

MEMO# 27245

May 20, 2013

NYSE Proposes Various Changes to Listing Application and Rules

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 14-13
ETF ADVISORY COMMITTEE No. 26-13
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 25-13 RE: NYSE PROPOSES VARIOUS
CHANGES TO LISTING APPLICATION AND RULES

The Securities and Exchange Commission ("SEC") has published for comment a notice of a proposed rule change by the New York Stock Exchange LLC ("NYSE") to make various changes to the listing application and rules ("NYSE Proposal"). [1] These proposed changes would: (1) delete sections in the Listed Company Manual ("Manual") containing the listing application materials (including the listing application and the listing agreement) and adopt updated listing application materials that will be posted on the NYSE's website; (2) adopt as new rules certain provisions that are currently included in various forms of agreement in the Manual; and (3) adopt new rules that make explicit existing NYSE policies with respect to initial listing.

This memorandum briefly summarizes the NYSE Proposal. Comments on the NYSE Proposal are due by June 7. If you have concerns with any aspects of the proposed rule change, please contact Jennifer Choi at jennifer.choi@ici.org or (202) 326-5876 as soon as possible.

Listing Application

The NYSE proposes to move all of the required documents (including the listing application and the listing agreement) from the Manual and make them available on its website (www.nyx.com). If the NYSE makes any substantive changes to those documents, the NYSE will submit a rule filing to the SEC for approval.

In addition, the NYSE proposes to delete information requirements in the current listing application that are duplicative of information that the applicant files with the SEC under the Securities Exchange Act of 1934 ("Exchange Act") or the Securities Act of 1933 ("Securities Act") or do not provide any substantial assistance to the NYSE in determining suitability for listing given the totality of the information required.

The NYSE also proposes to add new Section 104.00 to describe the free confidential review of the eligibility for listing undertaken by the NYSE of any company that requests such a

review and provides the documents listed for domestic companies or for non-U.S. companies. A company may submit an original listing application only after it has been cleared by the NYSE after completion of a confidentiality eligibility review. [\[2\]](#)

The NYSE proposes various amendments to the listing agreements for both U.S. and non-U.S. issuers. The proposed amended listing agreements would include requirements, among others, on companies to agree to list on the NYSE all subsequent amounts of securities to be listed that may be issued or authorized for issuance and to furnish to the NYSE such information that the NYSE may reasonably request. In addition, the NYSE proposes to include an explicit agreement by the applicant issuer to abide by the transfer agent and registrar requirements.

Proposed New Rules Currently Included in Agreements

The NYSE proposes to move certain requirements from the forms of listing agreement to new or amended listing rules. These include provisions requiring partial redemptions (amended Section 311.01) and stock and bond certificates (amended Sections 501.01 and 501.02).

Codification of Existing NYSE Policies for Initial Listing

The NYSE proposes to include new Section 107(Financial Disclosure and Other Information Requirements), which includes policies that the NYSE states it has long applied as part of its initial listing process. These proposed requirements are as follows:

- Section 107.01 (Auditing Standards) A company's qualification to list will be determined on the basis of financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; (ii) reconciled to U.S. generally accepted accounting principles as required by the SEC's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for companies that are permitted to file financial statements using those standards consistent with the SEC's rules.
- Section 107.02 (Auditor Registration) Each company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002.
- Section 107.03 (SEC Compliance) No security shall be approved for listing if the issuer has not for the 12 months immediately preceding the date of listing filed on a timely basis all periodic reports required to be filed with the SEC or Other Regulatory Authority [\[3\]](#) or the security is suspended from trading by the SEC pursuant to Section 12(k) of the Exchange Act.
- Section 107.04 (Exchange Information Requests) The NYSE may request any information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial listing, including, but not limited to, any material provided to or received from the SEC or Other Regulatory Authority. A company's security may be denied listing if the company fails to provide such information within a reasonable period of time or if any communication to the NYSE contains a material misrepresentation or omits material information necessary to make the communication to the NYSE not misleading.

Moreover, the NYSE proposes to make explicit in Section 802.01D that the NYSE may delist a company for a breach of the terms of its listing agreement. Although this section already

provides broad discretion to the NYSE to delist a company when its continued listing is deemed inadvisable, the NYSE proposes to make explicit in the rule that a violation of the terms of a company's listing agreement may result in a delisting.

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endnotes

[1] See SEC Release No. 34-69565, 78 FR 29165 (May 17, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-05-17/pdf/2013-11759.pdf>.

[2] The NYSE also proposes to amend Section 702 to provide that, if a company wishes to list a class of securities but does not at the time of application have any other class of securities listed on the NYSE, the company must first seek a free confidentiality review.

[3] "Other Regulatory Authority" would mean: (i) in the case of a bank or savings authority identified in Section 12(i) of the Exchange Act, the agency vested with authority to enforce the provisions of Section 12 of the Exchange Act; or (ii) in the case of an insurance company that is subject to an exemption issued by the SEC that permits the listing of the security, notwithstanding its failure to be registered pursuant to section 12(b), the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary state.