

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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-MSRB-2008-02 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5704 Filed 3-20-08; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57499; File No. SR-NYSE-2008-17]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt New Initial and Continued Listing Standards To List Special Purpose Acquisition Companies**

March 14, 2008.

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 March 6, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Exchange's Listed Company Manual (the "Manual") to adopt listing standards for special purpose companies formed for the purpose of raising capital in an initial public

offering and entering into an undetermined business combination. The filing also proposes the adoption of requirements that (i) any equity security listing on the Exchange must have a closing price or, if listing in connection with an initial public offering ("IPO"), an IPO price per share of at least \$4 at the time of initial listing and (ii) convertible debt issuances listed on the Exchange must have an aggregate market value or principal amount of no less than \$10,000,000.

Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

**102.01 Minimum Numerical Standards—Domestic Companies—Equity Listings**

\* \* \* \* \*

**102.01B**

A Company must demonstrate an aggregate market value of publicly-held shares of \$60,000,000 for companies that list either at the time of their initial public offerings ("IPO") (C) or as a result of spin-offs or under the Affiliated Company standard, and \$100,000,000 for other companies (D). *A company must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least \$4 at the time of initial listing.*

\* \* \* \* \*

**102.03 Minimum Numerical Standards—Domestic Companies—Debt Listings**

\* \* \* \* \*

**Convertible Bonds**

Debt securities convertible into equity securities may be listed only if the underlying equity securities are subject to real-time last sale reporting in the United States. *The convertible debt issue must have an aggregate market value or principal amount of no less than \$10,000,000.*

\* \* \* \* \*

**102.06 Minimum Numerical Standards—Acquisition Companies**

*The Exchange will consider on a case-by-case basis the appropriateness for listing of companies ("acquisition companies" or "ACs") with no prior operating history that conduct an initial public offering of which at least 90% of the proceeds, together with the proceeds of any other concurrent sales of the AC's equity securities, will be held in a trust account" controlled by an independent custodian until consummation of a business combination in the form of a merger, capital stock exchange, asset acquisition, stock purchase,*

*reorganization, or similar business combination with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets held in trust (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust) (a "Business Combination").*

*ACs must demonstrate an aggregate market value of \$250,000,000 (A) and a market value of publicly-held shares of \$200,000,000 (A) and must comply with the requirements of Section 102.01A. An AC must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least \$4 at the time of initial listing.*

*(A) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. For ACs that list at the time of their IPOs, if necessary, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the AC's offering in order to determine an AC's compliance with this listing standard.*

*Under the terms of its constitutive documents or by contract, any AC deemed suitable for listing will be subject to the following minimum requirements:*

- *The Business Combination must be approved by a majority of the votes cast by public shareholders at a duly held shareholders meeting;*
- *Each public shareholder voting against the Business Combination will have the right ("Conversion Right") to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable, and amounts disbursed to management for working capital purposes), provided that the Business Combination is approved and consummated. It will be permissible for an AC to establish a limit (set no lower than 10% of the shares sold in the AC's IPO) as to the maximum number of shares with respect to which any public shareholder, together with any affiliate of such shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) may exercise Conversion Rights;*

- *The AC cannot consummate its Business Combination if public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock issued in the AC's initial public offering exercise their Conversion Rights*

<sup>9</sup> 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.

in connection with such Business Combination;

- The AC will be liquidated if no Business Combination has been consummated within a specified time period not to exceed three years. The Exchange will promptly commence delisting procedures with respect to any AC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract or (ii) three years, whichever is shorter; and

- The AC's founding shareholders must waive their rights to participate in any liquidation distribution with respect to all shares of common stock owned by each of them prior to the IPO or purchased in any private placement occurring in conjunction with the IPO, including the common stock underlying any founders' warrants. In addition, the underwriters of the IPO must agree to waive their rights to any deferred underwriting discount deposited in the trust account in the event the AC liquidates prior to the completion of a Business Combination.

In the event that AC securities are listed as units, the components of the units (other than common stock) will be required to meet the applicable initial listing standards for the security types represented by the components.

In determining the suitability for listing of an AC, the Exchange will consider:

- The experience and track record of management;
- The amount of time permitted for the completion of the Business Combination prior to the mandatory dissolution of the AC;
- The nature and extent of management compensation;
- The extent of management's equity ownership in the AC and any restrictions on management's ability to sell AC stock;
- The percentage of the contents of the trust account that must be represented by the fair market value of the Business Combination;
- The percentage of voting publicly-held shares whose votes are needed to approve the Business Combination;
- The percentage of the proceeds of sales of the AC's securities that is placed in the trust account; and
- Such other factors as the Exchange believes are consistent with the goals of investor protection and the public interest.

\* \* \* \* \*

**103.01 Minimum Numerical Standards Non-U.S. Companies Equity Listings Distribution**

103.01A. A company must meet the following distribution [and] size, and price requirements:

Number of shareholder, holders— 5,000 Worldwide of 100 or more shares.  
 Number of shares publicly held—2.5 million Worldwide.

Market value of publicly held shares (A)—\$100 million Worldwide (B) or for companies listing under the Affiliated Company standard— \$60 million Worldwide (B).

(A) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. If a company either has a significant concentration of stock, or if changing market forces have adversely impacted the public market value of a company which otherwise would qualify for listing on the Exchange such that its public market value is no more than 10 percent below \$100,000,000, the Exchange will generally consider \$100,000,000 in stockholders' equity as an alternate measure of size and therefore, as an alternative basis to list the company.

(B) For companies that list at the time of their initial public offerings ("IPOs"), if necessary, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with this listing standard[s]. Similarly, for spin-offs, the Exchange will rely on a representation from the parent company's investment banker (or other financial advisor) or transfer agent in order to estimate the market value based upon the as disclosed distribution ratio. For purposes of this paragraph, an IPO includes a spin-off and is an offering by an issuer which, immediately prior to its original listing, does not have a class of common stock registered under the Securities Exchange Act of 1934. An IPO includes a carve-out, which is defined for purposes of this paragraph as the initial offering of an equity security to the publicly traded company for an underlying interest in its existing business (may be subsidiary, division, or business unit).

A company must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least \$4 at the time of initial listing.

\* \* \* \* \*

**802.01B Numerical Criteria for Capital or Common Stock**

\* \* \* \* \*

*Criteria for REITs and Limited Partnerships*

The Exchange will promptly initiate suspension and delisting procedures with respect to REITs and Limited Partnerships if the average market capitalization of the entity over 30 consecutive trading days is below \$25,000,000. The Exchange will promptly initiate suspension and delisting procedures with respect to a REIT if it fails to maintain its REIT status (unless the resultant entity qualifies for an original listing as a corporation).

The Exchange will notify the REIT or limited partnership if the average market capitalization falls below \$35,000,000 and will advise the REIT or limited partnership of the delisting standard. REITs and limited partnerships are not eligible to follow the procedures outlined in Sections 802.02 and 802.03.

*Criteria for Acquisition Companies ("ACs")*

*Prior to Consummation of Business Combination*

Prior to the consummation by a listed Acquisition Company (an "AC") of its Business Combination (as defined in Section 102.06), the Exchange will promptly initiate suspension and delisting procedures:

(i) If the AC's average aggregate global market capitalization is below \$125,000,000 or the average aggregate global market capitalization attributable to its publicly-held shares is below \$100,000,000, in each case over 30 consecutive trading days. An AC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criterion, and any such AC will be subject to delisting procedures as set forth in Section 804. The Exchange will notify the AC if its average aggregate global market capitalization falls below \$150,000,000 or the average aggregate global market capitalization attributable to its publicly-held shares falls below \$125,000,000 and will advise the AC of the delisting standard.

(ii) If the AC securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:

the number of total stockholders (A) is less than—400

OR

the number of total stockholders (A) is less than—1,200 and average monthly trading volume is less than—100,000 shares (for most recent 12 months)

OR

the number of publicly-held shares (B) is less than—600,000 (C).

(A) The number of beneficial holders of stock held in the name of Exchange member organizations will be considered in addition to holders of record.

(B) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares.

(C) If the unit of trading is less than 100 shares, the requirement relating to the number of shares publicly held shall be reduced proportionately.

In the case of AC securities traded as a unit, such securities will be subject to suspension and delisting if any of the component parts do not meet the applicable listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing of the component. If a component is a warrant, it will be subject to the continued listing standards for warrants set forth in Section 802.01D, including a distribution requirement of 100 holders.

Notwithstanding the foregoing, the Exchange will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of the Exchange, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, the Exchange will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

(iii) If the AC fails to consummate its Business Combination within the time period specified by its constitutive documents or required by contract, or as provided by Section 102.06, whichever is shorter.

#### At the Time of the Business Combination

After shareholder approval of a Business Combination, the Exchange will consider whether the continued listing of the AC after consummation of the Business Combination will be in the best interests of the Exchange and the

public interest and will have the discretion to suspend and commence delisting proceedings with respect to the AC prior to consummation of the Business Combination. An AC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to such a delisting determination, and any such AC will be subject to delisting procedures as set forth in Section 804.

#### After Consummation of Business Combination

After consummation of its Business Combination, a company that had originally listed as an AC will be subject to Section 801 and Section 802.01 in its entirety and will be subject to the continued listing standards applicable to companies that qualify to list under the Earnings Test as set forth above.

#### “Back Door Listing”

When a listed AC consummates its Business Combination, the Exchange will consider whether the Business Combination gives rise to a “back door listing” as described in Section 703.08(E). If the resulting company would not qualify for original listing, the Exchange will promptly initiate suspension and delisting of the AC.

\* \* \* \* \*

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

In its filing with the Commission, the self-regulatory organization 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 below. The 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 amend the Manual to adopt listing standards for acquisition companies (“ACs”).

An AC is a special purpose company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more operating businesses or assets (a “Business Combination”). The securities sold by

the AC in its initial public offering are typically units, consisting of one share of common stock and one or more warrants (or a fraction of a warrant) to purchase common stock, that are separable at some point after the IPO. Management generally is granted a percentage of the AC’s equity and may be required to purchase additional shares in a private placement at the time of the AC’s IPO.

While ACs are not uniform in their structure, the ACs that have come to market in recent times have generally provided the following investor protections:

- Most of the proceeds of the IPO and any other concurrent sales of the AC’s equity securities are placed in a trust account controlled by an independent custodian and may only be released for (i) a shareholder-authorized Business Combination or (ii) a return of capital to the shareholders;

- A Business Combination with one or more target businesses that together have a fair market value equal to a threshold percentage (typically 80%) of the assets in the trust account must be completed within a specified time frame (generally 18 months or two years), or the trust account must be liquidated and the shareholders must receive their pro rata share of its contents; and

- The Business Combination must be approved by a majority of the votes cast by the public shareholders at a duly constituted shareholders meeting, and dissenting shareholders must have a right to have their shares redeemed according to a predetermined methodology. The AC cannot consummate its Business Combination if the holders of more than a specified percentage (typically 19.9%) of the shares request redemption.

While the Exchange does not believe that all ACs are suitable for listing on the NYSE, it believes that there may be certain transactions where the quality of the sponsor and the size of the offering proceeds may make ACs suitable for NYSE listing.

#### Initial Listing Standard

The Exchange does not currently have a financial listing standard under which an AC conducting its IPO could qualify to list. ACs by their nature have no financial history, while all of the Exchange’s financial listing standards for operating companies require some period of operations prior to listing. As such, the Exchange proposes to adopt new Section 102.06 of the Manual, requiring ACs to demonstrate a total market value of \$250,000,000 and a market value of publicly-held shares of

\$200,000,000.<sup>3</sup> The standard would not require any prior operating history, but ACs would have to meet the same distribution criteria as all other IPOs, as set forth in Section 102.01A—400 holders of round lots and 1,100,000 publicly-held shares. All of the Exchange's corporate governance requirements applicable to operating companies will apply to listed ACs.

Under the terms of its constitutive documents or by contract, any AC deemed suitable for listing will be subject to the following minimum requirements:

- At least 90% of the proceeds from the AC's IPO and any other concurrent sales of the AC's equity securities will be held in a trust account controlled by an independent custodian until consummation of the AC's Business Combination;
- The Business Combination must be approved by a majority vote of the votes cast by public shareholders at a duly held shareholders meeting;
- Each public shareholder voting against the Business Combination will have the right ("Conversion Right") to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable and amounts disbursed to management for working capital purposes), provided that the Business Combination is approved and consummated. It will be permissible under Section 102.06 for an AC to establish a limit (set no lower than 10% of the shares sold in the AC's IPO) as to the maximum number of shares with respect to which any public shareholder, together with any affiliate of such shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d)<sup>4</sup> and 14(d)<sup>5</sup> of the Act) may exercise Conversion Rights;<sup>6</sup>
- The AC cannot consummate its Business Combination if public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock issued in the AC's initial public offering exercise their Conversion Rights

<sup>3</sup> Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. For ACs that list at the time of their IPOs, if necessary, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the AC's offering in order to determine an AC's compliance with this listing standard.

<sup>4</sup> 15 U.S.C. 78m(d).

<sup>5</sup> 15 U.S.C. 78n(d).

<sup>6</sup> For example, an AC which sells 10,000,000 shares in its IPO could limit the exercise of Conversion Rights by any one holder to 10% of that amount, or a maximum of 1,000,000 shares.

in connection with such Business Combination;

- The AC will be liquidated if the Business Combination has not been consummated within a specified time period not to exceed three years. The Exchange will promptly commence delisting procedures with respect to any AC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract, or (ii) three years, whichever is shorter; and
- The AC's founding shareholders must waive their rights to participate in any liquidation distribution with respect to all shares of common stock owned by each of them prior to the IPO or purchased in any private placement occurring in conjunction with the IPO, including the common stock underlying any founders' warrants. In addition, the underwriters of the IPO must agree to waive their rights to any deferred underwriting discount deposited in the trust account in the event the AC liquidates prior to the completion of a Business Combination.<sup>7</sup>

In the event that AC securities are listed as units, the components of the units (other than common stock) will be required to meet the applicable initial listing standards for the security types represented by the components.<sup>8</sup>

The Exchange intends to consider proposed AC listings on a case-by-case basis and does not necessarily intend to list every AC that meets the minimum requirements for listing.

In determining the suitability for listing of an AC, the Exchange will consider:

- The experience and track record of management;
- The amount of time permitted for the completion of the Business Combination prior to the mandatory dissolution of the AC;
- The nature and extent of management compensation;
- The extent of management's equity ownership in the AC and any restrictions on management's ability to sell AC stock;

<sup>7</sup> In the event of liquidation, the pro rata share of the trust account to be paid to the holder of each publicly-held share would be calculated in accordance with the law of the AC's state of incorporation. However, the actual amount paid to the public shareholders could vary depending on a variety of factors as disclosed in the AC's IPO prospectus, such as liquidation expenses, indemnification obligations, etc.

<sup>8</sup> If a component is a warrant, it will be subject to the initial listing standards for warrants set forth in Section 703.12. See telephone conversation between Steve L. Kuan, Special Counsel, Division of Trading and Markets, Commission, and John Carey, Assistant General Counsel, Office of the General Counsel, NYSE Euronext, on March 11, 2008.

- The percentage of the contents of the trust account that must be represented by the fair market value of the Business Combination;
- The percentage of voting publicly-held shares whose votes are needed to approve the Business Combination;
- The percentage of the proceeds of sales of the AC's securities that is placed in the trust account; and
- Such other factors as the Exchange believes are consistent with the goals of investor protection and the public interest.

#### Continued Listing Standard Applicable to ACs Prior to Business Combination

Prior to the consummation by an AC of its Business Combination, the Exchange will promptly initiate suspension and delisting procedures:

- If the AC's average aggregate global market capitalization is below \$125,000,000 or the average aggregate global market capitalization attributable to its publicly-held shares is below \$100,000,000, in each case over 30 consecutive trading days. An AC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criterion, and any such AC will be subject to delisting procedures as set forth in Section 804. The Exchange will notify the AC if its average aggregate global market capitalization falls below \$150,000,000 or the average aggregate global market capitalization attributable to its publicly-held shares falls below \$125,000,000 and will advise the AC of the delisting standard.
- If the AC securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:

The number of total stockholders<sup>9</sup> is less than—400

OR

The number of total stockholders<sup>9</sup> is less than—1,200

And average monthly trading volume is less than—100,000 shares (for most recent 12 months)

OR

The number of publicly-held shares<sup>10</sup> is less than—600,000.<sup>11</sup>

In the case of AC securities traded as a unit, such securities will be subject to suspension and delisting if any of the

<sup>9</sup> The number of beneficial holders of stock held in the name of Exchange member organizations will be considered in addition to holders of record.

<sup>10</sup> Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares.

<sup>11</sup> If the unit of trading is less than 100 shares, the requirement relating to the number of shares publicly held shall be reduced proportionately.

component parts do not meet the applicable listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria,<sup>12</sup> the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing of the component.

Notwithstanding the foregoing, the Exchange will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of the Exchange, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, the Exchange will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

- If the AC fails to consummate its Business Combination within the time period specified by its constitutive documents or required by contract, or three years, whichever is shorter.

The continued listing standards set forth in Sections 801 ("Policy"), 802.01C ("Price Criteria for Capital or Common Stock"), 802.01D ("Other Criteria") and 802.01E ("SEC Annual Report Timely Filing Criteria") will also apply to listed ACs, in the same way those provisions apply to other equity securities.

#### At the Time of the Business Combination

After shareholder approval of a Business Combination, the Exchange will consider whether the continued listing of the AC after consummation of the Business Combination will be in the best interests of the Exchange and the public interest and will have the discretion to suspend and commence delisting proceedings with respect to the AC prior to consummation of the Business Combination. An AC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to such a delisting determination, and any such AC will be subject to delisting procedures as set forth in Section 804.

<sup>12</sup> If a component is a warrant, it will be subject to the continued listing standards for warrants set forth in Section 802.01D, including a continued distribution requirement of 100 holders.

#### Continued Listing Standard Applicable to ACs After Business Combination

After consummation of its Business Combination, a company that had originally listed as an AC will be subject to Section 801 and Section 802.01 in its entirety and will be considered to be below compliance standards if it does not meet the continued listing standards applicable to operating companies listed under the Exchange's Earnings Test as set forth in Section 802.01B of the Manual,<sup>13</sup> *i.e.*, if average global market capitalization over a consecutive 30-day period is less than \$75,000,000, and, at the same time, stockholders' equity is less than \$75,000,000. Notwithstanding the foregoing, Section 802.01B provides that the Exchange will promptly initiate suspension and delisting procedures with respect to a company if that company is determined to have average global market capitalization over a consecutive 30-day trading period of less than \$25,000,000. Section 802.01B provides that a company will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criterion.

#### Application of "Back Door Listing" Rule to ACs Upon Consummation of Business Combination

When a listed AC consummates its Business Combination, the Exchange will consider whether the Business Combination gives rise to a "back door listing" as described in Section 703.08(E) of the Manual, *i.e.*, whether the transaction in the opinion of the Exchange constitutes an acquisition of the AC by an unlisted company. In applying its back door listing policy, the Exchange gives consideration to all factors, including changes in ownership of the listed company, changes in management, whether the size of the company being "acquired" is larger than the listed company, and whether the two businesses are related on a horizontal or a vertical basis. All circumstances will be considered collectively, and weight may be given to compensating factors. In a back door listing, the unlisted company is typically the larger entity, and frequently the unlisted company will be

<sup>13</sup> Section 802.01B establishes separate continued listing standards for companies that qualified to list under each of the Exchange's four separate initial listing standards for operating companies, *i.e.*, the Earnings Test, the Valuation/Revenue with Cash Flow Test, the Pure Valuation/Revenue Test, and the Affiliated Company Test. As the Exchange cannot predict the standard that would be most appropriate to any specific AC after its Business Combination, we have decided to apply the continued listing standard applicable to companies listed under the Earnings Test to all post-Business Combination ACs.

treated as the acquiror for accounting purposes. Where a transaction is determined to be a back door listing, Section 703.08(E) requires that the resulting company meet the standards for original listing. If the resulting company would not qualify for original listing, the Exchange will refuse to list additional shares of the AC for the transaction, and the AC will be delisted. If the Exchange does not determine that an AC's Business Combination is a back door listing, the Exchange will not subject the AC to an original listing analysis at the time of the Business Combination, but rather will simply subject the post-Business Combination company to the continued listing standards for companies that originally listed under the Earnings Test.

#### Minimum Closing Price Requirement for New Listings

The filing also proposes the adoption of a requirement that any equity security listing on the Exchange, including AC securities, must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least \$4 at the time of initial listing. This price test would apply whether a company listed under the domestic company standards of Section 102.01 of the Manual or the standards set forth in Section 103.01 for non-U.S. companies.

#### Minimum Value of New Listings of Convertible Debt

The Exchange also proposes to adopt a requirement that any convertible debt issuance listed on the Exchange must at the time of listing have an aggregate market value or principal amount of no less than \$10,000,000.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> 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 listing standard is consistent with Section 6(b)(5) of the Act<sup>16</sup> in that it

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> *Id.*

contains requirements in relation to the listing of ACs that provide adequate protections for investors and the public interest.

#### *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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-17 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2008-17. This file number should be included on the subject line if e-mail 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 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 a.m. and 3 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-2008-17 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E8-5673 Filed 3-20-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of waiver of the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing product number 6210.

**SUMMARY:** The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing (Indoor and Outdoor Electrical Lighting Fixtures). The basis for waiver is that no small business manufacturers are supplying this class of product to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to

supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

**DATE:** This waiver is effective April 7, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Pamela M. McClam, Program Analyst, by telephone at (202) 205-7408; by FAX at (202) 481-4783; or by e-mail at [Pamela.McClam@sba.gov](mailto:Pamela.McClam@sba.gov).

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code required as a data entry field by the Federal Procurement Data System.

The SBA received a request on February 19, 2008, to waive the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing (Indoor and Outdoor Electrical Lighting Fixtures).

In response, on March 6, 2008, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing (Indoor and Outdoor Electrical Lighting Fixtures). SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this

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