

public interest concern.<sup>30</sup> Accordingly, the Commission believes the proposed rule change will continue to enable the Exchange to immediately suspend and delist companies that have failed to hold an annual meeting when the circumstances warrant it, but at the same time will provide the Exchange with flexibility to address instances in which the failure to hold an annual meeting, in the Exchange's discretion, counsels in favor of giving the non-compliant company an opportunity to regain compliance for a limited time period without being subject to immediate suspension and delisting or having to avail themselves of the Hearings Panel process to stay the action. The Commission believes, therefore, that the proposed rule change is designed to protect investors and the public interest, as well as to promote just and equitable principles of trade.

The Commission further notes that, as an additional protection of investors and the public interest, a listed company that receives notification that it is deficient in satisfying the annual meeting requirement will continue to be required to publicly disclose that it has received notification of non-compliance with the annual meeting requirement.<sup>31</sup> In addition, the Exchange publicly discloses a list of companies that are non-compliant with the continued listing standards and the listing standards with which they failed to comply.<sup>32</sup> Furthermore, by making it clear in the proposed rules that a Public Reprimand Letter does not apply to deficiencies from the requirement to hold an annual meeting, the Commission believes that the proposal should benefit the public interest and protect investors by helping to ensure that deficient companies are subject to suspension and delisting for failure to hold an annual meeting and ensures that the only cure under the Exchange rules is for the company to hold its annual meeting.<sup>33</sup> Accordingly, for the

foregoing reasons, the Commission believes that the proposed rule change is reasonably designed to further the goals of Section 6(b)(5) of the Act.

The Commission also finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>34</sup> which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Commission believes that assessing the \$5,000 compliance plan review fee for deficiencies from the annual meeting requirement on listed companies that have not opted-in to the Fee Program is reasonable and equitably allocated because it is the same fee that is charged for other deficiencies that allow for the submission of a plan of compliance.<sup>35</sup> Furthermore, the Commission believes that assessing different fees between listed companies that elect to participate in the Fee Program and those that do not are consistent with the approach allowed when the Fee Program was adopted.<sup>36</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>37</sup> that the proposed rule change (SR-NASDAQ-2015-144), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Robert W. Errett**,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

*Extension:* Rule 13e-1, SEC File No. 270-255, OMB Control No. 3235-0305.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission

plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13e-1 (17 CFR 240.13e-1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act to purchase any of its equity securities during the tender offer, unless it first files a statement with the Commission containing information required by the rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. The information filed under Rule 13e-1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 10 burden hours per response to provide the information required under Rule 13e-1 and that the information is filed by approximately 10 respondents. We estimate that 25% of the 10 hours per response (2.5 hours) is prepared by the company for a total annual reporting burden of 25 hours (2.5 hours per response × 10 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 12, 2016.

**Robert W. Errett**,  
Deputy Secretary.

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<sup>30</sup> See Exchange Rule 5810(c)(1).

<sup>31</sup> See Exchange Rule 5810(b) and IM-5810-1. See also Item 3.01 of Commission Form 8-K, which requires that a registrant disclose any notification from the exchange that maintains its principal listing that the registrant does not satisfy a rule or standard for continued listing on the exchange.

<sup>32</sup> See Exchange List of Non-Compliant Companies, available at <https://listingcenter.nasdaq.com/NonCompliantCompanyList.aspx>.

<sup>33</sup> Exchange Rule 5805(j) defines a "Public Reprimand Letter" as a letter issued by Staff or a written decision of an Adjudicatory Body in cases where the listed company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction.

<sup>34</sup> 15 U.S.C. 78s(b)(5).

<sup>35</sup> See proposed Exchange Rule 5810(c)(2)(A)(iii); see also *supra* note 21.

<sup>36</sup> See Notice, *supra* note 5, at 81575.

<sup>37</sup> 15 U.S.C. 78f(b)(2).

<sup>38</sup> 17 CFR 200.30-3(a)(12).