SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39659; File No. SR–NYSE–97–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval Policy

February 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1997, as amended on January 30, 1998,[1] the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 by the self-regulatory organization. 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 Exchange is proposing to modify its shareholder approval policy (the ''Policy''), contained in Paragraphs 312.03 and 312.04 of the Exchange's Listed Company Manual (the ''Manual''). The proposal will provide greater flexibility for listed companies to adopt stock option and similar plans (''Plans'') without shareholder approval, while preserving the significant shareholder rights afforded under the Policy.

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.

[1] The Exchange filed a letter supplementing and amending the proposed rule filing on January 30, 1998, the substance of which is incorporated into this notice. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Heather Seidel, Attorney, Market Regulation, Commission, dated January 28, 1998 (''Amendment No. 1'').

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

1. Purpose

During the past year, the Exchange has conducted a broad review of the Policy. Based on that review, the Exchange recently adopted, and the Commission approved, amendments to the Policy regarding related-party transactions and private sales.[2] The Exchange has continued its review of that portion of the Policy that requires shareholder approval of certain Plans.

Currently, the Policy requires a listed company to seek shareholder approval of all stock option plans that are not ''broadly-based.'' The only exception is for stock or options issued as an inducement for employment to a person not previously employed by the company.

The legal requirements governing shareholder approval of Plans has been subject to recent change. The Commission recently amended its rules in this area, and those rules now permit companies to adopt Plans without shareholder approval.[3] The Commission's action recognizes the increasing role of independent compensation committees and enhanced disclosure rules regarding compensation policies. Listed companies also have urged the Exchange to review the Policy in light of these changes.

For these reasons, the Exchange has been reviewing the Policy with its various constituents. The consensus favored some relaxation in the Policy, but not a total repeal of the shareholder approval requirement for Plans. Specifically, the general view was to require shareholder approval when there is the potential for a material dilution of shareholder's equity. The consensus was that the threshold should be based on the cumulative dilution of an issuer's non-broad-based Plans, and not on a single Plan. Constituents also asked for more guidance on the definition of a ''broad-based'' Plan.

This proposed rule change would amend the Policy to exempt from shareholder approval non-broad-based Plans in which:

- No single officer or director acquires more than one percent of the shares of the issuer's common stock outstanding at the time the Plan is adopted; and
- The cumulative dilution of all non-broad-based Plans of the issuer does not exceed five percent of the issuer's common stock outstanding at the time the Plan is adopted.

The Exchange reviewed the non-broad-based Plans of a sample of listed companies,[4] and the average dilution for such Plans was 3.35 percent, with the median dilution being somewhat lower. Based on this review, the Exchange believes that a five percent cumulative threshold will protect shareholder interests while affording issuers reasonable flexibility in establishing their compensation policies.

The Exchange also proposes a definition of a ''broadly-based Plan.'' The definition generally would require a review of a number of factors, including the number of persons covered by the Plan and the nature of the company's employees (such as whether they are compensated on an hourly or salaried basis). The Exchange will invite companies to discuss their proposed Plans with the Exchange staff to seek guidance on whether the Exchange considers such Plans to be ''broadly-based.''

To provide a level of certainty for companies, the definition would include a non-exclusive ''safe harbor'' for any Plan in which at least 20 percent of an issuer's employees are eligible, the majority of whom are neither officers nor directors. This is based on the current ''rule of thumb'' the Exchange uses in determining whether a Plan is broadly-based.[5]

The rule change also makes one correction to the previous amendments to the Policy, clarifying that, in calculating a company's outstanding shares, the company must exclude shares held by subsidiaries, not all affiliates.[6] Finally, the proposed rule

[2] *See* Securities Exchange Act Release No. 39098 (September 19, 1997) 62 FR 50979 (September 29, 1997).

[3] *See* Rule 16b–3(d) under the Exchange Act, as amended in Securities Exchange Act Release No. 37260 (May 31, 1996) 61 FR 30376 (June 14, 1996).

[4] NYSE has indicated that they sampled 29 companies. Telephone conversation between Michael Simon, NYSE, Steve Walsh, NYSE, and Heather Seidel, Market Regulation, Commission, on January 16, 1998.

[5] The NYSE's definition of a ''broad-based plan'' is based on NYSE interpretations of this term, and will not generally correspond to definitions regarding the scope of stock options plans used in other contexts. *See, e.g.*, Sections 401(a)(26), 410 and 423 of the Internal Revenue Code (26 U.S.C. 401(a)(26), 410 and 423) and Section 201(2) of the Employee Retirement Income Security Act (29 U.S.C. 1051(2)).

[6] In September, 1997, the Commission approved various changes to the NYSE's shareholder approval requirements. *See supra* note 2. One such change substituted the term ''affiliate'' for ''subsidiary'' in Paragraph 312.04(c) of the Manual. While the NYSE believed that use of the term ''affiliate'' would clarify the operation of that provision, in fact, it has created confusion. Specifically, an ''affiliate'' of a listed company can include natural persons who

change also amends the exception for stock or options issued as an inducement for employment to a person not previously employed by the company, to state that it must be a material inducement (as opposed to an inducement essential) to such person's entering into an employment contract with the company. In its discussions with the NYSE on the proposed rule change, the Legal Advisory Committee raised for discussion the current requirements that a stock option grant be an ''essential'' inducement, and believed that it is difficult, if not impossible, to conclude that any single item is ''essential'' to a person's entering into an employment contract. Rather, they believed that a ''materiality'' standard would be more workable, yet still would achieve the NYSE's goal of ensuring that the stock option grant be an important aspect of an employment decision. The NYSE agreed with that comment and incorporated the change into the proposed rule change.

2. Statutory Basis

The Exchange believes that the basis under the Act of this proposed rule change is the requirement under Section 6(b)(5) [7] 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 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 inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

control the company, as well as corporate affiliates. While the NYSE never intended to exclude stock holdings of natural persons in making calculations under Paragraph 312.04(c), the current wording of this provision is ambiguous. To eliminate this ambiguity, the NYSE now proposed to return to the original working of Paragraph 312.04(c) through the use of the term ''subsidiary.'' As before, the NYSE will interpret the term to include any majority-owned subsidiary of the listed company. *See* Amendment No. 1, *supra* note 1.

[7] 15 U.S.C. 78f(b)(5).

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

Within 35 days of the 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 the proposed rule change, or

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

IV. Solicitation of Comments

Interested person 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, N.W., Washington, D.C. 20549. 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 the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–37 and should be submitted by March 16, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-1(8)]

Newton v. Chater; Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 98-1(8).

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after February 23, 1998. If we made a determination or decision on your application for benefits between August 9, 1996, the date of the Court of Appeals decision, and February 23, 1998, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence