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NYSE Amends Rules Relating to their Financial Listing Criteria

On May 16, 2006, the NYSE filed with the SEC proposed amendments (the “Amendments”) to its financial listing standards for domestic U.S. companies proposing to list on the NYSE. In general, the Amendments allow domestic companies to qualify for listing, under certain limited circumstances, on the basis of their earnings, cash flows or revenues, as applicable, for the most recent completed nine-month period. The NYSE filed the Amendments pursuant to rules that render the Amendments immediately effective upon filing.

The Amendments

Prior to the Amendments, Section 102.01C of the NYSE’s Listed Company Manual allowed companies to list under the NYSE’s domestic listing criteria by meeting one of the following three standards:

- **Earnings Test** - Pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, adjusted for certain specified items, must total at least \$10,000,000 in the aggregate for the last three fiscal years together with a minimum of \$2,000,000 in each of the two most recent fiscal years, and positive amounts in all three years.
- **Valuation/Revenue with Cash Flow Test**
 - (1) at least \$500,000,000 in global market capitalization,
 - (2) at least \$100,000,000 in revenues during the most recent 12 month period, and
 - (3) at least \$25,000,000 aggregate cash flows for the last three fiscal years with positive amounts in all three years, subject to certain adjustments.

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- Pure Valuation/Revenue Test

- (1) at least \$750,000,000 in global market capitalization, and
- (2) at least \$75,000,000 in revenues during the most recent fiscal year.

Under these tests, the NYSE has been unable to list a number of financially healthy companies because those companies had insufficient earnings, cash flow, or revenues in the earliest fiscal year required by the applicable standard. Companies often are very different at the time of their listing applications as compared to earlier periods. Such companies may have undergone a recapitalization transaction in which they substantially reduced their debt burden or experienced a significant change in operations.

The Amendments will enable the NYSE to qualify a company based on the most recent completed nine months in lieu of the earliest fiscal year otherwise required by the applicable standard in circumstances where a recapitalization transaction or significant change in operations has rendered the financial position of the company in that third year back irrelevant and the company would meet the requirements of Section 102.01C based on the most recent nine months and the two immediately preceding fiscal years. In such cases, the NYSE must conclude that the Company can reasonably be expected to qualify under the pre-existing standard on completion of its then current fiscal year.

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

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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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