C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

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

The proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) thereunder,[11] in that it establishes or changes a due, fee or other charge imposed by the Association. At any time within 60 days [12] of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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 NASD. All submissions should refer to the File No. SR–NASD–00–10 and should be submitted by May 11, 2000.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b-4(f)(2).

[12] Because Amendment No. 1 replaces the original proposal, the 60 day period will be calculated based on a March 31, 2000 filing date.

[13] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formationl 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [14]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9878 Filed 4–19–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42671; File No. SR–NYSE–00–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Original and Continued Listing Standards for Affiliated Companies

April 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 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 March 28, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On April 12, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] 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 Nos. 1 and 2.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE clarified the method of analysis of a listed company's good-standing status. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division of Market Regulation (''Division'', SEC, dated March 24, 2000 (''Amendment No. 1'').

[4] In Amendment No. 2, the Exchange proposed to apply the changes proposed in Amendment No. 1 to paragraph 102.01C, U.S. companies, to paragraph 103.01B, Non-U.S. companies. The Exchange also proposed to delete the proposed rule text from paragraph 802.01C which would have applied the Price Criteria standard to a situation which is the subject of a separate proposed rule change by the Exchange. Furthermore, the Exchange changed their request for accelerated approval to April 12 from April 10, 2000, and the Exchange expanded their explanation of the proposed rule change in the purpose section of the filing. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division, SEC, dated April 11, 2000 (''Amendment No. 2'').

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

The proposed rule change consists of amendments to Sections 102.01B, 102.01C, 103.01A, 103.01B, 802.01B and 802.01C of the *Listed Company Manual* (''Manual'') of the Exchange. These sections of the Manual set forth the financial original and continued listing standards of the Exchange. The text of the proposed rule change, as amended, is as follows. New text is *italicized.*

NYSE Listed Company Manual

* * * * *

Section 1

The Listing Process

* * * * *

102.01B. A company must demonstrate an aggregate market value of publicly-held shares of $60,000,000 for companies that list either at the time of their initial public offerings (''IPOs'')(C) or as a result of spin-offs *or under the Affiliated Company standard*, and $100,000,000 for other companies (D).

102.01C. A company must meet one of the following financial standards:

* * * * *

(IV) Affiliated Company Standard [5]

(1) Market capitalization of $500 million or greater (as evidenced by written representation from the underwriter, company, or its investment advisor);

(2) Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);

(3) Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) Parent/affiliated company retains control of the entity or is under common control* with the entity.*

** ''Control'' for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other idicia*

[5] The formatting of the components in the proposed Affiliated Company listing standard were changed from capital letters (A, B, C, and D) to numbers (1, 2, 3, and 4). Telephone conversation between James Duffy, Senior Vice President and Associate General Counsel, NYSE, and Heather Traeger, Attorney, Division, SEC, on April 12, 2000.

that may be taken into account for this purpose include board representation, participation in policymaking processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. This test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.

* * * * *

103.01A. A company must meet the following distribution and size requirements

* * * * *

Market value of publicly-held shares (A)—$100 million Worldwide(B)

or for companies listing under the Affiliated Company standard—$60 million Worldwide(B)

103.01B. A company must meet one of the following financial standards:

* * * * *

OR

(IV) Affiliated Company Standard [6]

(1) Market capitalization of $500 million or greater (as evidenced by written representation from the underwriter, company, or its investment advisor);

(2) Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);

(3) Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) parent/affiliated company retains control of the entity or is under common control* with the entity.*

** ''Control'' for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other indicia that may be taken into account for this purpose include board representation, participation in policymaking processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. This test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.*

* * * * *

[6] The formatting of the components in the proposed Affiliated Company listing standard were changed from capital letters (E, F, G, and H) to numbers (1, 2, 3 and 4). *Id.*

Section 8

Suspension and Delisting

802.01B Numerical Criteria for Capital or Common Stock.

* * * * *

Affiliated Companies—Will not be subject to the $50 million market capitalization and stockholders' equity test unless the parent/affiliated company no longer controls the entity or such parent/affiliated company itself falls below the continued listing standards in this section.

Funds will be subject to immediate suspension and delisting procedures if (1) the average market capitalization over 30 consecutive trading days is below $15,000,000 or (2) the Fund ceases to maintain its closed-end status. The Exchange will notify the fund if the average market capitalization falls below $25,000,000 and advise the fund of the delisting standard. Funds are not subject to the procedures outlined in Paras. 802.02 and 802.03.

* * * * *

802.01C Price Criteria

* * * * *

Notwithstanding the foregoing, if the subject security is a stock listed under the Affiliated Company standard where the parent remains in ''control'' as the 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.

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 purpose of the proposed rule change is to add a new original listing standard and related continued listing standard to the Exchange's listing criteria.

According to the Exchange, companies in the current capital markets are employing strategies to ''unlock value'' in a portion of their business, particularly internet-related business. These include initial public offerings which spin-off or carve-out a subsidiary, as well as issuing ''tracking stocks,'' *i.e.,* stocks of an issuer that are intended to track the value of a portion of the issuer's business. Currently, the Exchange lists tracking stocks as additional shares of a listed issuer, but requires carve-outs and spin-offs to separately qualify under the original listing standards, even when the transaction is similar in many respects to one involving a tracking stock. The Exchange represents that its issuers, given a substantial continuing interest in these new entities, would like to keep them listed on the Exchange, and the Exchange agrees that in many cases that would appear to be appropriate. Accordingly, the Exchange is proposing to adopt a new Affiliated Company original listing standard, and a related continuing listing standard, that would accommodate these companies. The Exchange notes that conventional ''tracking stocks'' will continue to be listed without specific separate financial standards as they qualify as additional classes of securities of the already listed company.

Currently, all domestic companies listing on the Exchange must meet the distribution and minimum public market capitalization standards set forth in Sections 102.01A and 102.01B of the Manual, and Non-U.S. companies must meet the standards set forth in Section 103.01A. The Exchange notes that the pertinent sections of the Manual to this proposed rule change are Sections 102.01C and 103.01B, which set forth the financial criteria an applicant must meet. In applying the proposed Affiliated Company standard, therefore, applicants must comply with Sections 102.01A and 102.01B for domestic companies and Section 103.01A for Non-U.S. companies. The proposed changes to Sections 102.01C and 103.01B, which are identical, set forth four components as the minimum listing criteria for Affiliate Companies, including: (a) that the company have a market capitalization of $500 million or greater; (b) that the company have been in operation for a minimum of 12 months; (c) that the parent or affiliated company is a listed company in good standing; and (d) that the parent/affiliated company retains control of the entity or is under common control with the entity.

First, the Exchange proposes that the market capitalization of the Affiliated

Company must be at least $500 million to ensure the entity is of a size for which the new standard is appropriate. With respect to this requirement, the Exchange will require written representation from the underwriter, company or its investment adviser, as applicable, in order to establish that the new entity will have a minimum market capitalization of $500 million. The Exchange notes that the public market value of the Affiliated Company, as with spin-offs and carve outs, for example, must be at least $60 million.

Second, the Exchange proposes a maturation component that would require a minimum of twelve months of operations prior to the new listing. In this regard, the Exchange seeks to ensure that the entity is an appropriate candidate for the new standard by demonstrating operations for at least one year. The Exchange notes that there is no requirement that the entity be a separate corporate entity for such period, as it believes that such a construct is often not utilized by large corporations with multiple operating units.

Third, the proposed standard would require a two-part test with regard to the parent or affiliated company. First, it must be a listed company in good standing. The Exchange represents that in determining whether the parent/affiliate is in good standing, it will take into consideration the portion of the business that is becoming the new company. Specifically, in determining the stockholders' equity of the parent, the portion applicable to the new entity not retained by the parent/affiliate would be deducted. The Exchange will require written representation from the underwriter, company or its investment advisor, as applicable, in order to establish that the parent/affiliate will remain in good standing following he severance of the new entity. In adopting this approach, the Exchange seeks to prevent any double counting of the value of the new entity during the listing process. Second, the parent/affiliate must retain a certain amount of control (or be under common control). The Exchange believes the appropriate threshold at which to set a presumption of control is 20%. The Exchange will evaluate all inter-locking elements between the parent and the new entity in making the determination of whether sufficient control is retained such that the Affiliated Company standard is appropriate.

In addition to the proposed initial listing standard, the Exchange is proposing two changes to its continued listings standards. To maintain listing on the Exchange, companies must exceed a conjunctive test of at least both $50 million in market capitalization and $50 million in shareholders' equity, and a stand-along market capitalization minimum of at least $15 million. With respect to companies listed under the proposed Affiliated Company standard, the conjunctive test in Section 802.01B of the Manual would only be applied in the event that the parent/affiliated company no longer controls the entity or the parent/affiliated company itself fell below the continued listing standard. In this regard, the Exchange believes that, so long as the parent is in good financial standing and control is maintained, the new entity should be subject only to the minimum standard of $15 million in market capitalization.

The second proposed change to the continued listing standards pertains to Section 802.01C of the Manual. This section imposes a $1 Price Criteria, so that a security for which the stock price has fallen below $1 would be considered by the Exchange to be below continued listing standards. Again, the Exchange believes that, so long as the control elements continue to be in place, the application of the Price Criteria may not necessarily be appropriate. In this regard, the Exchange will evaluate the financial status of both the new company and the parent/affiliated company.[7]

2. *Statutory Basis*

The Exchange represents that the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act;[8] 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 solicited comments from its Legal Advisory Committee and Listed Company Advisory Committee. All comments received from the two Committees were in support of the proposed amendments.[9] The sole written comment support the proposal because transactions that result in Affiliated companies ''maximize value and return to operational units of a more controllable size.''[10] This commenter also stated that fees on Affiliated Company listings should be addressed at some point, and suggested that there should be a notion of a segregated operational unit, division, or management in addition to the 12 months of operating results.[11] In addition, this commenter questioned whether the 12-month benchmark is sufficient.[12]

In response to this commenter, the Exchange stated that it will address the issue of fees separately, and noted that most divisions that evolve into separate entities are segregated with a management structure in place in the particular division.[13] The Exchange further stated that it believes 12 months provides a sufficient benchmark as it would allow for an adequate gauge of credibility that the division was not formed solely to effectuate the transaction.[14]

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 filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No.

[7] The Exchange notes that a similar change has been proposed regarding applicability of the Price Criteria to second classes of securities. This proposed change has been filed with the Commission (SR–NYSE–00–08).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange noted that all comments were verbal, with the exception of one written comment received via electronic mail. *See* Amendment No. 1, *supra* note 3.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

SR–NYSE–00–12 and should be submitted by May 11, 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),[15] 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.[16]

Specifically, the Commission believes that the Exchange's proposed Affiliated Company listing standard and related continuing listing standard will permit the Exchange, without compromising the effectiveness of the Exchange's listing standards, to retain the listings of its issuer's carve-outs, spin-offs or ''tracking stocks'' that meet the requirements of the Affiliated Company standard. 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 by providing the NYSE with greater flexibility in determining which equity securities warrant inclusion in its market. As such, the proposal should allow the Exchange to add listings based on the prospective entity's relationship with an NYSE listed company in good standing that otherwise might not qualify under its current original listing 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 Exchange requested that the Commission accelerate the effective date of the proposed rule change so that issuers engaged in transactions that would result in Affiliated Companies could avail themselves of the new standard by April 12, 2000.[17] The Commission believes that it is reasonable to permit the Exchange to implement the new standard by April 12, 2000, as it would allow issuers currently engaged in such transactions to avail themselves of the new listing standards after such date. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[18] 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,[19] that the proposed rule change (SR–NSYE–00–12), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9916 Filed 4–19–00; 8:45 am]

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[15] 15 U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See* Amendment No. 2, *supra* note 4.

[18] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42689; File No. SR–NYSE–99–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the New York Stock Exchange, Inc. Relating to NYSE's Procedures for Delisting a Security and Related Issuer Appeals

April 13, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on December 27, 1999,[3] Amendment No. 2 on March 9, 2000,[4] and Amendment No. 3 on March 26, 2000.[5] The proposed rule change is 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 proposed rule change consists of amendments to the Exchange's *Listed Company Manual* (''Manual'') and NYSE Rule 499 regarding the Exchange's procedures for delisting a security and the accompanying appeals process available to the issuer. The text of the proposed rule change follows. New text is *italicized* and deleted text is bracketed.

804.00 Procedure for Delisting

• If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. *The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin appending a suffix to the security's ticker symbol identifying the security's status.*

• *The* [Such] notice *to the issuer* shall also inform the issuer of its right to a *review of the determination by* [hearing before] a Committee of the Board of Directors of the Exchange (*comprised of a majority of public Directors*), provided a written request for such a *review* [hearing] is filed with the Secretary of the Exchange within *ten business* [twenty] days after receiving the aforementioned notice. *Such review will be conducted on the next monthly Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange. If the next Review Day is in less than 25 business days, the review will be scheduled for the following Review Day.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange withdrew its request for implementation of a pilot program on an accelerated basis, provided an opportunity for an issuer to request a hearing (which a committee could grant or deny), and added a specific day each month on which committee members would be available to conduct reviews. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 21, 1999 (''Amendment No. 1'').

[4] In Amendment No. 2, the Exchange proposed the following additional changes to: (1) give issuers ten business days in which to notify the Exchange of an intent to appeal: (2) run the notice and document submission time period consecutively; (3) expand the hearing cycle period from twenty business days to twenty-five business days; and (4) clarify in its rule language that the Committee would be comprised of a majority of public directors for purposes of delisting appeals. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated March 7, 2000 (''Amendment No. 2'').

[5] In Amendment No. 3, the Exchange made technical changes to its proposed rule language. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Belinda Blaine, Associate Director, Division, Commission, dated March 23, 2000 (''Amendment'').