

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 these filings also will be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR-NQLX-2003-06 and should be submitted by November 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48685; File No. SR-NYSE-2003-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing Fees for Closed-End Funds

October 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice hereby is given that on October 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE has represented that the proposal meets the criteria of paragraph (f)(6) of Rule 19b-4 and, therefore, may take effect immediately. 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 Section 902.02 of its Listed Company Manual to implement a \$75,000 cap on the collective original listing fees payable by any two or more closed-end funds from the same fund family listing at the same time. Below is the text of the

proposed rule change. Proposed new language is italicized.

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Listed Company Manual

902.00 Listing Fees

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902.02 Schedule of Current Listing Fees

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A. Original Listing Fee

A special charge of \$36,800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. In any event, each issuer is subject to a minimum original listing fee of \$150,000 inclusive of the special charge referenced in the preceding sentence.

The special charge is also applicable to an application which in the opinion of the Exchange is a "back-door listing". See Para. 703.08 (F) for definition.

Original listings of closed-end funds are not subject to either the special charge or to the minimum original listing fee. Closed end funds will instead pay an original listing fee based on the number of shares outstanding upon listing. Closed-end funds with up to 10 million shares outstanding will be subject to a \$20,000 original listing fee, closed end funds with greater than 10 million shares up to 20 million shares outstanding will be subject to a \$30,000 original listing fee, and closed end funds with more than 20 million shares outstanding will be subject to a \$40,000 original listing fee. Original listings of closed-end funds are also not subject to the initial fees described below.

If two or more closed-end funds from the same fund family list at the same time, the Exchange will cap the collective original listing fee for those funds at \$75,000. A fund family consists of closed end funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

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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 regarding 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

In recognition of the increasing cost pressures facing closed-end funds, the Exchange recently reduced the original listing fees applicable to closed-end funds by establishing a three-tiered structure based on the number of shares outstanding.³ Closed-end funds with up to 10 million shares outstanding are subject to a \$20,000 original listing fee; funds with greater than 10 million shares up to 20 million shares outstanding are charged a \$30,000 original listing fee; and funds with more than 20 million shares outstanding are subject to a \$40,000 original listing fee.

The Exchange states that it inadvertently omitted in SR-NYSE-2003-22 an additional proposal to impose a cap of \$75,000 on the collective original listing fees payable by two or more closed-end funds from the same fund family listing at the same time. Accordingly, the Exchange proposes that there be a cap of \$75,000 on the collective original listing fees payable by a group of two or more closed-end funds from the same fund family listing at the same time. A fund family consists of closed-end funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940.⁴ The Exchange clarifies that the \$75,000 cap is available regardless of whether the funds are transferring from another market or making an initial issuance of shares. In fact, if some of the funds listing at the same time are transferring to the Exchange, and others are conducting an initial public offering, the funds would still be eligible for the collective \$75,000 cap.

2. Statutory Basis

The NYSE believes that the basis for the proposed rule change is Section 6(b)(4) of the Act,⁵ which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its

¹⁷ 17 CFR 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR-NYSE-2003-22).

⁴ 15 U.S.C. 80a-2(a)(3).

⁵ 15 U.S.C. 78f(b)(4).