

the Nasdaq Board with such concurrent authority.

*Supermajority Voting Requirements for By-Law or Certificate Amendments:* Delaware Law permits the certificate of incorporation to require a supermajority vote of stockholders for particular corporate action. The Certificate requires the approval of 66⅔% of the outstanding voting power for stockholder approval of amendments to certain provisions of the Certificate and for stockholders to amend the Nasdaq By-Laws.

#### Article Eleventh

The amended Certificate includes a new constituency provision that reflects the unique nature of the Nasdaq and its operations and status as a self-regulatory organization. To the fullest extent permitted by applicable law, this provision requires the Board to take into account certain factors in evaluating tender or exchange offers, mergers or consolidations, voting exemptions pursuant to Article Fourth, and other issues. These factors include, but are not limited to: (i) the potential impact thereof on the integrity, continuity and stability of The Nasdaq Stock Market and the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must 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. Nasdaq believes that the voting limitations and constituency provision in Articles Fourth and Eleventh of the Certificate will serve the public interest by ensuring that certain individuals or entities cannot gain under influence over the operations of the Nasdaq Stock Market.

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

Nasdaq 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.

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

Nasdaq 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 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 the 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 NASD. All submissions should refer to File No. SR-NASD-00-27 and should be submitted by June 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

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

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BILLING CODE 8010-01-W

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42785; International Series Release No. 1223; File No. SR-NYSE-00-23]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Shares of UBS AG

May 15, 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 May 15, 2000, the New York Stock Exchange, Inc. (the "Exchange" or the "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 and to approve the proposal on an accelerated basis.

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

The Exchange is proposing to adopt an interpretation under its rules to accommodate the trading of UBS AG ("UBS"). UBS is a stock corporation incorporated under the laws of Switzerland with a single class of common stock—ordinary shares with a par value of 20 Swiss Francs each—that will trade on both the NYSE and the Swiss Exchange, as well as on other exchanges around the world.

UBS will solicit proxies in a manner that combines characteristics of both the Swiss and U.S. markets. This rule change interprets Paragraphs 401.03 and 402 of the Exchange's Listed Company Manual ("Manual") to accept UBS's proposed proxy procedures.

<sup>3</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.

## 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 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 purpose of the proposed rule change is to provide an interpretation under the Exchange's rules to accommodate the listing and trading of UBS. This interpretation pertains to UBS's proxy solicitation and voting procedures, and is similar to an interpretation that the Commission approved in 1998<sup>3</sup> with respect to the listing of the ordinary shares of DaimlerChrysler.<sup>4</sup>

Under Swiss law, only stockholders who hold shares on the date of the stockholders meeting are entitled to vote. Accordingly, the record date for voting at a stockholder meeting is the meeting date. In contrast, Exchange rules require 10 days' notice of a record date and 30 days between record and meeting date. UBS will modify its current practice to accommodate the notice periods in the United States. In Switzerland, there already are procedures to distribute preliminary agendas and other information to shareholders approximately one month before the meeting. UBS has agreed to prepare and mail stockholder meeting materials approximately 45 days prior to its meeting, permitting the solicitation of proxies in the United States in the

currently accepted time frame. The company also has agreed to give the Exchange 10 days' notice of the record date.

The coincidence of the record and meeting date also raises the possibility that a selling shareholder could give a proxy and then sell the shares, with the buyer also getting a proxy. This could lead to double voting. In order to address this, both The Bank of New York as transfer agent (the "Transfer Agent") and Automatic Data Processing ("ADP"), the proxy agent for most member organizations, will institute procedures to monitor changes in the shareholder list between the date the proxy material is originally mailed out and the date of the meeting. These procedures will be designed (i) to cancel the votes of persons who submit proxies but sell their shares prior to the meeting date, and (ii) to facilitate voting by persons who purchase shares after the time the proxy material is mailed out, but before the meeting date. The second purpose of the proposed rule change is to accept these procedures as being in compliance with NYSE procedures.

Both the Transfer Agent and ADP will produce shareholder lists on the day designated for mailing the proxy material (approximately 30–45 days prior to the meeting). The Transfer Agent's list will reflect the names of registered holders and ADP's list will reflect the names of beneficial owners. Prior to the meeting date, the Transfer Agent and ADP will each produce a current shareholder list. If holders no longer appear on the list, then votes attributed to proxies submitted by them will be cancelled. If new holders appear, proxy materials will be mailed to them by the Transfer Agent, the case of registered owners, and by ADP, in the case of beneficial owners.

The shareholder lists can be updated periodically up until the date of the meeting. If practicable, proxy materials will be mailed to any new holders. This will be done on a best efforts basis. Such best efforts may include electronic notification and expedited delivery service. The proxy materials will describe voting procedures in detail. Notices will be included advising of the automatic revocation of the proxy if the holder sells stocks prior to the meeting. Finally, as a check and balance, the total vote cast in nominee name will not be permitted to exceed the total position so held.

In addition, UBS shareholders can vote in person at a shareholder's meeting. Under Swiss law, a shareholder must give the company notice of his or her intent to vote in person no later than three business days

prior to the meeting, and the person must be a record holder on the meeting date.<sup>5</sup>

#### 2. Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act<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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. 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, N.W.,

<sup>3</sup> See Securities Exchange Act Release No. 40597 (October 23, 1998), 63 FR 58435 (October 30, 1998). That rule change also interpreted the Exchange's rules to accommodate the form of DaimlerChrysler's share certificates. The Exchange is not requesting approval of any interpretations related to UBS's share certificates.

<sup>4</sup> The Exchange anticipates developing and filing with the Commission such generally applicable rules as are necessary to cover matters relating to the trading of ordinary shares of non-U.S. companies, thus making company specific rule filings such as this one unnecessary. Since UBS is listing before the development work can be finalized, however, the Exchange is requesting this company-specific approval, following the DaimlerChrysler model.

<sup>5</sup> With respect to dividends, UBS's record date also will be the date of the company's annual meeting (like most Swiss companies, UBS pays dividends annually.) This will make it impossible to trade the stock "ex-dividend" on the Exchange in the normal course. Accordingly, the Exchange will use its existing flexibility under Exchange Rules 235 and 257 and Paragraph 703.02 of the Manual to trade UBS stock with "due bills" for the period that the stock normally would trade ex-dividend. This is a process pursuant to which the seller will receive the dividend, but is obligated to pay the dividend to the buyer of the shares. This process will be transparent to investors since due bills net out in the clearing process. To avoid any potential confusion as to the "ex-dividend date," the Exchange will endeavor to transmit notices to member organizations well in advance of the dividend declaration date.

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

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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-00-23 and should be submitted by June 13, 2000.

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

The Commission finds that the NYSE's proposal to interpret the Manual to accommodate the listing and trading of UBS shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>8</sup> in that it will remove impediments to and perfect the mechanism of a free and open market, and will protect investors and the public interest, by enabling the NYSE to serve as a market for shares of UBS (rather than American depository receipts) while maintaining trading standards that are substantially equivalent to the NYSE's existing standards.

The Commission believes that it is reasonable for the NYSE to interpret the Manual to accept UBS's proxy procedures. By mailing stockholder meeting materials approximately 45 days prior to its annual meeting, UBS will give shareholders the same type of advance notification provided for in the Manual. Moreover, UBS's proxy procedures will cancel proxies for shares sold prior to the meeting, and will facilitate voting by persons who purchase shares during the month leading up to the meeting. In that way, the Exchange's proxy procedures regarding UBS appear to be substantially equivalent to the NYSE's existing standards, by permitting the

votes cast at the annual meeting to accurately reflect the company's shareholders at the time of the meeting. Indeed, the Commission approved a substantially similar interpretation in 1998 to permit the NYSE to trade ordinary shares of DaimlerChrysler.<sup>9</sup>

The Commission notes that the Exchange states that it anticipates developing and filing generally applicable rules related to the trading of ordinary shares of non-U.S. companies, making this type of company-specific rule filing unnecessary. The Commission supports that goal, and concurs that general rules are preferable to a series of company-specific exemptions.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**. According to the Exchange, the trading of UBS shares on the Exchange is scheduled to commence on May 16, 2000. The Exchange states that in light of the significant trading interest in UBS shares and the imminence of its listing date, approving this rule as quickly as possible will help eliminate uncertainty on the part of the market participants. The Exchange also states that DaimlerChrysler ordinary shares have traded without difficulty on the Exchange since their first listing.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve the NYSE's proposal on an accelerated basis to permit the public to begin to trade the newly issued UBS shares on the NYSE without questions about how UBS will conduct proxy voting.

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act<sup>10</sup> that the proposed rule change (SR-NYSE-00-23) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-12927 Filed 5-22-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before June 22, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

#### SUPPLEMENTARY INFORMATION:

*Title:* Amendments to License Application.

*Form No.:* SBA Form-415C.

*Frequency:* On Occasion.

*Description of Respondents:* SBIC Investment Companies.

*Annual Responses:* 1,200.

*Annual Burden:* 300.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 00-12925 Filed 5-22-00; 8:45 am]

**BILLING CODE 8025-01-U**

## DEPARTMENT OF STATE

**[Public Notice #3310]**

### Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will hold a meeting on June 16, 2000 from 2 pm to 5 pm to obtain public comment on issues to be

<sup>7</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See note 3, *supra*.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).