

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 Association. All submissions should refer to file number SR-NASD-01-09 and should be submitted by February 20, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-2850 Filed 2-1-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43879; File No. SR-NYSE-00-32]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Stock Option Plans

January 24, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on January 19, 2001, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the proposed rule change³ as described in Items I, II, and

III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

In this amendment, the Exchange proposes two modifications to the Notice. First, the Exchange proposes to extend the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which amendments were approved by the Commission on a pilot basis ("Pilot") on June 4, 1999,⁴ until September 30, 2001.⁵ Second, the Exchange proposes to amend Section 312.04, which defines the term "broadly based." Specifically, the Exchange proposes to amend the requirements regarding awards granted under broadly based plans. The text of the proposed rule change follows. Additions are *italicized*; deletions are [bracketed].

312.00 Shareholder Approval Policy

312.04 For the purpose of Para. 312.03:

* * * * *

(h) A Plan is "broadly-based" if, pursuant to the terms of the Plan:

at least a majority of the company's full-time employees in the United States, who are "exempt employees," as defined under Fair Labor Standards Act of 1938, are eligible to receive stock or options under the Plan; and

at least a majority of the shares of stock or shares of stock underlying options awarded under the Plan[,] during *any three year period* [the shorter of the three-year period commencing on the date the Plan is adopted by the company or the term of the Plan,] must be awarded to employees who are not officers or directors of the company.

Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 ("Notice").

⁴ Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999). The Pilot was originally scheduled to expire on September 30, 2000. On September 22, 2000, the Pilot was extended through November 30, 2000 to accommodate an extended comment period for the Notice. See Securities Exchange Act Release No. 43329, 65 FR 58833 (October 2, 2000). On November 30, 2000, the Pilot was further extended until February 28, 2000. See Securities Exchange Act Release No. 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000).

⁵ The Exchange originally proposed a three-year extension. See Notice, note 3 *supra*.

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 Exchange 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 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

In the Notice, the Exchange requested a three-year extension of the Pilot to permit additional industry discussion of the issues, while at the same time enabling the Exchange to continue to study the experience of NYSE listed companies and their investors under the broadly-based plan rules contained in the Pilot. Following receipt of comments from interested persons and discussion with the SEC staff, the Exchange is amending its proposed to shorten the extension request so that the Pilot will expire on September 30, 2001.

Several commenters on the Pilot also expressed concern that the second part of the broadly definition, which focuses on actual grants made under a plan during either the first three years of a plan or the life of a plan if shorter than three years, does not protect against actions the company may take *after* the first three years. The Commission staff also noted this issue in its order approving the Pilot.⁶

In a letter to the Commission dated March 11, 1999,⁷ the Exchange explained that the three-year formulation was primarily intended to avoid imposing a one-year test. The Exchange further stated that it anticipated that companies would not change their policies after the first three years of a plan. While the Exchange maintains this opinion, it also is willing to remove any lingering concern over this issue by amending the rule to specify that, in order to be "broadly

⁶ See note 4 *supra*.

⁷ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated March 11, 1999 (Amendment No. 2 to File No. SR-NYSE-98-32, in which the NYSE proposed the pilot period for the proposed rule change and responded to the comment letters received from interested persons).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange submitted the proposed rule change on July 13, 2000, which was published in the *Federal Register* on August 10, 2000. See

based," at least a majority of the shares of stock or shares of stock underlying options awarded under a plan during any three year period must be awarded to employees who are not officers or directors of the company. Naturally, this refers to periods of three consecutive years, and is a continuing requirement that should be applied on a rolling three-year basis by plans with terms longer than three years. In the event that a plan is implemented with a stated term shorter than three years, awards should be made in a way that would meet the rule criteria during such shorter period.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that an exchange's rules be designed to promote just and equitable principles of trade, 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 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 has neither solicited nor received written comments on the proposal.

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.

In this regard, the Exchange consents to an extension of the time period for

Commission action to February 28, 2001.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the requirements of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-06009. 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-00-32 and should be submitted by February 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-2815 Filed 2-1-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43880; File No. SR-NYSE-00-63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Expansion of the Maximum Share Size Parameter for Single Orders Entered Into the SuperDot System

January 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² notice is hereby given that on December 29, 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, II and III below, which Items have been prepared by the Exchange. On January 10, 2001, the Exchange amended its proposal.³ Pursuant to rule 19b-4(f)(5),⁴ the Exchange has designated this proposal as one effecting a change in an existing order-entry or trading system of a self-regulatory organization that does not: (1) significantly affect the protection of investors or the public interest, (2) impose any significant burden on competition, or (3) significantly have the effect of limiting the access to or availability of the system. As such, the proposed rule change is immediately effective upon the Commission's receipt of this filing, as amended.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change expands to one million shares the maximum share size parameter for single orders entered into the SuperDot System ("SuperDot System" or "SuperDot").⁶

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 Exchange 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 and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange's SuperDot System provides automated order routing and reporting services to facilitate the timely and effective transmission, execution, and reporting of market and limit orders on the Exchange. Pursuant to Exchange

³ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jack Drogin, Assistant Director, Division of Market Regulation, Commission, dated January 10, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange reduced the proposed maximum SuperDot System share size parameter from three million shares to one million shares.

⁴ 17 CFR 240.19b-4(f)(5).

⁵ For purposes of calculating the 60-day abrogation period, the Commission considers the period to begin as of the date the Exchange filed Amendment No. 1, January 10, 2001.

⁶ See Amendment No. 1 *supra* note 3.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.