

C. Continuing Annual Fee

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Per Share Calculation—All issued shares including treasury shares are included in the calculation.

Continuing Annual Fees

(Effective January 1, 2003)

Per Share Rate—\$930 per million

Minimum Fee—\$35,000

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Computation of Fee—Other Equity Issues—

The fee is the greater of the minimum of \$5,000 per issue or the fee calculated on a per share basis. All issued shares are included in the calculation.

Special Rule for Repackaged Securities

Any issue of Repackaged Securities (as defined below), will be subject to the continuing annual fee schedule in effect at the time of listing of such issue, regardless of any changes to the fee schedule made thereafter.

For the purpose of this Para. 902.02.C., Repackaged Securities are securities listed under Para. 703.19 of this Manual, issued by a trust with a term of years, where the assets of the trust consist primarily of underlying fixed-income securities, and where the trust is funded (or a reserve is created) at issuance to cover the trust's principal obligations and associated expenses during the life of the Repackaged Securities.

Overall Fee Cap

In calculating the continuing listing fee for a listed company, the fees for all classes (or series) of listed securities of the company, excluding derivative products, fixed income products, and closed-end funds, are aggregated and the total continuing listing fee is capped at \$500,000.

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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 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

On January 1, 2003, the Exchange instituted certain changes to the Schedule of Current Listing Fees for NYSE listed securities, including an increase of continuing annual fees for NYSE listed securities and discontinuance of the "15-year" policy, which previously removed from the calculation of continuing annual fees any shares that have been listed on the NYSE for 15 years or more.³ Following the implementation of these fee changes, certain of the Exchange's member firms brought to the attention of the Exchange that the increase in continuing annual fees and elimination of the Exchange's "15-year" policy had a significant negative impact on the economics of "repackaged" securities.

For purposes of this filing, a "repackaged" security is a security (such security referred to as a "Repack") issued by a trust the assets of which are primarily fixed-income securities.⁴ The Repacks issued by the trust have set maturity dates which correspond to the maturity of the underlying securities and typically range from 25 to 50 years, but can be called prior to maturity, typically at par or face value. A typical Repack also offers a call protection period, generally five to seven years from issuance, and is subject also to a call of the underlying securities. The trusts themselves are structured to be relatively maintenance free and self-funded. Funds required for the maintenance of the trust, including any listing fees, are calculated based on the expected life of the Repacks and paid (or reserved for) on a present value basis at the time of initial issuance. As of January 1, 2003, there were approximately 150 Repacks listed on the Exchange.

Because of the Repack trusts' financial structure, any increase to applicable listing fees during the life of the Repack has significant economic and administrative implications for the trust and its depositor (also sometimes referred to as a trustor). The Exchange represents that when the Exchange increased its continuing annual fees for listed companies and discontinued its

"15-year" policy,⁵ the Repack trusts did not have sufficient funding to pay listing fees, and the trust depositor became responsible for providing significant additional—and unexpected—funding to the Repack trusts.

With respect to Repacks listed prior to January 1, 2003, the Exchange is proposing to (a) roll back the continuing annual fee increase that became effective on January 1, 2003, and (b) reinstate the "15-year" policy thereby removing from the calculation of continuing annual fees any underlying shares of Repacks listed on the NYSE for 15 years or more.⁶

In respect of Repacks listed after January 1, 2003, the Exchange proposes to provide that the continuing annual fee applicable to Repacks at the time of listing will remain in effect for the life of the security. The "15-year" policy will not be applicable to Repacks listed after January 1, 2003.

The Exchange believes that these fee changes will provide fee certainty for present and future Repacks by allowing trust depositors to reserve appropriately for continuing annual fees at the time of listing at the then effective fee schedule.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with the requirement of section 6(b)(4) of the Act,⁷ which provides that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in the 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.

³ See *supra* note 3.

⁶ Note that to the extent that Repacks are typically called prior to 15 years, the Exchange's "15-year" policy would not ordinarily come into play. However, for Repacks listed prior to January 1, 2003, the effect of the "15-year" policy was included in the calculation of the funding needed for Repacks listed, so its removal going forward adversely affected the funding calculation for those Repacks.

⁷ 15 U.S.C. 78f(b)(4).

³ Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (File No. SR-NYSE-2002-62).

⁴ Fixed-income securities include debt and trust preferred securities. Among the Repacks listed on the Exchange are: COBALTSSM, TRUGSSM, CorTSSM, PCARSSM, CBTCSM, PPLUSSM, SATURNSSM and CABCOSM.