which the Subadvised fund serves as a funding medium) and does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives an inappropriate advantage.

7. Neither the Manager nor a Subadvised Fund will enter into Subadvisory Agreements with any Subadviser that is an Affiliated Subadviser, other than by reason of serving as Subadviser to one or more Subadvised Funds, without such Subadvisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund, or if applicable, pursuant to voting instructions provided by shareholders of those Feeder Funds investing in such Subadvised Funds (or by unit holders in the case of Feeder Funds that are insurance company separate accounts) that are registered under the Act or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable.

8. No trustee or officer of the Trusts or partner or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that Trustee, partner or officer) any interest in a Subadviser except for: (i) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with, a Subadviser.

9. Any changes to a Subadvisory Agreement that would result in an increase in the overall management and advisory fees payable by a Subadvised Fund will be required to be approved by the shareholders of the Subadvised Fund, or if applicable, pursuant to voting instructions provided by shareholders of those Feeder Funds investing in the Subadvised Fund (or by unit holders in the case of Feeder Funds that are insurance company separate accounts) that are registered under the Act or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, if applicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4470 Filed 2–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42437; File No. SR–AMEX–99–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The American Stock Exchange LLC Adopting Interpretive Materials Regarding Future Priced Securities

February 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 30, 1999, the American Stock Exchange LLC (''Amex'' 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 Amex. 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 Amex is proposing to adopt interpretive material relating to certain convertible securities. Below is the text of the proposed rule change. All text is being added.

* * * * *

Section 101
Commentary
.10 Future Priced Securities
Summary

Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for issuers. The security is generally structured in the form of a convertible security and is often issued via a private placement. Issuers will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the market price of the underlying common stock at the time of conversion and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the issuer's common stock at the time of conversion, the more shares into which the Future Priced Security is convertible. The delay in setting the conversion price is appealing to issuers who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in the common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Securities into large amounts of the issuer's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

For example, an issuer may issue $10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into $10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is $5 on the date of conversion, the Future Priced Security would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is $1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

Unless the issuer carefully considers the terms of the securities in connection with several Exchange rules, the issuance of Future Priced Securities could result in a failure to comply with the listing standards and concomitant delisting of the issuer's securities from The American Stock Exchange. The Exchange's experience has been that issuers do not always appreciate this potential consequence. Sections of the Exchange's Listing Standards, Policies and Requirements that bear upon the continued listing qualifications of an issuer and that must be considered when issuing Future Priced Securities include:

1. The shareholder approval rules
2. The voting rights rules
3. The rules relating to low priced securities
4. The listing of additional shares rules
5. The rules relating to the acquisition of a listed company by an unlisted company
6. The Exchange's discretionary authority rules

It is important for issuers to clearly understand that failure to comply with any of these rules could result in the delisting of the issuer's securities.

This notice is intended to assist companies considering financings involving Future Priced Securities. By adhering to the above requirements, issuers can avoid unintended listing qualifications problems. Issuers having any questions about this notice or proposed transactions should contact The Nasdaq-Amex Listing Qualifications Department at (301) 978–8026. The Exchange will provide an issuer with written interpretation of the application of Exchange rules to a

[1] 15 U.S.C. 78s(b)(1).

specific transaction, upon request of the issuer.

How the Rules Apply

Shareholder Approval

Section 713 of the Listing Standards, Policies and Requirements provides, in part:

The Exchange will require shareholder approval* * *in connection with a transaction involving* * *the sale or issuance by the company of common stock (or securities convertible into common stock) equal to 20% or more of presently outstanding stock for less than the greater of book or market value of the stock.[2]

When Exchange staff is unable to determine the number of shares to be issued in a transaction, it looks to the maximum potential issuance of shares to determine whether there will be an issuance of 20 percent or more of the common stock outstanding. In the case of Future Priced Securities, the actual conversion price is dependent on the market price at the time of conversion, and so the number of shares that will be issued is uncertain until the conversion occurs. Accordingly, staff will look to the maximum potential issuance of common shares at the time the Future Priced Security is issued. Typically, with a Future Priced Security, the maximum potential issuance will exceed 20 percent of the common stock outstanding because the Future Priced Security could, potentially, be converted into common stock based on a share price of one cent per share, or less. Further, for purposes of this calculation, the lowest possible conversion price is below the book or market value of the stock at the time of issuance of the Future Priced Security. Therefore, shareholder approval must be obtained *prior* to the issuance of the Future Priced Security. Issuers should also be cautioned that obtaining shareholder ratification of the transaction after the issuance of a Future Priced Security does not satisfy the shareholder approval requirements.

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20 percent or more of the common stock or voting power outstanding before the issuance of the Future Priced Security; [3] or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the *issuance* of the Future Priced Securities.

Voting Rights

Section 122 provides:

Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Exchange Act cannot be disparately reduced or restricted through any corporate action or issuance.

Under the voting rights rules, an issuer cannot create a new class of security that votes at a higher rate than an existing class of securities or take any other action that has the effect of restricting or reducing the voting rights of an existing class of securities. The voting rights rules are typically implicated when the holders of the Future Priced Security are entitled to vote on an as-converted basis or when the holders of the Future Priced Security are entitled to representation on the Board of Directors. Exchange staff will consider whether a voting rights violation exists by comparing the Future Priced Security holders' voting rights to their relative contribution to the company based on the company's overall book or market value at the time of the *issuance* of the Future Priced Security. The percentage of the overall vote attributable to the Future Priced Security holders and the Future Priced Security holders' representation on the board of directors must not exceed their relative contribution to the company based on the company's overall book or market value at the time of the issuance of the Future Priced Security. If the voting power or the board percentage exceeds that percentage interest, a violation exists because a new class of securities has been created that votes at a higher rate than an already existing class. Future Priced Securities that vote on an as-converted basis also raise voting rights concerns because of the possibility that, due to a decline in the price of the underlying common stock, the Future Priced Security holder will have voting rights disproportionate to its investment in the Company.

It is important to note that compliance with the shareholder approval rules prior to the issuance of a Future Priced Security does not affect whether the transaction is in violation of the voting rights rule. Furthermore, shareholders cannot otherwise agree to permit a voting rights violation by the issuer. Because a violation of the voting rights requirement can result in delisting of the issuer's securities from the Exchange, careful attention must be given to this issue to prevent a violation of the rule.

The Low Selling Price Provision

Section 1003(f)(v) provides that the Exchange may delist a security when it sells for a substantial period of time at a low price per share. This provision must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the price of the issuer's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the low selling price provision.[4]

Listing of Additional Securities

Section 301 provides:

A listed company is not permitted to issue, or to authorize its transfer agent or registrar to issue or register, additional securities of a listed class until it has filed an application for the listing of such additional securities and received notification from the Exchange that the securities have been approved for listing.

Issuers should be cognizant that under this rule the application for listing of additional securities is required *prior* to issuing any security (including a Future Priced Security) convertible into shares of a class of securities already listed on the Exchange. Failure to provide such notice can result in an issuer's delisting.

Public Interest Concerns

Section 1003(f)(iii) provides that the Exchange will consider delisting a security if the company or its management engages in operations which, in the opinion of the Exchange, are contrary to the public interest.

[2] The Exchange may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

[3] In order to obviate the need for shareholder approval through such an arrangement, those shares already issued in connection with the Future Priced Security must not be entitled to vote on the proposal to approve the issuance of additional shares upon conversion of the Future Priced Security.

[4] If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by Exchange rules and may be prohibited by the terms of the placement.

The returns on Future Priced Securities may become excessive compared with those of public investors in the issuer's common securities. In egregious situations, the use of a Future Priced Security may be contrary to the public interest. In addition to the demonstrable business purpose of he transaction, other factors that Exchange staff will consider in determining whether a transactions raises public interest concerns include: (1) the amount raised in the transaction relative to the issuer's existing capital structure; (2) the dilutive effect of the transaction on the existing holders of common stock; (3) the risk undertaken by the Future Priced Security investor; (4) the relationship between the Future Priced Security investor and the issuer; (5) whether the transaction was preceded by other similar transactions; and (6) whether the transaction is consistent with the just and equitable principles of trade.

Some Future Priced Securities may contain features that address the public interest concerns. These features tend to provide incentives to the investor to hold the security for a longer time period and limit the number of shares into which the Future Priced Security may be converted. Such features may limit the dilutive effect of the transaction and increase the risk undertaken by the Future Priced Security investor in relationship to the reward available.

Acquisition of a Listed Company by an Unlisted Company

Section 341 provides that the Exchange will apply its original listing guidelines to the surviving company following a plan of acquisition, merger or consolidation, which results in a listed company being acquired by an unlisted company even though the listed company is the nominal survivor.[5] In applying this policy, consideration will be given to all relevant factors, including the proportionate amount of the securities of the resulting company to be issued to each of the combining companies, changes in ownership or management of the listed company, whether the unlisted company is larger than the listed company, and the nature of the businesses being combined.

This provision applies regardless of whether the issuer obtains shareholder approval for the transaction. It is important for listed companies to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a change of control in a deemed merger or consolidation with the holders of the Future Priced Securities. In such event, an issuer would be required to reapply for initial listing and satisfy all initial listing requirements.

* * * * *

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 Amex 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 Amex 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

Amex staff has seen an increase in the use of Future Priced Securities, which are securities that convert into common stock of the issuer based upon a below-market floating conversion rate. In some cases, it appears that there may be some lack of understanding as to how these transactions may implicate the rules of the Exchange. Accordingly, the Exchange has prepared interpretive material, which issuers can use when considering whether to issue these securities.

Future Priced Securities are generally structured in the form of convertible preferred stock and are often issued via a private placement. Issuers will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the future market price of the underlying common stock and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the issuer's common stock at the time of conversion, the more shares into which the Future Priced Security is convertible. The delay in setting the conversion price is appealing to issuers who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in the common stock price, creating addition dilution to the existing holders of the common stock. Such a price decline allows the holders of the Future Priced Security to convert into large amounts of the company's common stock. As the company issues more shares, the common stock price may tend to decline further.

While Future Priced Securities can provide a legitimate mechanism for issuers to raise capital, each issuance may raise concerns under several Exchange rules, including those rules relating to shareholder approval, voting rights, low selling prices, listing of additional securities, and the acquisition of a listed company by an unlisted company. In addition, the use of Future Priced Securities may be inconsistent with the protection of investors and the public interest. An issuer may negotiate features designed to protect the issuer and the existing shareholders. The interpretive material is designed to alert issuers to the potential affect Future Priced Securities may have on the issuer's qualification for continued listing on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5)[6] of the Act, which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The interpretive material is designed to educate issuers as to how the Amex applies its various rules to Future Priced Securities in order to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] This provision is designed to address situations where a company attempts to obtain a listing on the Exchange by merging with an Exchange-listed company with minimal assets and/or operations.

[6] 15 U.S.C. 78f(b)(5).

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Securities Exchange Act of 1934 and subparagraph (f)(1) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

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 the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–50 and should be submitted by March 17, 2000.

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

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12)

Dated:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–4472 Filed 2–24–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42433; File No. SR–NYSE–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

February 16, 2000.

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 February 14, 2000, the New York Stock Exchange, Inc. (''Exchange'' or ''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 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

The Exchange proposes to extend the effectiveness of the pilot fees (''Pilot Fee Structure'') currently set forth in Exchange Rule 451, ''Transmission of Proxy Material,'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material,'' (collectively the ''Rules''). The Rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on February 15, 2000. The Exchange proposes to extend the Pilot Fee Structure through September 1, 2000.

In addition, the Exchange proposes to define the term ''nominee'' as it relates to calculation of the nominee coordination fee. The proposed definition would limit the universe of nominees in respect of whom the nominee coordination fee is payable.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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.

As first adopted, the Pilot Fee Structure revised the Rules to lower certain reimbursement guidelines, create incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees.[3] The Pilot Fee Structure has been modified and extended several times,[4] most recently by Commission order dated December 30, 1999.[5]

The Exchange believes that an extension of the Pilot Fee Structure through September 1, 2000, will give the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

[4] *See* Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50); 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); 41669 (July 29, 1999), 64 FR 43007 (Aug. 6, 1999) (order extending Pilot Fee Structure through November 1, 1999); and 42086 (Nov. 1, 1999), 64 FR 60870 (Nov. 8, 1999) (order extending Pilot Fee Structure through January 3, 2000).

[5] *See* Securities Exchange Act Release No. 42304 (Dec. 30, 1999), 65 FR 1212 (Jan. 7, 2000) (order extending Pilot Fee Structure through February 15, 2000).