

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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR-MSTC-96-03 and should be submitted by August 14, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-18799 Filed 7-23-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37445; File No. SR-NYSE-95-42]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Establishment of Uniform Listing and Trading Guidelines for Narrow-Based Stock Index Warrants

July 16, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The NYSE filed Amendments No. 1 ("Amendment No. 1") and 2 ("Amendment No. 2" together with Amendment No. 1 "Amendments") to the proposed rule change on April 3 and July 12, 1996, respectively.¹ This Order approves the proposed rule change, as amended, on an accelerated basis and also solicits comments on the proposed rule change, as amended, from interested persons.

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

The NYSE proposes to amend Rule 414 (Index and Currency Warrants) and Rule 431 (Margin Requirements) to permit the trading of warrants on an industry index stock group ("industry index stock group" or "narrow-based stock index"). Amendments No. 1 and 2 propose to modify Rule 414 and certain of the position limit rules that apply to narrow-based stock index warrants, as discussed below.

The text of the proposed rule change is available at the Office of the Secretary of the NYSE and at 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 NYSE 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 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

On August 29, 1995, the Commission approved rule changes for the NYSE and several other stock exchanges which established uniform listing and trading guidelines for broad-based stock index, currency, and currency index warrants ("broad-based regulatory framework").² Those standards govern all aspects of the listing and trading of index warrants, including issuer eligibility, customer suitability and account approval procedures, position and exercise limits, reportable positions, automatic exercise, settlement, margin, and trading halts and suspensions.

The purpose of this proposal is to allow for the listing and trading of warrants on narrow-based stock index groups in a similar manner as was recently approved for other U.S.

exchanges.³ With the exceptions of separate higher margin requirements and reduced position limits, the broad-based regulatory framework will fully apply to the listing, trading, and surveillance of narrow-based index warrants. This includes a heightened suitability standard for recommendations in index warrants as well as requiring all purchasers of index warrants to be options approved. The proposed changes from the broad-based regulatory framework are outlined as follows:

(a) Position Limits

The Exchange notes that position limits for broad-based index warrants were set at levels approximately equal to 75 percent of the then applicable corresponding limits applicable to options on the same index. In turn, the Exchange proposes to establish narrow-based index warrant position limits at a level equal to 75 percent of those recently approved for narrow-based index options.⁴ As a result, narrow-based position limits would be governed by three tiers, using the same qualifications criteria as used for narrow-based index option position limits:

(i) 4,500,000 warrants if any single stock in the group accounts for 30 percent or more of the index group value.⁵

(ii) 6,750,000 warrants where either: (a) any single stock in the group accounts for 20 percent or more of the group's numerical index value; or (b) any five stocks in the group together account for more than 50 percent of the index group value and no single stock in the group accounts for 30 percent or more of the index group value.⁶

(iii) 9,000,000 warrants if the underlying group does not fall within the criteria set forth in either of the other two tiers.

The NYSE proposes that it make the determinations concerning the relative weight of stocks within an index when a warrant on the index first commences to trade on the Exchange and twice a year thereafter. Furthermore, the Exchange proposes to establish uniform dates on which to make those semi-annual determinations so as to allow it to make all such determinations for all Exchange-listed industry index warrants at the same time.

³ On March 21, 1996, the Commission approved uniform listing and trading guidelines for narrow-based stock index warrants for the Philadelphia Stock Exchange, American Stock Exchange, and Chicago Board Options Exchange. See Securities Exchange Act Release No. 37007 (March 21, 1996).

⁴ Currently, depending on the characteristics of the index, position limits for narrow-based index options are either 12,000, 9,000, or 6,000 contracts on the same side of the market.

⁵ See Amendment No. 2.

⁶ See Amendment No. 2.

⁹ 17 CFR 200.30-3(a)(12) (1995).

¹ Letter from James E. Buck, Secretary, NYSE, to Michael Walinskas, SEC, dated April 2, 1996 (Amendment No. 1) and Letter from James E. Buck, Secretary, NYSE, to Ivette Lopez, SEC, dated July 11, 1996 (Amendment No. 2). The Amendments primarily address and clarify position limit related issues.

² On August 29, 1995, the Commission approved uniform listing and trading guidelines for stock index, currency and currency index warrants for the NYSE, Pacific Stock Exchange, Philadelphia Stock Exchange, American Stock Exchange, and Chicago Board Options Exchange. See Securities Exchange Act Release Nos. 36165, 36166, 36167, 36168, and 36169 (Aug. 29, 1995), respectively.

The NYSE further proposes that after a warrant first commences to trade, it will make its subsequent semi-annual determinations on the first of the uniform dates thereafter. If the subsequent semi-annual determinations indicate that an underlying industry index stock group now qualifies for a higher position limit, then the filing would allow the Exchange to increase the limit to the new number immediately. Once a position limit has been established for a particular issuance of warrants, however, it would never decrease as a result of changes in the relative weights of the index's component stocks.⁷ The Exchange believes this provision would eliminate the confusion and difficulty that might accompany a forced reduction in position limits during the life of a particular industry index warrant issue.

In addition, Amendment No. 1 clarifies that industry index warrant positions that a person or group of persons acting in concert holds or controls must be aggregated for the purpose of applying the industry index warrant rules. Aggregation applies in two contexts: within a particular issue of industry index warrants and among different issues on the same underlying industry index stock group. Within a particular issue of industry index warrants, the aggregate position is subject to the position limit that applies to that issue. In the case of multiple issues of warrants on the same underlying industry index stock groups, the aggregate position for all such issues is subject to the maximum position limit that applies in respect of any such issue.

(b) Margin Requirements

Margin will be similar to that required for narrow-based index options. Accordingly, all purchases of narrow-based index warrants must be paid in full. Additionally, the minimum margin required for each narrow-based index warrant carried short in a customer's account would be 100% of the current market value of each warrant plus 20% of the current index group value. Narrow-based index warrants would also be subject to the same spread margin treatment recently approved for broad-based index warrants.⁸

Listing Warrants on Approved Indexes

The proposed narrow-based index warrant regulatory framework would

also allow the Exchange to list a warrant on a narrow-based stock index without prior Commission approval if the Commission has already approved the underlying stock index for warrant or options trading. Furthermore, the Exchange proposes to incorporate certain generic initial listing and maintenance criteria which, when satisfied, provide for the expedited approval of warrants based on narrow-based indexes. The expedited approval process is nearly identical to that approved for narrow-based index options,⁹ except as provided below:

(i) The index must contain a minimum of nine stocks at all times;¹⁰ and

(ii) Allow for the use of closing ("p.m.") prices in determining the value of an index warrant except that, where 25 percent or more of the value of an index underlying a warrant consists of stocks that trade primarily in the United States, opening prices ("a.m. settlement") must be used at (1) the warrant's expiration, and (2) on any date in which the warrant's settlement value will be based on prices on either of the two business days preceding expiration.¹¹

The basis under the Act for the proposal, as amended, is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, 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.

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

The NYSE does not believe the proposed rule change imposes 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

Comments were neither solicited nor received.

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

The Exchange requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposal, as amended,

prior to the 30th day after its publication in the Federal Register in view of the Commission's previous approval of substantially identical rule changes submitted by three other SROs.¹² These other proposals were subject to the full notice and comment period and the Exchange notes that no comment letters were submitted. The NYSE also notes that the Commission approved amendments to the three other SRO's narrow-based stock index warrant proposal on an accelerated basis. Accordingly, because the NYSE's proposed regulatory structure for narrow-based stock index warrants mirrors standards already approved by the Commission for other SROs, the NYSE believes no regulatory purpose would be served by delaying the ability of NYSE to list narrow-based stock index warrants.

IV. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).¹³ Specifically, the Commission finds that the Exchange's proposal to establish uniform listing and trading standards for narrow-based stock index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The Exchange's proposed generic listing standards for narrow-based stock index warrants set forth a regulatory framework for the listing of such products. Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent.

⁷ Subsequently issued warrants on the same industry index stock group would, however, be subject to the position limit applicable at the time of the new issuance. This may result in separate issuances of warrants on the same narrow-based stock index with disparate position limit levels.

⁸ See NYSE Rule 431.

⁹ See Securities Exchange Act Release No. 34157 (June 3, 1994).

¹⁰ The generic narrow-based index option standard requires ten stocks initially and nine stocks thereafter.

¹¹ The generic index option standard requires the use of opening ("a.m.") price settlement.

¹² See *supra* note 3.

¹³ 15 U.S.C. § 78f(b)(5) (1988).

The Commission notes that, with certain exceptions listed below, the Exchange will apply to narrow-based index warrants the same regulatory framework which recently was approved for broad-based index warrants. In approving the broad-based index warrant regulatory framework, the Commission found that the framework provides an adequate regulatory structure for the trading of such warrants, including appropriate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. The Commission also found that the applicable framework is designed to minimize the potential for manipulation, thereby helping to ensure that such index warrants do not have a negative market impact. Finally, the Commission also indicated that the framework adequately addressed the special risks to customers arising from the trading of such warrants.¹⁴

The Commission believes it is reasonable for the Exchange to apply a nearly identical regulatory structure to narrow-based index warrants as broad-based index warrants, particularly given the substantial similarities that exist between them.¹⁵ Both broad and narrow-based stock index warrants represent a leveraged investment in a portfolio or group of equity securities. However, broad-based index products generally have a large number of component securities and represent a certain overall equities market or a substantial segment thereof. Narrow-based index products, on the other hand, generally are comprised of fewer component securities that often are concentrated in a particular industry

group. These differences heighten concerns with leveraged narrow-based index products regarding market impact, manipulation and volatility, dictating that narrow-based indexes be subject to lower position limits and more restrictive margin treatment.¹⁶

Accordingly, the Exchange has proposed separate margin and position limit treatment for narrow-based index warrants. The proposed margin levels are analogous to those currently in place for narrow-based stock index options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, the Commission believes that it is appropriate to apply options margin treatment given the options-like market risk posed by warrants.¹⁷

The proposed position limits are also similar to those in place for narrow-based index options.¹⁸ In addition, the Exchange has proposed aggregation requirements to address multiple issuances of warrants on the same narrow-based index.¹⁹ The Commission believes that the position limits and aggregation requirements are reasonable and will serve to minimize potential manipulation and other market impact concerns while not unduly restricting liquidity in warrant issuances.

The Commission believes the Exchange's existing surveillance procedures applicable to broad-based index warrants are adequate to surveil the trading of narrow-based index warrants. The Commission found that the Exchange's broad-based surveillance procedures were adequate to surveil for manipulation and other abuses involving the warrant market and the underlying component securities. Given the functional similarities between

narrow and broad-based index warrants, the Commission believes it is reasonable to apply the same surveillance procedures to both.

Similarly, for the same reasons noted in our order approving broad-based index warrants, the Commission believes that heightened customer suitability standards, options account approval requirements, and sales practice procedures which are modelled after index options should be extended to narrow-based index warrants. The Commission notes that, upon approval of this filing, the Exchange may list a warrant upon any narrow-based index that the Commission has previously approved for options or warrant trading. Additionally, in order to expedite SEC review of a particular warrant issuance, the Exchange has proposed employing accelerated listing procedures similar to those adopted for listing options on narrow-based indexes.²⁰

The Commission notes that these proposed accelerated listing standards for index warrants differ from the standards applicable to narrow-based index options in that there is a minimum nine stock requirement for index warrants (*i.e.*, an index must initially and at all times thereafter be comprised of at least nine stocks) and that index warrants may, at certain times, utilize a p.m. settlement methodology, as discussed above. The Commission believes the proposed differences are reasonable in the warrant context for several reasons.

With respect to p.m. settlement, index warrants are issuer-based products whose terms are individually set by the issuer, with the number of warrants on a given index being fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce pressure from liquidation of warrant hedges at settlement. Second, the Commission authorized the same settlement methodology for broad-based index warrants and believes it is reasonable that narrow-based index warrants operate in the same manner. With respect to the nine stock requirement, the Commission does not believe that this difference is such that it will subject narrow-based index warrants to

¹⁴ Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes narrow-based index warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

¹⁵ The regulatory framework for broad-based index warrants is similar to the approach used in regulating index options. Because the same risks exist in trading of narrow-based index options, the Commission believes it is appropriate to utilize the same approach.

¹⁶ This is similar to the approach taken in regulating narrow-based and broad-based index options.

¹⁷ The customer spread margin rules applicable to broad-based stock index and currency warrants were approved subject to a one year pilot program. The Commission notes that narrow-based index warrants will be subject to the same pilot program and, upon expiration of that program, it will determine whether to revise or approve on a permanent basis the proposed spread margin rules.

¹⁸ The Commission notes that position limits for broad-based stock index warrants were set at a level roughly equivalent to 75% of broad-based index options. In the absence of trading experience with U.S. equities market based index warrants, the Commission believes it would be imprudent to establish position limits for positions greater than those currently applicable (on an equivalent basis) to stock index options on the same index.

¹⁹ Because each individual warrant issuance is assigned a separate identification symbol, the Exchange has the ability to monitor the aggregation of separate issuances of warrants on the same underlying index.

²⁰ Accelerated listing procedures allow the Exchange to permit issuances of warrants on a particular narrow-based index pursuant to a filing submitted to the Commission for effectiveness immediately upon filing under Section 19(b)(3)(A) of the Act. In the event that a proposed index does not qualify for expedited approval under these standards, the Exchange is not precluded from filing a proposed rule change for Commission review pursuant to Section 19(b)(2).

increased manipulation. In fact, narrow-based index options impose the same maintenance requirement of nine stocks. The Commission does not believe that the creation of a nine stock index, as opposed to a ten stock index, will lead to increased manipulation, per se, provided the other listing criteria are satisfied. The Commission notes that this requirement precludes the issuance of index warrants pursuant to the accelerated listing procedures upon any index comprised of less than nine stocks.

The Commission believes that the accelerated listing procedures will provide a sufficient opportunity for it to examine narrow-based index warrant products based on new indexes (which require that a filing be made pursuant to Section 19(b)(3)(A) of the Act). Specifically, the Commission believes that the seven day prefiling requirement gives the Commission staff an opportunity to discuss with the Exchange whether its proposal to list and trade particular narrow-based index warrants properly qualifies for effectiveness upon filing. In addition, the Commission finds that the 30 day delay in the commencement of trading of proposed narrow-based index warrants will provide a meaningful opportunity for public comment prior to the commencement of trading, while also providing the Exchange with the opportunity to inform market participants in advance of the proposed trade date for new index warrants. In accordance with Section 19(b)(3)(C) of the Act, if the Commission determines that the rule change proposal is inconsistent with the requirements of the Act and the rules and regulations thereunder, the 30 day delay would allow the Commission to abrogate the rule change before trading commences, which will minimize disruption on market participants. This authority could be utilized if, for example, it is determined that the proposed narrow-based index warrant does not satisfy the applicable accelerated listing standards.

The Commission believes that the adoption of these proposed uniform listing and trading standards for narrow-based index warrants will provide an appropriate regulatory framework. These standards will also benefit the Exchange by providing it with greater flexibility in structuring narrow-based index warrant issuances and a more expedient process for listing narrow-based index warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying

any non-approved narrow-based index that has not been previously approved by the Commission for narrow-based index warrant or options trading. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new narrow-based index warrant products.

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to allow the NYSE to begin listing narrow-based stock index warrants without delay. As discussed above, the proposal is nearly identical to those submitted by several other SROs.²¹ These other narrow-based stock index warrant proposals were subject to the full notice and comment period and no comment letters were received in response. The Commission notes that the filing, as amended, brings the NYSE's proposal into conformity with those of the other exchanges. Accordingly, the Commission does not believe the filing, as amended, raises any new or unique regulatory issues.

For these reasons, the Commission believes there is good cause, consistent with Section 19(b)(2)²² of the Act, to approve the Exchange's proposal, as amended, on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 Section, 450 Fifth Street, NW.,

Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,²³ that proposed rule change (SR-NYSE-95-42) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-18712 Filed 7-23-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37450; File No. SR-NYSE-96-11]

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change Relating to Procedures for Public Release of Information by Its Listed Companies

July 17, 1996.

I. Introduction

On May 7, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules governing the procedures followed by its listed companies for disseminating material news or information to the public.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37237 (May 22, 1996), 61 FR 26943 (May 29, 1996). No comments were received on the proposal.

II. Description of the Proposal

The Exchange's timely disclosure procedures require listed companies to release to the public any news or information which might reasonably be expected to materially affect the market for their securities. Section 202.06(B) and Section 202.06(C) of the Exchange's Listed Company Manual currently requires listed companies to disseminate material news to Dow Jones & Company, Inc. ("Dow Jones") and

²³ 15 U.S.C. § 78s(b)(2) (1988).

²⁴ 17 CFR § 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²¹ See *supra* note 3.

²² 15 U.S.C. § 78s(b)(2) (1988).