

SEC UPDATE



NYSE Proposes Amendments to Mandate Eligibility to Participate in a Direct Registration System

In May, the NYSE filed proposed amendments with the SEC to amend its Listed Company Manual (the “Manual”) to mandate that all listed companies become eligible to participate in a Direct Registration System (“DRS”) administered by a clearing agency registered under Section 17A of the Securities Exchange Act of 1934 (the “1934 Act”).

Background

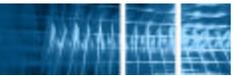
In 1996, the NYSE amended its rules to permit companies to participate in a DRS, although such participation was voluntary. A DRS is a system that allows an investor to establish, either through the issuer's transfer agent or through the investor's broker-dealer, a book-entry position in eligible securities on the books of the issuer and to electronically transfer its positions between the transfer agent and the broker-dealer. Through DRS, investors can have eligible securities registered in their name without having a certificate issued to them and can electronically transfer their securities to their broker-dealer in order to effect a transaction without the risk and delays associated with the use of certificates. Currently, the only registered clearing agency operating a DRS is the Depository Trust Company (“DTC”). Approximately 649 issuers listed on the NYSE currently participate in DRS.

In 2004, the SEC issued a concept release that discussed whether self-regulatory organizations that list securities should adopt rules to require issuers to participate in a DRS. Following the SEC's release, representatives from the NYSE, the Nasdaq Stock Market, the American Stock Exchange, DTC and the Securities Industry Association proposed a common approach that would require listed companies to become eligible to participate in a DRS but would not require participation. (The Nasdaq Stock Market and the American Stock Exchange have also filed proposed rule changes with the SEC that would require certain listed companies securities to become DRS-eligible.)

The Proposed Amendments

The NYSE has proposed a new Section 501.00 of the Manual that will require listed companies' securities to be eligible for a DRS operated by a clearing agency, as defined in Section 3(a)(23) of the 1934 Act, that is registered with the SEC pursuant to Section 17A(b)(2) of the 1934 Act. Currently, the DRS operated by DTC is the only facility meeting the definition. However, Section 501.00 will provide issuers with the option of using another qualified DRS if one should exist in the future.

In light of proposed Section 501.00, the NYSE has also proposed to amend Section 601.01 of the Manual (“Exchange Approval of Transfer Agents and Registrars”) to require that any issuer required to make a listed security eligible for DRS pursuant to proposed Section 501.00 must maintain a transfer



agent for that security which is eligible for DRS operated by either DTC or another registered clearing agency. In addition, the NYSE has proposed to amend the transfer agent agreements in Section 906 of the Manual to require transfer agents for securities subject to proposed Section 501.00 to agree that they will at all times be eligible either for the DRS operated by DTC or by another registered clearing agency.

Transition

In order to make a security DRS-eligible, as currently operated by DTC, the issuer must have a transfer agent which is a DTC DRS Limited Participant. DTC's rules require transfer agents for companies, as well as issuers acting as their own transfer agents, that issue securities in a DRS to be a DRS Limited Participant. While larger transfer agents serving many of the NYSE's listed companies are already DTC DRS Limited Participants, some transfer agents may need to take steps to become one and some issuers may wish to change their transfer agent in connection with this process. Furthermore, the NYSE has been notified that some issuers may need to amend their certificates of incorporation or by-laws in order for their securities to become DRS-eligible.

The proposed amendments will be introduced in two steps. To give companies listing for the first time greater flexibility to adjust to the eligibility requirements, proposed Section 501.00 will require all securities initially listed on the NYSE on or after January 1, 2007 to be eligible for DRS at the time of listing. This requirement will not apply to securities of companies (i) that already have securities listed on the NYSE, (ii) that immediately prior to such listing had securities listed on another registered securities exchange in the U.S. or (iii) whose securities are specifically permitted under NYSE's rules to be, and which are, book-entry only. (Securities that the NYSE permits to be book-entry-only include all debt securities, securities issued pursuant to Section 703.19 of the Manual and nonconvertible preferred stock.) On and after January 1, 2008, all securities listed on the NYSE will be required to be eligible for DRS, other than those securities that are specifically permitted under NYSE rules to be, and which are, book-entry only.

The complete text of the proposed amendments is available on the NYSE's website (<http://www.nyse.com>).

This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul, Weiss Securities Group, including:

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