

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 persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 the principal office of the NASD.

All submissions should refer to File No. SR-NASD-99-33 and should be submitted by February 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42343; File No. SR-NYSE-99-47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 431 ("Margin Requirements")

January 14, 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 December 13, 1999, 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. 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 NYSE proposes to amend NYSE Rule 431, "Margin Requirements," to establish margin requirements for day trading in customer accounts of member organizations. The text of the proposal is below. Deletions are in brackets, and additions are in italics.

Rule 431—Margin Requirements

No change to 431(a) through (b)(3).

(b)(4) equity of at least \$2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). *The minimum equity requirement for a "pattern day trader" is \$25,000 pursuant to paragraph (f)(8)(B)(iv)(1) of this Rule.*

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with Regulation T of the Board of Governors of the Federal Reserve System and after such withdrawal the equity in the account is at least the greater of \$2,000 *(\$25,000 in the case of "pattern day traders")* or an amount sufficient to meet the maintenance margin requirements of this Rule.

No change to 431(c) through (f)(8)(A)(iii).

(f)(8)(B) Day Trading.

(i) The term "day trading" means the purchasing and selling *or the selling and purchasing* of the same security on the same day in a margin account except for:

(a) *a long security position held overnight and sold the next day prior to any new purchases of the same security, or*

(b) *a short security position held overnight and purchased the next day prior to any new sales of the same security.*

(ii) [A "day trader" is any customer whose trading shows a pattern of day trading.] *The term "pattern day trader" means any customer who executes four (4) or more day trades within five (5) business days. However, if the number of day trades is 6% or less of total trades for the five (5) business day period, the customer will no longer be considered a pattern day trader and the special requirements under paragraph (f)(8)(B)(iv) of this Rule will not apply.*

(iii) *The term "day trading buying power" means the equity in a customer's account at the close of business of the previous day, less any maintenance margin requirement as prescribed in paragraph (c) of this Rule, multiplied by four, for equity securities.*

Whenever day trading occurs in a customer's margin account the [margin to be maintained] *special maintenance margin required for the day trades in equity securities* shall be [the margin on the "long" or "short" transaction, whichever occurred first, as required pursuant to the other provisions of this Rule. When day trading occurs in the account of a "day trader" the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first, as required by Regulation T of the Board of Governors of the Federal Reserve System or as required pursuant to the other provisions of this Rule, whichever amount is greater.] *25% of the cost of all the day trades made during the day. For non-equity securities, the special maintenance margin shall be as required pursuant to the other provisions of this Rule. Alternatively, when two or more day trades occur on the same day in the same customer's account, the margin required may be computed utilizing the highest (dollar amount) open position during that day. To utilize the highest open position computation method, a record showing the "time and tick" of each trade must be maintained to document the sequence in which each day trade was completed.*

(iv) *Special Requirements for Pattern Day Traders*

(1) *Minimum Equity Requirement for Pattern Day Traders—The minimum equity required for the accounts of customers deemed to be pattern day traders shall be \$25,000. This minimum equity must be maintained in the customer's account at all times (see Supplementary Material .40 of this Rule).*

(2) *Pattern day traders cannot trade in excess of their day trading buying power as defined in paragraph (f)(8)(B)(iii) above. In the event a pattern day trader exceeds its day trading buying power which creates a special maintenance margin deficiency, the following actions will be taken by the member organization.*

(a) *The account will be margined based on the cost of all the day trades made during the day, and*

(b) *The customer's day trading buying power will be limited to the equity in the customer's account at the close of business of the previous day, less the maintenance margin required in paragraph (c) of this Rule, multiplied by two, for equity securities.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²² 17 CFR 200.30-3(a)(12).

(3) Pattern day traders who fail to meet their special maintenance margin calls as required within five business days from the date the margin deficiency occurs will be permitted to execute transactions only a cash available basis for 90 days or until the special maintenance margin call is met.

(4) Pattern day traders are restricted from utilizing the guaranteed account provision pursuant to paragraph (f)(4) of this Rule for meeting the requirements of paragraph (f)(8)(B).

(5) Funds, deposited into a day trader's account to meet the minimum equity or maintenance margin requirements of this Rule 431(f)(8)(B) cannot be withdrawn for a minimum of two business days following the close of business on the day of deposit.

(f)(8)(C) When the equity in a customer's account, after giving consideration to the other provisions of this Rule, is not sufficient to meet the requirements of paragraph (f)(8)(A) or (B) additional cash or securities must be received into the account to meet any deficiency within [seven] five business days of the trade date.

In addition, on the sixth business day only, member organizations are required to deduct from net Capital the amount of unmet maintenance margin calls pursuant to SEA Rule 15c3-1.

* * * * *

Supplementary Material

.10-.20 No change.

.30 In the event that the organization at which a customer seeks to open an account knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the minimum equity required under paragraph (f)(8)(B)(iv)(1) above (\$25,000) must be deposited in the account prior to commencement of day trading.

.40 When a customer engages in pattern day trading, the minimum equity required under paragraph (f)(8)(B)(iv)(1) above (\$25,000) must be deposited in the account before such customer may continue day trading.

.50 For purposes of paragraph (f)(8)(B)(iv)(2)(a) above, "time and tick" (i.e., calculating margin utilizing each trade in the sequence that it is executed, using the highest open position during the day) may not be used for a pattern day trader who exceeds their day trading buying power.

.60 For purposes of paragraph (f)(8)(B)(iii) and (iv)(2)(b), the day trading buying power for non-equity securities may be computed using the applicable special maintenance margin requirements pursuant to other provisions of this Rule.

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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 IV below. The NYSE 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 Exchange proposes to amend NYSE Rule 431 to implement specific requirements for day trading in customer accounts of member organizations. The primary purpose of the proposal is to require that minimum levels of equity and margin be deposited and maintained in day trading accounts sufficient to support the risks associated with day trading activities.

NYSE Rule 431 prescribes the minimum margin amount required to be maintained in customer accounts of member organizations. As a result of recent amendments to federal margin regulations and a rapidly changing industry environment, the Exchange established, in April 1996, a Rule 431 Committee (the "Committee") to review margin requirements and make recommendations for change. The Committee established subcommittees to review specific provisions of NYSE Rule 431. A special subcommittee was formed recently to address the risks associated with day trading in customer accounts. The Exchange's Board of Directors has approved a number of proposed amendments resulting from Committee recommendations.

This proposal amends NYSE Rule 431 to establish special maintenance margin requirements for customers that engage in day trading, and specific minimum equity requirements and buying power limitations for customers that demonstrate a pattern of day trading.

According to the Exchange, the recent growth and advances in technology have contributed to a dramatic increase in day trading by customers and in the establishment of broker-dealers whose primary business is to provide customers with direct links to the securities markets by allowing them to trade their own portfolios on-line. In this environment, day traders attempt to make profits on intra-day price movements of stock in the securities markets.

The proposed amendments to NYSE Rule 431(f)(8)(B) define "day trading" as "the purchase and sale of the same security in the same day in a margin account." An exception to the definition is provided when: (1) a long security position is carried in the account overnight, and sold the next day prior

to any new purchases of that security; or (2) a short security position is carried overnight and purchased the next day prior to any new sales of that security, (i.e., closing transactions to wrap-up the prior day's activities prior to any new purchases or sales of the same security). While such transactions would not fall within the definition of day trading, any further commitments with respect to that security (i.e., any subsequent purchase or sale) would be deemed day trading.

A customer will be deemed as a "pattern day trader" if there are four or more day trades within five business days in an account, provided that the number of day trades is more than 6% of total trades in the account for the five day period.³ The 6% criteria is proposed so that customers who engage in a large number of transactions overall are not inappropriately deemed a pattern day trader solely because they exceeded the "more-than-four-trade" standard. For example, a customer who transacts four day trades within five business days and who also has a total of 100 transactions in that time period would not be deemed a pattern day trader, because less than 6% of the total trades were day trades.

The proposal also defines "day trading buying power" to provide a maximum level of day trading allowed by "pattern day traders" without restrictions. For equity securities, buying power is the equity in the account at the close of the business day, less any maintenance margin, multiplied by four. For non-equity securities, buying power shall be computed using applicable special maintenance margin requirements pursuant to other provisions of the Rule.

The proposed amendments require day traders to maintain special maintenance margin commensurate with their levels of day trading activity. For day trades in equity securities, the required special maintenance margin is 25% of the cost of all day trades during the day. For non-equity securities, margin required is the same as maintenance margin required pursuant to other provisions of NYSE Rule 431. However, when two or more day trades occur on the same day in the customer's account, the required margin may be based on the highest open position

³ "Pattern day trading" status is determined on a rolling five business day basis. Telephone conversation among Donald van Weezel, Managing Director, Regulatory Affairs, NYSE; Albert Lucks, Director, Credit Regulation, NYSE; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation; Thomas McGowan, Assistant Director, Division of Market Regulation; Joseph Morra, Attorney; and Melinda Diller, Attorney, Commission, January 7, 2000.

during that day. This computation requires maintenance of "time and tick" records to document the sequence in which each day trade was completed.

Further, under the amended Rule, the time frame for meeting day trading special maintenance margin calls will be reduced from seven business days to five business days. If the special maintenance margin call is not met within five business days from the date the special margin deficiency occurred, pattern day traders will be restricted to day trading on a cash available basis only for 90 days, or until the special call for additional funds is met. Member organizations will incur a one time capital charge for the amount of any unmet deficiency on the sixth business day.

Currently, NYSE Rule 431 requires \$2,000 minimum equity for a customer to open a margin account. The Exchange is proposing to require that a pattern day trader's account maintain a minimum equity of \$25,000 at all times. In the event that a pattern day trader's account falls below the required minimum equity, no further day trades will be permitted until the requisite equity level is maintained. In addition, member organizations that have advance knowledge or reason to believe that a new account will pattern day trade must require the customer to deposit \$25,000 minimum equity into the account prior to the commencement of day trading activity.

The proposal will also restrict pattern day traders from trading in excess of their day trading buying power. If the day trading buying power is exceeded, and this results in a special maintenance margin deficiency, the following actions must be taken by member organizations: (i) the account will be margined based on the total cost of all day trade purchases for that day; and (ii) the customer's day trading buying power will be reduced by the maintenance margin amount required.

To provide greater financial stability to such accounts, the proposal requires that a day trading customer deposit into the day trading account a sufficient amount of money to meet minimum equity and maintenance margin requirements. Such deposits will not be allowed to be withdrawn for at least two business days.

In addition, pattern day traders will be prohibited from utilizing "cross guarantees" otherwise permitted in margin accounts. These prohibitions are intended to address instances where margin calls in day trading accounts are met by cross-guarantees within different customer accounts at the same broker-dealer. The net effect of these

prohibitions is to require that each pattern day trading account meets its requirements independently by utilizing funds actually on deposit in the account.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(5)(b) of the Act,⁴ which requires that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

The Exchange believes that the proposed rule change is also consistent with Section 7(a) of the Act⁵ and with the rules and regulations of the Board of Governors of the Federal Reserve System, because it prevents the excessive use of credit for the purchase or carrying of securities.

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

The Exchange believes that the proposed rule change will 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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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 Exchange 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, N.W., Washington, D.C. 20549-0609. Copies of the submissions, 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 persons, 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, 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-99-47 and should be submitted by February 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42350; International Series Release No. 1211; File No. SR-NYSE-00-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Listing Fees for Canadian Companies

January 19, 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 January 4, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78g.