

potentially be subject to financial risk. This proposal helps ensure that these specialists are adequately capitalized and can meet their obligation of maintaining fair and orderly markets.

The Commission also believes that it is appropriate to place additional capital requirements on specialists units that are combining. The combined entity will be larger than either of the two (or more) original entities, responsible for more securities, and financially exposed to a larger degree. The potential impact of the financial failure of a large-sized specialist unit upon the NYSE would be proportionately greater in comparison to the failure of either original unit. Thus, imposing more stringent capitalization requirements upon the new unit should decrease the probability of any such failure, and minimize any subsequent detrimental impact upon the market place.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-99-46) 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. 34-43111; File No. SR-NYSE-00-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend the Pilot Relating to Shareholder Approval of Stock Option Plans

August 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 13, 2000, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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.

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

The Exchange proposes to extend the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan ("1999 Proposal").³ The Commission approved 1999 Proposal on a pilot basis ("Pilot") on June 4, 1999.⁴ The Pilot is scheduled to expire on September 30, 2000. The Exchange proposes to extend the effectiveness of the Pilot until September 30, 2003.

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

The 1999 Proposal amended Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual to reflect the recommendations formulated by a Stockholder Approval Policy Task Force ("Task Force"), which was established by the Exchange to review comments and make recommendations concerning possible changes to its definition of what constitutes a "broadly-based" stock option plan for purposes of the Exchange's shareholder approval policy. The Task Force also

recommended that the Exchange actively consider utilizing an overall dilution maximum for all non-tax qualified plans that otherwise would be exempt from shareholder approval requirements. The Task Force recommended that the Exchange direct it or another appropriate group to immediately consider the dilution issue with a target date of the NYSE's September 1999 meeting of the Board of Directors.

The Exchange did so, and the Task Force continued its work and submitted a report of its findings to the Exchange's Board at the November 1999 meeting.⁵ The Task Force, however, recommended implementing enhanced disclosure requirements for the compensation tables contained in a company's SEC filings.⁶ Although the Task Force formulated dilution standards and presented them in its report, the Task Force believed and the Exchange's Board agreed, that such standards should be adopted uniformly by all the major listing markets in the United States. The Task Force was concerned that adoption of the dilution standard by only one market would lead to competition for listings based on disparities in the corporate governance rules of the respective markets. The Task Force believed that this would compromise the purposes intended to be served by those rules, and could undermine the public's confidence and trust in the markets.

Accordingly, the Exchange began discussions with the management of the National Association of Securities Dealers regarding a dilution standard, but no consensus has yet been achieved. The Exchange is requesting an extension of the Pilot for three years in order to permit additional industry discussion of the issues, while at the same time enabling the Exchange to continue to study the experience of NYSE listed companies and their investors that utilize the exemption from shareholder approval for broadly-based stock options plans, as approved in the Pilot.

The order issued by the Commission approving the 1999 Proposal on a pilot

³ The Commission notes that the definition approved in the 1999 Proposal classifies a stock option plan as broadly-based if, pursuant to the terms of the plan (a) at least a majority of the issuer's full time, exempt U.S. employees are eligible to participate under the plan; and (b) at least a majority of the shares awarded under the plan (or shares of stock underlying options awarded under the plan) during the shorter of the three-year period commencing on the date the plan is adopted by the issuer or the term of the plan itself are made to employees who are not officers or directors of the issuer.

⁴ Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

⁵ The Task Force had previously submitted a status report to the Commission in October 1999. See letter from Catherine Kinney, Group Executive Vice President, Office of the Chief Executive, NYSE, to Annette Nazareth, Director, Division of Market Regulation, SEC, dated October 28, 1999 (Status Report Submission NYSE 98-32).

⁷ See *supra* note 4.

⁸ The Commission notes that the Order directed the NYSE to address concerns raised regarding the three-year limit for reviewing grants awarded under broadly-based plans in any request to extend the Pilot by monitoring whether companies continue to

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.

basis ("Order")⁷ requested that the Exchange submit a data report in connection with any extension request such as the one contained herein. Through review of supplemental listing applications submitted since June 4, 1999, the Exchange is determining which newly adopted stock option plans relied on the broadly-based exception set forth in the 1999 Proposal.

The Exchange estimates that given the number of companies involved and the fact that the information is not otherwise necessary for any other compliance reason, it will submit the requisite report to the Commission within forty-five days of this filing. Should the Exchange find that it will take significantly longer to compile the full report, the Exchange will prepare and submit to the Commission an interim report covering the information assembled during the 45-day period while continuing to work expeditiously to complete the report.

In the Order, the Commission noted the concern expressed by several commenters on the 1999 Proposal that the second part of the definition of a broadly-based plan, which focuses on actual grants awarded during the shorter of either the first three years of the life of a plan or the term of the plan itself, does not protect against actions the company may take *after* the first three years. The Commission stated that it expected the Exchange "to monitor and notify those companies that are subject to this rule if it believes that they are not complying with the spirit of the rule by delaying actual awards under a Plan until the three-year period has expired."⁸

The data which the Exchange will obtain from its companies and report to the Commission in connection with this extension request will give some indication of how companies are awarding grants under broadly-based plans, although the Exchange does not

believe that this initial survey will provide any conclusive answers, and of course will not address whether companies will behave differently after the first three years of a plan. Nonetheless, if the grants reported by a company in connection with this survey appear heavily weighted towards officers and directors, the Exchange will counsel management of the company regarding the meaning and intent of the Exchange rule in an effort to assure that overall activity under the plan in the longer term will support the conclusion that the plan is in fact broadly-based.⁹ Should the listing markets move to a dilution standard that will replace the broadly-based exception, monitoring for this issue will not be necessary in the long term.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that extending the effectiveness of the Pilot until September 30, 2003 is consistent with these objectives because it will enable the Exchange to monitor the actions of listed companies with respect to their broadly-based plans, while permitting industry participants to continue discussions regarding a uniform dilution standard.

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 proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. 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. 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-00-32 and should be submitted by August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New system of records and proposed new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled, the *Social Security*

⁷ See *supra* note 4.

⁸ The Commission notes that the Order directed the NYSE to address concerns raised regarding the three-year limit for reviewing grants awarded under broadly-based plans in any request to extend the Pilot by monitoring whether companies continue to administer plans in a broadly-based fashion to determine whether changes need to be made to the participation prong. Specifically, the Commission stated that the NYSE should address whether the development of a rolling three-year period or other alternative would be more appropriate to ensure that plans are administered in a broadly-based manner. Further, the Commission directed the NYSE to submit a monitoring report including, at a minimum, information on the types and number of employees who are eligible to participate in broadly-based stock options plans, as well as information concerning actual awards being made under such plans. The Commission expects that the monitoring report due to be submitted to the Commission will contain such information.

⁹ See *supra* note 8.

¹⁰ 17 CFR 200.30-3(a)(12).