

multiple nominees at least 10 days prior to a shareholder meeting, thereafter providing daily updates on a consolidated basis up through the day prior to the meeting, providing two vote reports on the day prior to the meeting, and providing a final, consolidated vote report on the date of the meeting. Finally, the intermediary would be expected to consolidate the invoices that it presents to an issuer for the processing of multiple nominees.

These additions of proposed specificity to the functions that are expected of the intermediary in return for the coordination fee are not meant to be exclusive. However, NYSE believes that adding this level of specificity in connection with the minimum performance to be expected of an intermediary will help to clarify the relationship between intermediary and issuer. Both issuers and intermediaries will be put on notice as to the minimum performance that is to be expected of an intermediary in its performance of coordination functions.

## 2. Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)<sup>5</sup> that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In addition, the Exchange believes that an additional basis for the proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not 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*

According to the Exchange, it has engaged in on-going dialogue regarding the proposed rule change as well as other aspects of its proxy reimbursement guidelines with Commission staff as well as the Proxy Fee Working Committee, a group that NYSE selected as representative of the parties interested in the proxy process, including representatives of the American Society of Corporate Secretaries (on behalf of issuers). NYSE believes that a majority of the committee's representatives approve of the proposed rule change. NYSE has not otherwise solicited, and does not intend to solicit, comments on the proposed rule change. NYSE has not received any unsolicited comments from members or other interested parties.

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

Within 35 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 90 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 the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, 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

Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-00-36 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43164; File No. SR-NYSE-00-15]

### **Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., To Amend Paragraph 902.02 of the Exchange's Listed Company Manual Regarding the Initial Listing Fee for Tracking Stocks**

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 12, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission "SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 17, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis.

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

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual by eliminating

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19B-4.

<sup>3</sup> Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 13, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to clarify the purpose and application of the proposed rule change.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

the per-share initial listing fee and imposing a flat fee of \$5,000 for tracking stocks of listed companies, irrespective of the number of shares issued. Below is the text of the proposed rule change. New language is *italicized*.

\* \* \* \* \*

902.2 Schedule of Current Listing Fees (in effect Jan. 1, 1989)

\* \* \* \* \*

#### B. Initial Fee

The initial fee schedule applies to original listings and to the listing of additional shares, new issues of stock, warrants, or similar securities which are the subject of subsequent applications. *Tracking stocks of listed companies will be charged a fixed initial fee of \$5,000 in lieu of the per share schedule.*

\* \* \* \* \*

## 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 NYSE 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The NYSE seeks to eliminate the per-share initial listing fee for tracking stocks and instead impose a flat fee of \$5,000, irrespective of the number of shares issued. The NYSE represents that the proposed flat fee for a tracking stock, *i.e.*, stocks of an issuer that are intended to track the value of a portion of the issuer's business, would apply to a listed company that is listing an additional class of stock on the Exchange. The NYSE states that a company that is originally listing a single class of common stock on the Exchange would pay the regular fee applicable to that type of listing. A listed company that is listing an additional class of tracking stock on the Exchange would pay the proposed \$5,000 flat fee, regardless of the original listing criteria under which the

company initially listed on the Exchange.<sup>4</sup>

The Exchange notes that its listed companies and those companies with whom the Exchange discusses possible listing indicate an increased desire to utilize tracking stocks to achieve strategic and financial goals. The NYSE believes that the proposed rule change is responsive to the views and needs of all segments of the issuer community.<sup>5</sup> The NYSE further believes that a reduction in the initial listing fee for tracking stocks will place it in a more competitive position vis-a-vis this increasingly popular capitalization structure.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

The Exchange did not receive any written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, 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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-00-15 and should be submitted by September 13, 2000.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed the NYSE's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of Section 6 of the Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(4) of the Act,<sup>9</sup> because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.<sup>10</sup>

The Commission finds that the NYSE's proposed flat fee for tracking stocks is a reasonable response to the increased desire of companies to utilize this capitalization structure. The Commission further finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Exchange requested that the Commission accelerate the effective date of the proposed rule change so that the Exchange could institute the fee reduction as quickly as possible. The Commission agrees that approval of this request would enable issuers to promptly benefit from the proposed rule change. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,<sup>11</sup> to approve the proposal, as amended, on an accelerated basis.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSE-00-15), as amended, is hereby approved on an accelerated basis.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-43163; File No. SR-NYSE-00-16)

### Self Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., To Amend Paragraph 902.02 of the Exchange's Listed Company Manual Regarding Total Listing Fees Charged Per Issuer

August 16, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 25, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Item I and II below, which Items have been prepared by the Exchange. On July 17, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal and Amendment No. 1 on an accelerated basis, as a pilot program through December 31, 2002.<sup>4</sup>

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

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual by implementing a \$1 million fee cap per issuer in any given calendar year. Below

is the text of the proposed rule change. New language is *italicized*.

\* \* \* \* \*

902.02 Schedule of Current Listing Fees (in effect Jan. 1, 1989)

\* \* \* \* \*

It is suggested that the calculation of the fees be checked in advance with the Exchange where there is any question as to the amount of the fee payable. All fees will be calculated to the nearest dollar.

*There is a \$1 million cap on listing fees per issuer in any given calendar year. This fee cap includes and encompasses all classes of securities except derivatives issued by listed companies as part of their capital structure. This cap will not apply to closed-end funds. The cap is in effect on a pilot basis for 3 years through 2002.*

\* \* \* \* \*

#### 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 NYSE 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The NYSE proposes to amend its listed company fee schedule to implement a \$1 million fee cap per issuer in any given calendar year. The fee cap would include all classes of securities except derivatives issued by listed companies as part of their capital structure. In addition, the fee cap would not apply to closed-end funds. The fee cap would be in effect on a pilot basis through December 31, 2002.

The Exchange notes that it has a variety of listing fees that are or can be applicable to an issuer in a particular year. In the year of initial listing, the company pays an initial listing fee and a pro rata continuing fee as well. In any typical subsequent year, the company will pay a continuing listing fee, but might also pay additional fees for supplemental listing if, for example, the company issues additional shares of its listed stock or creates and issues an

additional class of stock. The Exchange represents that, depending on a company's number of shares outstanding and its additional listing activity in any particular year, listing fees can become substantial for an individual company. The Exchange therefore believes that the proposed rule change, which would be instituted on a pilot basis, is an appropriate response to the views of its listed companies.<sup>5</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

The Exchange did not receive any written comments on the proposed rule change.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

<sup>5</sup> See Amendment No. 1, *supra* note 3.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 13, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to clarify the purpose and application of the proposed rule change.

<sup>4</sup> Telephone conversation between Daniel Odell, Assistant Secretary, NYSE, and Susie Cho, Attorney, Division, Commission, on August 15, 2000.