously approved by the Commission consistent with the requirements of the Act.

The Commission has also considered whether the proposed changes will continue to ensure that only those companies with adequate market depth and liquidity can continue to trade on the Exchange so that fair and orderly markets can be maintained, consistent with investor protection and the public interest under Section 6(b)(5) of the Act. In this regard, we note that the Exchange represented that 87% of the operating companies currently listed on the Exchange are already subject to a continued listing standard which is identical to the proposed continued listing standard. As a result, for these listed companies the proposed continued listing standard will have no change as to their continued listing

<sup>13</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> See Section 802.01A of the Manual.

<sup>15</sup> See Section 802.01C of the Manual.

<sup>16</sup> See Section 802.01B of the Manual (requiring average global market capitalization over a consecutive 30 trading-day period of \$15,000,000).

<sup>17</sup> The Commission notes that prior to the 2004 change in continued listing standards, the Exchange's continued listing requirements generally applied to all companies, except for a separate standard for companies qualifying for the global market capitalization standard.

<sup>18</sup> See note 5, *supra*. In particular, the Exchange was referring to the \$1 per share price requirement and the \$15 million minimum global market capitalization requirement.

<sup>19</sup> See note 5, *supra*.

<sup>9</sup> See Section 802.01B(II) of the Manual.

<sup>10</sup> See Section 802.01B(III) of the Manual.

<sup>11</sup> See Section 802.01B(IV) of the Manual.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

requirements. In addition, because the vast majority of listed companies have to comply with the proposed continued listing standard, the Exchange should have sufficient experience monitoring for compliance with the proposed standard. As noted above, the Exchange also found, based on a review of data of companies below compliance under the NYSE's financial standards from 2006 to 2012, that all of the securities that were delisted under the current applicable standard would have been delisted under the proposed standard, or the other applicable minimum listing criteria.<sup>20</sup> Based on the Exchange's review and experience in administering the proposed standard, the Exchange concluded that the proposed continued listing standard, in combination with the other minimum continued listing criteria, is a rigorous measure to ensure companies and their securities remain suitable for listing.<sup>21</sup> Based on the above, the Commission believes that that proposal is consistent with the requirements of the Act. We, however, would expect the Exchange to monitor its continued listing standards to ensure that they remain adequate and make adjustments to its rules where necessary.

Finally, in approving the proposal, we recognize that some of the current continued listing standards have substantially higher market capitalization requirements than under the new standard.<sup>22</sup> We understand some of the rationale for the higher standards was related to the higher market capitalization requirements in the initial listing standards. For the reasons, however, noted above,

including the Exchange's representation that the proposed standard, along with the additional minimum standards, should adequately ensure the quality of companies that continue to list on the exchange based on its experience with monitoring companies for compliance, and the fact that the proposed standard had previously been approved as one of several continued financial listing standards, and thus already applies to a large majority of currently listed companies, we are approving the proposal.<sup>23</sup> We also note that the adoption of the proposed continued listing standard does not appear to set a new low when comparing the continued listing standards of other named markets under Section 18 of the Securities Act of 1933, both currently and at the time Section 18 was adopted in 1996.<sup>24</sup> Taken as a whole, the Exchange's continued listing standards appear to be as high as NYSE MKT's continued listing standards for common stock of operating companies.<sup>25</sup>

#### IV. Conclusion

For the foregoing reasons, 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, with Section 6(b)(5) of the Act.<sup>26</sup>

*It is therefore ordered*, pursuant the Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2013-67), is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71027; File No. SR-FINRA-2013-051]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Uniform Branch Office Registration Form (Form BR)

December 9, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 25, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the Uniform Branch Office Registration Form ("Form BR") to (1) eliminate Section 6 (NYSE Branch Information), which is currently applicable only to NYSE-registered firms; (2) add questions relating to space sharing arrangements and the location of books and records that are currently only in Section 6 and make them applicable to all members; (3) modify existing questions and instructions to provide more detailed selections for describing the types of activities conducted at the branch office; (4) add an optional question to identify a branch office as an "Office of Municipal Supervisory Jurisdiction," as defined under the rules of the Municipal Securities Rulemaking Board (MSRB); and (5) make other technical changes to adopt uniform terminology and clarify questions and instructions (collectively, the proposed amendments to Form BR are hereinafter referred to as the "Updated Form BR").

<sup>20</sup> See Notice at *supra* note 3 and note 18, *supra*. The Exchange further noted that the minority of companies that would not have fallen below the proposed standard or other minimum continued listing standards, have all regained compliance with the quantitative continued listing standards.

<sup>21</sup> As to companies listed under the Affiliated Company Test, the Commission notes that although the current quantitative market capitalization and stockholder equity continued listing standards applicable to such listings are higher than the proposed standards, these standards only applied if the parent or affiliated company ceased control of the listed company or the parent or affiliate also fell below continued listing standards. Under the new standards, however, companies listed under the Affiliated Company Test will be subject to the new continued listing requirement irrespective of whether the parent or affiliated company ceases to control the listed company or the parent or affiliate falls below continued listing standards, which arguably may be a stronger standard despite the lower numerical criteria.

<sup>22</sup> For example, under the current Pure Valuation/Revenue Test, companies would need to meet average global market capitalization over a consecutive 30 trading-day period of \$100,000,000. The Commission notes, however, that the proposed standard includes an additional requirement on stockholders equity.

<sup>23</sup> The Commission notes that the Exchange rules give it the flexibility to commence delisting proceedings should any event or condition makes further dealings or listing of the securities on the Exchange inadvisable or unwarranted. Accordingly, we would expect the Exchange to continue to monitor a listed company that has lost a significant percentage of its market capitalization when compared to the original standard it was listed under, especially if the substantial loss in value indicates issues with the company that would raise whether further dealings on the Exchange are warranted. See Section 802.01D of the Manual.

<sup>24</sup> 15 U.S.C. 77r (Section 102 of the National Securities Markets Improvement Act ("NSMIA") of 1996 amended Section 18 of the Securities Act of 1933).

<sup>25</sup> See email from Patrick Troy, Chief Counsel, NYSE, to Steve L. Kuan, Special Counsel, Division of Trading and Markets, Commission, on November 25, 2013. The Commission notes that the a direct comparison of NYSE MKT's continued listing standards with the proposed NYSE continued listing standards is not possible, since some of the standards use different criteria. For example, NYSE MKT uses a public stockholder requirement, while NYSE uses a total stockholders requirement. Taken as a whole, however, the Commission believes that the proposed NYSE standards appear to be as high as NYSE MKT's standards.

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> See 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.