

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58367; File No. SR-NYSE-2008-75)

August 15, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 303A.02(b) of the Listed Company Manual with respect to Two of its Director Independence Tests

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 12, 2008, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NYSE. 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

The Exchange proposes to make amendments to two of the tests with respect to the independence of directors set forth in Section 303A.02(b) of the Exchange’s Listed Company Manual (the “Manual”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to make amendments to two of the tests with respect to the independence of directors set forth in Section 303A.02(b) of the Manual.

Direct Compensation Test

Section 303A.02(b)(ii) of the Manual provides that a director may not be deemed independent for purposes of Section 303A if such director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than \$100,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service). NYSE proposes to increase the dollar threshold in this test from \$100,000 to \$120,000. This change reflects the SEC's August 2006 amendment to the dollar threshold applicable to related party transactions that must be disclosed under Item 404 of Regulation S-K.³ Prior to the SEC's amendment to Item 404, the applicable threshold for disclosures was \$60,000. The NYSE believes that the monetary threshold in its independence definition should be consistent with the amount in Regulation S-K Item 404. Using a consistent standard would enhance the NYSE's ability to assess compliance with the independent director requirements because companies are required to

³ See Securities Act Release No. 8732A (August 29, 2006).

disclose compensation in excess of \$120,000, but are not necessarily required to disclose compensation between \$100,000 and \$120,000.

Auditor Test

Additionally, NYSE is proposing to amend the bright line test set out in Section 303A.02(b)(iii) relating to a listed company's internal or external auditor. The test currently precludes a director from being deemed independent if:

- the director or an immediate family member is a current partner of a firm that is the company's internal or external auditor;
- the director is a current employee of such a firm;
- the director has an immediate family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or
- the director or an immediate family member was within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the listed company's audit within that time.

NYSE's experience to date has demonstrated that the current standard with respect to immediate family members has had the effect of precluding a director from being deemed independent in cases even where an immediate family member had no relationship to the listed company's audit. For example, NYSE's current test has required a listed company's board to conclude that a director may no longer be deemed independent when the director's child took an entry-level job in the audit practice of the listed company's external auditor upon graduation

from college, notwithstanding the fact that the child was a low-level employee in a different region and had no involvement with the listed company's audit.

In addition, NYSE's proposed change will bring its standards more in line with the auditor tests utilized by Nasdaq and the American Stock Exchange.⁴

NYSE proposes to modify its current test with respect to a director's immediate family member to cover only an immediate family member who:

- is a current partner of the company's internal or external auditor;
- is a current employee of such a firm and personally works on the listed company's audit; or
- was within the last three years a partner or employee of such a firm and personally worked on the listed company's audit within that time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁵ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ in particular, in that it is designed 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. The Exchange believes that the proposed amendment to

⁴ See NASDAQ Marketplace Rule 4200(a)(15)(F) and Amex Company Guide Section 803(A)(2)(f).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

Section 303A.02(b)(iii) will help to perfect the mechanism of a free and open market in that it will conform the Exchange's approach to that of Nasdaq and Amex.

The Exchange believes that this amendment is consistent with the protection of investors and the public interest because the amended test will continue to bar a finding of independence where a director has any material relationship with the listed company. The proposed amendment to Section 303A.02(b)(ii) furthers the protection of investors and the public interest in that it adopts the Commission's own materiality threshold for related party transactions and will therefore provide a standard that is clear, straightforward, and easy for issuers to understand and apply.

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

Written comments were neither solicited nor received.

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

Because the foregoing 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) 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)

⁷ 15 U.S.C. 78s(b)(3)(A).

thereunder.⁸

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.

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-2008-75 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2008-75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

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, 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 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-2008-75 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.⁹

Florence E. Harmon
Acting Secretary

⁹ 17 CFR 200.30-3(a)(12).