

eligibility against additional comprehensive criteria. The Commission notes that the proposal is not materially different from standards in place at other marketplaces; both the New York Stock Exchange, Inc. and The Nasdaq Stock Market, Inc. listing standards contain a variety of alternative qualifications standards, including standards based on measures of market capitalization, revenue and assets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Amex-2002-97) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47115; File No. SR-NYSE-2002-62]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Initial Fees and Continuing Annual Fees for Domestic and Non-U.S. Issuers, Technical Original Listing Fees, and Supplemental Listing Applications Fees

December 31, 2002.

I. Introduction

On November 20, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to increase and simplify the continuing annual listing fee pricing for all listed companies (excluding closed-end funds), and to increase the fee for technical original listings and supplemental listing applications. The NYSE also proposes to make permanent an overall \$1 million per-issuer fee cap that has been in effect on a pilot basis and is scheduled to expire on December

31, 2002.³ Notice of the proposed rule change was published for comment in the **Federal Register** on December 16, 2002.⁴ On December 30, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.⁵ This order approves the NYSE's proposed rule change on an accelerated basis, publishes notice of Amendment No. 1, and grants accelerated approval to Amendment No. 1.

II. Description

A. Background

As noted above, the proposed rule change would increase the fees the NYSE charges to issuers that are listed on the NYSE and simplify the fee schedule that provides for such fees. The NYSE proposes to make the fees effective as of January 1, 2003.

B. Changes to the Fee Schedule

The NYSE proposes to increase the "technical original" listing fee. Currently, Section 902.02B of the NYSE Listed Company Manual provides for a "reduced initial fee" of \$5,300 when a company makes a technical change in the nature of the company without substantively affecting the equity position or rights of its common shareholders. This fee, often referred to as a "technical original" listing fee, applies when, for example, a company changes its state of incorporation or reincorporates, forms a holding company which replaces the listed company, or does a reverse split. The NYSE proposes to increase this fee from \$5,300 to \$15,000.

Section 902.02B of the NYSE Listed Company Manual also specifies that the

minimum fee for the consideration of any listing application is \$1,500. When shares are being issued concurrently with the application, the company is charged the greatest of the per-share rate, this minimum fee, or the "technical original" listing fee described in the immediately preceding paragraph. The NYSE is proposing to increase the minimum initial fee from \$1,500 to \$2,500.

The NYSE proposes to amend Section 902.02C of the NYSE Listed Company Manual, which relates to the continuing annual listing fee.⁶ Continuing annual fees for each issuer are based on the number of its securities listed (including American Depositary Securities represented by American Depositary Receipts), and there is a schedule of per-share rates set forth in Section 902.02C (Section 902.04C for non-U.S. companies) of the NYSE Listed Company Manual. Currently, that schedule is tiered, with a per-share rate of \$1,650 per million shares for the first and second million shares, and a per-share rate of \$830 per million shares for additional shares beyond two million. Likewise, the minimum fee that an issuer pays to continue to be listed on the NYSE is subject to a tiered structure, whereby an issuer is subject to a variable annual fee minimum based upon the number of shares it lists. The NYSE is proposing to eliminate the tiers, so that the per-share rate will be \$930 per million shares subject to a minimum continuing annual fee of \$35,000, as provided for in Section 902.04C of the proposed rule change to the NYSE Listed Company Manual.

The impact of these proposed changes to the continuing annual fee as described below will be capped for each issuer at \$75,000 for calendar 2003, and at \$150,000 for calendar 2004.⁷ For a company hitting both those caps, the full impact of these price changes would not be borne until calendar year 2005.

Continuing annual fees, which are set forth in Section 902.02C and Section 902.04C of the NYSE Listed Company

³ See Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR-NYSE-00-16).

⁴ See Securities Exchange Act Release No. 46960 (December 6, 2002), 67 FR 77124 (December 16, 2002) (SR-NYSE-2002-62). The 15-day comment period expired on December 31, 2002.

⁵ See Letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 27, 2002 ("Amendment No. 1"). In Amendment No. 1, the NYSE requested that the Commission either approve the proposed rule change after thirty days following publication in the **Federal Register** with retroactive effectiveness to January 1, 2003, or find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. In addition, the NYSE provided the Commission with copies of four letters from issuers responding to correspondence from the NYSE in early October that announced the NYSE's intention to implement the new fee schedule. (The Commission also received a copy of one of the letters following publication of the notice in the **Federal Register**.) Furthermore, the NYSE set forth its view as to why it believed the Commission had good cause to accelerate the effectiveness of the proposed rule change prior to the thirtieth day after publication of the notice in the **Federal Register**.

⁶ At this time, the NYSE is not proposing to change the continuing annual fees as applied to closed-end funds listed on the NYSE, which continue to be subject to the fee schedule currently in effect. The Commission notes, however, that the NYSE is in the process of developing a revised fee schedule for closed-end fund issuers. Telephone conversation between Annmarie Tierny, Senior Counsel, Office of General Counsel, NYSE and Tim Fox, Law Clerk, Division of Market Regulation, December 5, 2002. In addition, no changes are being proposed to the several specific pricing provisions provided in Section 902.02C for "fund families" with a number of funds listed on the NYSE.

⁷ The Commission notes that the NYSE communicated these fee caps to issuers in correspondence sent to the issuers dated in early October of 2002. See Amendment No. 1.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.