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Deputy Secretary.
[FR Doc. 95-13533 Filed 6-1-95; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-35773; File No. SR-NYSE-95-19]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 16, 1995, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NYSE. The Commission is publishing this notice to solicit comments from interested persons.

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

NYSE proposes to adopt a new Rule 227 which will set forth depository eligibility requirements for issuers that apply to list their securities on NYSE.

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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, NYSE will adopt a uniform depository eligibility rule, proposed new Rule 227, for issuers that desire to list their securities on NYSE. The uniform rule has been developed by the Legal and

Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the National Association of Securities Dealers ("NASD"). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to NYSE's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day ("T+5") to a three-day ("T+3") settlement cycle. The transition is set to occur June 7, 1995.³

The proposed rule change will require domestic issuers to represent to the NYSE before issues of securities are listed that the CUSIP numbers identifying the securities have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under section 17A of the Act.⁴ This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible," as such term is used in Rule 226 of the NYSE rules.⁵ The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the

processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]), and in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on NYSE.

The proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it protects investors and the public interest by reducing the risk inherent in settling securities transactions to clearing corporations, their members, and public investors. This is accomplished because the new rule will promote book-entry settlement for the vast majority of initial public offerings and will reduce risk in the U.S. national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE 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

NYSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 NYSE consents, the Commission will:

(a) By order approve such proposed rule change or

⁶ 15 U.S.C. 78f(b)(5) (1988).

³ Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6-1 from June 1, 1995 to June 7, 1995).

⁴ 15 U.S.C. 78q-1 (1988).

⁵ The term "depository eligible securities" is defined in Rule 226(d) as securities that (i) are part of an issue (securities identified by a single CUSIP number) of securities that is eligible for deposit at a securities depository and (ii) with respect to a particular transaction, are eligible in book-entry transfer at the depository at the time of settlement of the transaction.

¹ 15 U.S.C. 78s(b)(1) (1988).

² The Commission has modified the language in these sections.

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

NYSE has requested accelerated approval of the proposed rule change in order that the rule can become effective on June 7, 1995.⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, 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 Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to file number SR-NYSE-95-19 and should be submitted by June 23, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-13534 Filed 6-1-95; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-21098; 812-6902]

IDS Certificate Company, Notice of application

May 26, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: IDS Certificate Company ("IDSC").

RELEVANT ACT SECTIONS: Order requested under sections 6(c), 28(b), 18(j)(1), and 28(c).

SUMMARY OF APPLICATION: IDSC requests an order under section 28(b) to permit

it to hold as "qualified investments" those investments permitted under the Minnesota life insurance code ("Minnesota Code") and to value these investments in accordance with the Minnesota Code; under section 6(c) to adopt a more conservative formula to calculate its minimum reserve requirements; under section 18(j)(1) to engage in certain hedging transactions that are permitted under the Minnesota Code; and under section 28(c) to authorize certain custodial arrangements. The order under section 6(c) would supersede a prior order (the "Interest Rate Order") relating to IDSC's reserve calculations.¹ In addition, the order under section 28(c) would amend two prior orders (the "Custody Orders") concerning IDSC's custodial arrangements.²

FILING DATE: The application was filed on October 15, 1987, and amended on March 30, 1988, March 3, 1989, December 22, 1989, May 24, 1990, August 20, 1990, September 27, 1994, and May 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, IDS Tower 10, Minneapolis, Minnesota 55440, Attn: Bruce A. Kohn.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Branch Chief, at (202) 942-0564, or Elizabeth G. Osterman, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

¹ *IDS Certificate Company*, Investment Company Act Release Nos. 14981 (Mar. 11, 1986) (notice) and 15045 (Apr. 7, 1986) (order).

² *IDS Certificate Company*, Investment Company Act Release Nos. 14652 (July 31, 1985) (notice) and 14712 (Sept. 11, 1985) (order); *IDS Certificate Company*, Investment Company Act Release Nos. 17652 (Aug. 3, 1990) (notice) and 17723 (Aug. 31, 1990).

application. The complete application may be obtained for a fee for the SEC's Public Reference Branch.

Applicant's Representations

1. IDSC, a registered face-amount certificate company, is a wholly-owned subsidiary of IDS Financial Corporation, a registered broker-dealer and investment adviser. IDSC issues several types of "face-amount certificates" with varying terms and maturities. Face-amount certificates are debt obligations of the issuing company. These certificates obligate the issuer to pay a certain amount to the holder thereof upon maturity or to pay a specified surrender value prior to maturity.

2. IDSC is located in Minnesota. A specific statutory mandate subjects IDSC to oversight and periodic inspections by the Minnesota Department of Commerce, which administers the Minnesota Code and also regulates insurance companies. The Department inspects IDSC at least annually, and focuses particularly on portfolio quality and the adequacy of reserves for losses.

A. Qualified Investments

1. As a face-amount certificate company, the Act requires IDSC to hold assets having a value of not less than the aggregate amount of its required paid-in capital and certificate reserves. Section 28(b) provides that these assets must consist of cash or "qualified investments," which are defined as those investments that life insurance companies are permitted to invest in or hold under the Code of the District of Columbia (the "D.C. Code") or investments that the SEC may authorize by rule, regulation, or order. In addition, the section provides that these investments must be valued in accordance with the D.C. Code.

2. Investments available in the marketplace have changed substantially since the adoption of the D.C. Code, and applicants believe that the D.C. Code is largely outdated as the last substantive amendments were passed in 1960. Under the D.C. Code, life insurance companies may not invest more than 5% of their assets in investments not expressly permitted by the D.C. Code (the "5% Limitation").

3. IDSC requests and order under section 28(b) to permit it to hold as "qualified investments" those financial instruments that life insurance companies may hold under the Minnesota Code, as in effect at the time relief is granted. In addition, if the requested relief is granted, these investments will be valued in accordance with the Minnesota Code. The Minnesota Code allows "financial

⁷ *Supra* note 3 and accompanying text.

⁸ 17 CFR 200.30-3(a)(12) (1994).