

capitalization set forth neither the time frames for determining non-compliance nor compliance. Thus, the proposed rule change provides additional information that is critical to the determination of an issuer's continuing compliance with the standards relating to the number of market makers and market capitalization should an issuer fail to comply with either category.

#### *Shareholder Approval for the Potential Issuance of Shares*

Making clear that shareholder approval is required in the case of actual or potential issuance of shares promotes just and equitable principles of trade, and removes an impediment to and perfects the mechanism of a free and open market and a national market system. The Commission notes that Nasdaq has consistently interpreted the shareholder approval rules to include the potential issuance of shares and therefore the proposed rule change explicitly codifies accepted practice. Additionally, the Commission finds that requiring shareholder approval for the potential issuance of shares protects a shareholder's ability to vote on a significant corporate transaction that might affect the rights of the voting shareholder.

#### *Changes to Reflect the Underlying Security for ADRs*

The proposed rule change relating to the requirement that the underlying security be considered in determining compliance with initial or continued listing standards is appropriate because Nasdaq has consistently looked to the security underlying an ADR in other contexts involving ADRs (e.g., determining round lot shareholders, number of shares in the public float, market value of public float, and market capitalization). Thus, the proposed rule change removes an impediment to and perfects the mechanism of a free and open market by conforming the analysis of whether an ADR meets the initial or continued listing standards to other situations involving ADRs, and explicitly making clear that Nasdaq should consider the security underlying the ADR. The proposed rule change also protects the mechanism of a free and open market by explicitly stating the continued listing requirement time frames for ADRs.

#### *Rights and Warrants*

Finally, the Commission believes that the proposed rule change clarifying that rights as well as warrants are subject to the initial listing standards of Nasdaq Rule 4420(d)(1) will protect investors and the public interest. The

Commission notes that the continued listing standards address both rights and warrants,<sup>14</sup> and thus the proposed rule change rightly conforms the initial listing standards to the continued listing standards. Furthermore, the Commission finds that clarifying that rights and warrants need not meet the publicly held shares, market value of publicly held shares, or bid price initial listing standards is in the public interest because Nasdaq has represented that industry practices for pricing rights and warrants are such that Nasdaq has not historically required issuers to satisfy these requirements. Thus, the proposed rule change clarifies that these standards are not applicable to rights and warrants. Furthermore, the Commission notes that rights and warrants will be to satisfy all other initial inclusion requirements before they can be listed on Nasdaq, which should help to ensure that only bona fide companies with substantial float, investor base, and trading interest list rights and warrants on Nasdaq.

#### *Accelerated Approval of Amendment No. 3*

The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause for approving Amendment No. 3 to proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3 merely withdraws the portion of the proposed rule change that defines market capitalization to enable Nasdaq to more carefully consider how it wants to define the term without delaying approval of the remaining provisions of the proposed rule change.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether the amendment 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 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 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 the File No. SR-NASD-99-69 and should be submitted by November 9, 2000.

#### **V. Conclusion**

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the amended proposed rule change (SR-NASD-99-69) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jonathan G. Katz,**  
Secretary.

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43429; File No. SR-NYSE-00-42]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by 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 Communications Materials**

October 10, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> (the "Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 10, 2000, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

<sup>16</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.

<sup>14</sup> See Nasdaq Rule 4450(d).

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

The NYSE is proposing to extend the pilot fee structure ("Pilot Fee Structure") regarding Exchange Rules 451 and 465 ("Rules").<sup>3</sup> Among other things, the Rules establish guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing of proxy materials and other issuer communications (collectively, "Material") with respect to security holders whose securities are held in street name. The Pilot Fee Structure is scheduled to expire on October 10, 2000. NYSE proposes to extend the pilot through November 20, 2000.

## **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 statement 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**

Among other things, the Pilot Fee Structure lowers certain guidelines concerning the reimbursement of fees for the distribution of Material, creates incentive fees to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees. The proposed rule change would extend the Pilot Fee Structure termination date from October 10, 2000, to November 20, 2000.

An extension of the Pilot Fee Structure's termination date will give the Commission additional time to consider the pilot fees as well as the proposed nominee coordination fee,<sup>4</sup> without a lapse in the current rules. Absent an extension of the Pilot Fee

Structure's termination date, the fees in effect prior to the pilot program would return to effectiveness after October 10, 2000, creating confusion in the market.

#### **2. Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b)(4)<sup>5</sup> of the Act, which requires an exchange's rules to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In addition, the Exchange believes that the proposed rule change is consistent with section 6(b)(5)<sup>6</sup> of the Act, which requires 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 Exchange believes that the proposed rule changes does 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**

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

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section

19(b)(3)(A)<sup>7</sup> of the Act and Rule 19b-4(f)(6)<sup>8</sup> thereunder.<sup>9</sup>

A proposed rule change filed under rule 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE seeks to have the proposed rule change become operative on or before October 10, 2000, in order to allow the Pilot Fee Structure to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through November 20, 2000. This extension of the Pilot Fee Structure will provide the Commission with additional time to review and evaluate the pilot fees as well as the proposed nominee coordination fee components.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rates for Material distributed after October 10, 2000, will revert to those in effect prior to March 14, 1997. The Commission believes that such a result could be confusing and counterproductive.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately through November 20, 2000. At any time within 60 days of the filing of the 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.

## **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

<sup>3</sup> The text of Rule 451 also is included at Para. 402.10(A) of the Exchange's *Listed Company Manual*.

<sup>4</sup> The Exchange submitted a proposed rule change to set forth the minimum functions that an intermediary is expected to perform to recover the nominee coordination fee. See Securities Exchange Act Release No. 43159 (August 16, 2000), 65 FR 51384 (August 23, 2000).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change.

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-00-42 and should be submitted by November 9, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jonathan G. Katz,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43427; File No. SR-AMEX-00-40]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Inflation Indexed Securities

October 10, 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 August 3, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 grant accelerated approval to the proposed rule change.

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

The Exchange proposes to approve for listing and trading under Section 107A of the Amex *Company Guide*, index linked debt securities based in whole or

in part on changes in the value of the U.S. Consumer Price Index. The text of the proposed rule change is available at the Office of the Secretary, Amex, 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

Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>3</sup> Under Section 107A, in March of 1995, the Commission approved the Exchange's proposed rule change relating to the listing and trading of commodity linked notes ("COINS").<sup>4</sup> And in February of 1996, the Commission approved the Exchange's proposed rule change relating to the listing and trading of commodity indexed securities ("ComPS").<sup>5</sup> The Amex now proposes to list for trading under Section 107A of the *Company Guide*, indexed linked debt securities<sup>6</sup> ("Securities") whose value in whole or in part will be based upon the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (the "CPI-U" or "Index"), published monthly by the U.S. Department of Labor Bureau of

Labor Statistics ("BLS"). Holders of the Securities receive at maturity a payment linked to the value of the Index based on the following formula: Face Value + (Ending Index Value—Beginning Index Value), but not less than zero.

The "Beginning Index Value," which is approximately equal to the forward value of the CPI-U on the pricing date, will be announced at the time of the offering. The "Ending Index Value" will be equal to the ending level of the CPI-U, as published by the BLS and used by the U.S. Treasury for its Treasury Inflation Protected Securities ("TIPS").

##### CPIS Description

The Securities will be non-convertible and will conform to the listing guidelines under Section 107A of the *Company Guide*, which provide that such issues have: (1) Assets in excess of \$100 million and stockholders' equity of at least \$10 million; (2) a minimum public distribution of 1 million trading units with a minimum of 400 public shareholders; except, if traded in thousand dollar denominations, then no minimum number of holders; (3) a market value of not less than \$4 million.

Although a specific maturity date will not be established until the time of the offering, the Securities will provide for maturity of not less than one year from the date of issue. The Securities may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index. At maturity holders of the Securities may receive less than 100% of the initial issue price.

The redemption price of the Securities will be based on, in part, the ending Reference CPI-U level for the maturity date. At redemption, holders will receive Face Value *plus* (Ending Index Value *minus* Beginning Index Value); but not less than zero. Thus, at redemption, the holder could receive less than the Face Value or the Issue Price of the Securities, but never less than zero.<sup>7</sup> The denomination will be at least \$1000 and the redemption will be multiplied by a gross-up factor to produce a \$1000 face value, *i.e.* Gross-up  $\times$  Face Value *plus* (Ending Index Value *minus* Beginning Index Value). Equity margin rules will apply to the trading of the Securities. The Securities are designed to produce an ever-

<sup>3</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

<sup>4</sup> See Securities Exchange Act Release No. 35518 (March 21, 1995), 60 FR 15804 (March 27, 1995).

<sup>5</sup> See Securities Exchange Act Release No. 36885 (February 26, 1996), 61 FR 8315 (March 4, 1996).

<sup>6</sup> When the Amex originally filed its proposed rule change with the SEC, the Amex was uncertain as to whether the Securities would trade as preferred equity securities or debt securities. The Amex has since determined that the Securities will trade as debt securities. As per telephone conversation between Scott Van Hatten, Legal Counsel, Derivative Securities, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on September 29, 2000.

<sup>7</sup> The underwriter has advised the Amex that the Securities will comply with the "hybrid exemption" of the Commodity Futures Trading Commission ("CFTC"), 17 CFR Part 34. The underwriter further advised that it has presented a description of the structure and sample termsheet of the Securities to the staff of the CFTC in order to facilitate the approval of the registration and listing of the Securities.

<sup>10</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.