

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-00-20 and should be submitted by July 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42954; File No. SR-NYSE-100-8]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Exchange's Pride-Based Continued Listing Standards

June 19, 2000.

Pursuant to Section 19(b)(12) of the Securities Exchange Act<sup>1</sup> of 1934 ("Act"), and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 22, 2000, the New York Stock Exchange, Inc. ("NYSE" 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. On May 3, 2000, the Exchange

submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change and Amendment No. 1.

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

The proposed rule change consists of an amendment to Section 802.01C of the *Listed Company Manual* ("Manual") of the Exchange and corresponding changes to NYSE Rule 499. The text of the proposed rule change, as amended, is as follows. New text is *italicized*.

#### NYSE Listed Company Manual

##### Section 8

##### *Suspension and Delisting*

##### 801.00 Policy

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##### 802.00 Continued Listing

##### 802.01 Continued Listing Criteria

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##### 802.01C. Price Criteria

Average closing price of a security is less than \$1.00 over a consecutive 30-trading-day period (D).

(D) Once notified, the company must bring its average share price back above \$1.00 by the later of its subsequent annual meeting date or six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. 802.20 and 802.03 do not apply. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. In the event that at the expiration of the cure period, a \$1.00 average share price over the preceding 30 trading days is not attained, the Exchange will commence suspension and delisting procedures. Notwithstanding the foregoing, if the subject security *is not the primary trading common stock of the company (e.g., a tracking stock or a preferred class) or is a stock listed under the Affiliated Company standard where the parent remains in "control" as that term*

is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.

\* \* \* \* \*

#### NYSE Rules

#### Delisting of Securities

#### Suspension From Dealings or Removal From List by Action of the Exchange

The aim of the New York Stock Exchange is to provide the foremost auction market for securities of well-established companies in which there is a broad public interest and ownership. Rule 499.

\* \* \* \* \*

.20 NUMERICAL AND OTHER CRITERIA—WHEN A COMPANY FALLS BELOW ANY OF THESE CRITERIA, THE EXCHANGE MAY GIVE CONSIDERATION TO ANY DEFINITIVE ACTION THAT A COMPANY WOULD PROPOSE TO TAKE THAT WOULD BRING IT ABOVE CONTINUED LISTING STANDARDS.

\* \* \* \* \*

9. Average closing price of a security is less than \$1.00 over a consecutive 30 trading-day period. Once notified, the company must bring its average share price back above \$1.00 by the later of its subsequent annual meeting date or six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. .50 and .60 of this Rule 499 do not apply. The company must, however notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency. In the event that at the expiration of the cure period, a \$1.00 average share price over the preceding 30 trading days is not attained, the Exchange will commence suspension and delisting procedures. *Notwithstanding the foregoing, if the subject security is not the primary trading common stock of the company (e.g., a tracking stock or a preferred class) or is a stock listed under the Affiliated Company standard where the parent remains in "control" as that term is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.*<sup>1</sup>

<sup>3</sup> In Amendment No. 1, the NYSE made technical changes to the proposed rule text. See letter from Daniel P. Odell, Assistant Secretary, NYSE, to Nancy dSanow, Senior Special Counsel, Division of Market Regulation, SEC, dated May 1, 2000 ("Amendment No. 1").

<sup>4</sup> When the Exchange amended Section 802.01C of the Manual in SR-NYSE-00-12, the Exchange did not amend NYSE Rule 499 to reflect the

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

## 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 recently adopted and revised a series of standards and procedures regarding the continued listing of securities for both domestic and non-U.S. issuers.<sup>5</sup> One of the new standards is a price-based criterion of \$1 over the span of 30 consecutive days. Once a company triggers this standard, it must re-establish its trading price above \$1 within the later of its next annual meeting date or six months of notification. The Exchange represents that since the implementation of this new standard, several issuers (both listed and prospective) have questioned whether the standard is applicable to classes of securities other than the company's primary trading vehicle.<sup>6</sup>

Therefore, the Exchange proposes to modify the price-based criteria so that the Exchange will have the discretion to determine whether the \$1 standard is applicable to all of an issuer's listed classes of securities. In making such a determination, the Exchange would evaluate the overall financial status of a company, including the price of the primary trading common stock and its other listed securities.

corresponding changes. Accordingly, the Exchange proposes to do so now. See Securities Exchange Act Release No. 42671 (April 12, 2000), 65 FR 21227 (April 20, 2000).

<sup>5</sup> See Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999).

<sup>6</sup> For example, a company with a Class A common stock trading at \$30 and several tracking stocks, one of which is below \$1, would take the position that it is inappropriate to apply the price-based standard to this tracking stock because the low price of that stock is not indicative of the overall financial health and valuation of the company. In addition, the Exchange believes that delisting only the one low-priced security would result in the company's equity securities being traded in multiple markets, a situation undesirable to most issuers.

#### 2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with the requirement under Section 6(b)(5)<sup>7</sup> of the Act that an Exchange have rules that are designed 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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. 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-00-08 and should be submitted by July 17, 2000.

## IV. Commission's Findings and Order Granting Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange, and in particular, with the requirements of Section 6(b)(5),<sup>8</sup> because the proposed rule is designed 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.<sup>9</sup>

Specifically, the Commission believes that the proposed rule change to the Exchange's price-based standard will allow for a more appropriate application of the criteria to classes of stock other than a company's primary trading stock by allowing the Exchange to evaluate the overall financial status of a company before determining whether the \$1 standard should apply. The Commission further believes that the proposed rule change, as amended, is consistent with the Exchange's obligation to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that the proposed rule will increase the Exchange's ability to retain listings that would otherwise not qualify under its current price-based criteria.

The NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The NYSE contends that accelerated approval would enable the Exchange to uniformly implement the amendments to all affected listed companies and not disadvantage those possibly subject to the rule during the full commentary period. The Commission believes that it is reasonable to grant accelerated approval to allow the Exchange to uniformly implement the amendments to all affected listed companies at the same time, thereby eliminating any confusion or the possibility of inconsistent application of the new rule. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,<sup>10</sup> to approve the proposed rule change, as amended, on an accelerated basis.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-00-08), as amended, is hereby approved on an accelerated basis.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42960; File No. SR-NYSE-00-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Creating New Rule 438 Mandating Decimal Pricing Testing and Rescinding Rule 437 Relating to Year 2000 Testing

June 20, 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 June 14, 2000, 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 NYSE. The NYSE has designated this proposal as one concerned solely with the administration of the NYSE under Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 proposal consists of the adoption of new NYSE Rule 438 ("Participation in Decimal Conversion Testing") and the rescission of NYSE Rule 437 ("Participation in Year 2000 Testing"). The text of the proposed rule change is available upon request from the NYSE or 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 regarding 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 28, 2000, the Commission issued an order ("January 28 Order")<sup>4</sup> requiring the NYSE, the other national securities exchanges, and the National Association of Securities Dealers, Inc. (the "Participants") to take certain steps necessary to facilitate a safe and orderly transition to decimal pricing in the United States securities markets. The initial phase-in date of this process was originally scheduled for July 3, 2000.

In order to prepare for the implementation of decimal pricing industry-wide, the Commission's January 28 Order required, among other things, that the Participants jointly submit a "Decimals Implementation Plan" by April 14, 2000. The Commission additionally required each Participant to submit by April 28, 2000, such proposed rule changes as would be necessary to administer the Decimals Implementation Plan.

On April 13, 2000, the Commission suspended by order<sup>5</sup> the deadlines prescribed by the January 28 Order and solicited public comment on the feasibility of several alternatives for implementing decimal trading (including the possibility of trading exchange-listed securities in penny or nickel increments by September 4, 2000). On June 8, 2000, the Commission subsequently issued an order<sup>6</sup> directing the securities markets to begin phasing in decimal pricing no later than September 5, 2000.

In order to assist and coordinate the efforts of the NYSE's membership to ensure a smooth transition to decimalization, new NYSE Rule 438 authorizes the Exchange to require members and member organizations, in a manner and frequency to be prescribed by the Exchange, to participate in decimal pricing testing. The Exchange is prepared to adjust its

testing and implementation dates in accordance with Commission directives.

NYSE Rule 438.10 provides the Exchange authority to exempt either individual or categories of members and member organizations from some or all of the testing requirements. Further, NYSE rule 438.20 requires members and member organizations to maintain adequate documentation of such tests as may be required, including results of those tests, which must be made available to the Exchange for examination. NYSE rule 438.30 provides that the rule shall expire automatically upon the full implementation of decimal pricing.

In addition to creating the foregoing new rule, the Exchange proposes to delete NYSE Rule 437, authorizing the Exchange to require the membership's participation in testing related to potential computer problems associated with the year 2000 date change. Further testing in this regard is no longer necessary.

##### 2. Statutory Basis

The NYSE believes proposed NYSE Rule 438, which is designed to authorize the Exchange to require its members and member organizations, in a manner and frequency prescribed by the Exchange, to participate in testing of computer systems in preparation for the implementation of decimal pricing, is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and to 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 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.

<sup>12</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>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> Securities Exchange Act Release No. 42360 (Jan. 28, 2000), 65 FR 5003 (Feb. 2, 2000).

<sup>5</sup> Securities Exchange Act Release No. 42685 (Apr. 13, 2000), 65 FR 21046 (Apr. 19, 2000).

<sup>6</sup> Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).