

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47652; File No. SR-NYSE-2003-08]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing and Trading ELDS on the Exchange

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 4, 2003, the New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") filed with the Securities and Exchange Commission (the "SEC" or the "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 approve the proposal on an accelerated basis.

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

The NYSE proposes to amend section 703.21 of the Exchange's Listed Company Manual relating to the listing and trading of equity-linked debt securities ("ELDS") on the Exchange. The text of the proposed rule change is set forth below in its entirety. Proposed new language is in *italics*; proposed deletions are in [brackets].

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#### Listed Company Manual

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#### 703.00 Subsequent Listing Applications and Debt Securities Applications

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#### 703.21 Equity-Linked Debt Securities

The Exchange will consider listing equity-linked debt securities ("ELDS") that meet the criteria of this paragraph. "Equity-linked debt securities" are non-convertible debt of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock[ or], non-convertible preferred stock, *common units of a master limited partnership or any other common equity security of a type classified for trading as stocks by the Exchange.*

(A) through (D)—No change

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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 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 Exchange is proposing to amend section 703.21 of the Exchange's Listed Company Manual (the "Manual") relating to the listing and trading of equity-linked debt securities ("ELDS") on the Exchange. The Exchange is proposing to clarify that the definition of ELDS covers non-convertible debt of an issuer where the value of the debt is based, at least in part, not only on the value of another issuer's common stock or non-convertible preferred stock, but also on the value of common units of a publicly traded master limited partnership, as well as any other equity security of a type classified for trading as "stocks" by the Exchange. The Exchange represents that this terminological clarification is consistent with the intent of the original rule of section 703.21 and should provide issuers with greater transparency regarding the scope of the rule. The Exchange believes that this rule change will provide issuers with more flexibility in developing ELDS and thus provide greater investment choices in the market without having an adverse effect on investor protection.<sup>3</sup>

<sup>3</sup> In Securities Exchange Act Release No. 34545, dated August 18, 1994 (the "Release"), the Commission stated that, except under limited circumstances, the issuance of ELDS relating to any underlying security may not exceed five percent of the total shares outstanding of such underlying security. Footnote 10 of the Release states that the only exceptions to this restriction are where either (1) the issuer of the ELDS and the issuer of the underlying security are affiliated; or (2) the issuer of the ELDS holds an amount of the underlying security at least equal to the amount of the underlying security represented by the ELDS. As required by the SEC under the Release, the maximum percentage of ELDS that may be issued will be evaluated by the Exchange on a case-by-case

The Exchange represents that its rules and policies currently applicable to ELDS generally will apply to ELDS linked to limited partnership units and other equity securities.<sup>4</sup>

###### 2. Statutory Basis

NYSE believes that the proposed rule change is consistent with section 6 of the Act,<sup>5</sup> in general, and furthers the objectives of section 6(b)(5)<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 remove impediments to, and perfect the mechanism of a free and open market 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 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.

#### 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, 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 at 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of

basis in consultation with, and with the approval of, the staff of the Commission.

<sup>4</sup> An equity security on which the value of the debt is based must meet the requirements of Section 703.21(C) of the Manual.

<sup>5</sup> 15 U.S.C. 78f.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.