

Option class	Market-maker surcharge (per contract)	Order book of- ficial broker- age rate (per contract) ⁴
Open Market, Inc. (OQM)	0.12	0.00
Orbital Sciences Corp. (ORB)	0.06	0.00
OnSale, Inc. (QOL)	0.07	0.00
Prime Medical Services, Inc. (QSI)	0.09	0.00
Synovus Financial Corp. (SNV)	0.07	0.00
Wackenhut Corrections Corp. (WHC)	0.08	0.00
Zebra Technologies, Corp. (ZBQ)	0.10	0.00
AboveNet Communications (UBV)	0.15	0.00

⁴ The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from \$0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

These fees will be effective as of July 1, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) ⁵ of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) ⁶ of the Act and Subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ At any time within 60 days of the filing of the proposed 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.⁸

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-33 and should be submitted by August 23, 1999.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-19718 Filed 7-30-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41648; File No. SR-NYSE-99-29]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program Relating to Continued Listing Standards

July 26, 1999.

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 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change has described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval to the portion of the proposal instituting a pilot program relating to continued listing standards.

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

The Exchange proposes to amend Section 8 of its *Listed Company Manual* ("Manual"), and to make corresponding changes to NYSE Rule 499, regarding its criteria governing the continued listing of securities. The Exchange proposes to implement these changes immediately pursuant to a Pilot program ("Pilot") that would expire on November 1, 1999, or such earlier time as the Commission approves the Exchange's request for permanent approval of the program.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Telephone conversation with N. Amy Bilbija, Counsel, NYSE, and Heather Traeger, Attorney, Division of Market Regulation ("Division"), SEC, on July 9, 1999.

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).

The text of the proposed rule change follows.⁴ New text is italicized and deleted text is bracketed.⁵

NYSE Listed Company Mutual

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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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The Exchange would normally give consideration to delisting a security of *either a domestic of non-U.S. issuer* [a company] when:

802.01A. *Distribution Criteria for Capital or Common Stock—*

* * * * *

[• Aggregate market value of publicly-held shares, (A) subject to adjustment depending on market conditions, as described below (C) is less than—\$8,000,000]

[(C) Calculation of Adjustment

On January 15 and July 15 of each year, the NYSE Composite Index at the close of business for that date, or on the next succeeding business day if the Exchange is closed, is divided by the base value of 55.06 (the NYSE Composite Index for July 15, 1971, the date upon which the \$5,000,000 standard was adopted). The \$5,000,000 standard is multiplied by the adjustment factor as so calculated (after rounding to the nearest thousandth). The resulting product is rounded to the nearest \$100,000.

The adjustment is made only when the NYSE Composite Index is lower than that of the base value, and is limited to a maximum reduction of 50% to a \$2,500,000 standard which will be in effect for the succeeding six months following the calculation.

Since the NYSE Composite Index has remained above 55.06 in recent years, no adjustment has been necessary and the standard has remained at \$5,000,000.]

* * * * *

⁴ The Exchange notes that it recently received approval from the Commission to amend many aspects of the NYSE's listing and continued listing programs. The proposed rule language set forth here shows changes against the new text approved by the Commission, but not yet incorporated into the Manual. See Securities Exchange Act Release No. 41502 (June 9, 1999), 64 FR 32588 (June 17, 1999) (order approving File No. SR-NYSE-99-13) ("Release No. 41502").

⁵ Several minor technical changes were made to the proposed rule text pursuant to a telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Heather Traeger, Attorney, Division, SEC, on July 9, 1999.

[Earnings—

- Aggregate market value of shares outstanding (excluding treasury stock) is less than—\$12,000,000 and average net income (D) after taxes for past 3 years is less than—\$600,000

- Net tangible assets available to common stock are less than—\$12,000,000 and average net income (D) after taxes for past 3 years in less than—\$600,000

(D) For a company that included in its original listing application adjustments to historical financial data, during the first three years following the date of its original listing, the Exchange will calculate the company's average net income after taxes for any year considered in assessing its qualification for listing taking into consideration those specific adjustments made to the company's historical financial data for that year in the original listing application.]

* * * * *

[Adjusted Net Income—

- For companies that, on listing, demonstrated earning power by meeting the listing standards requiring minimum levels of adjusted net income, and for companies that are currently valued on a "cash flow" basis, as described in Para. 102.01 of this Listed Company Manual: Aggregate market value of shares outstanding (excluding treasury stock) is less than—\$25,000,000 and average adjusted net income for past 3 years is less than—\$6,500,000

Bonds—

- The aggregate market value or principal amount of publicly-held bonds is less than—\$1,000,000

The issuer is not able to meet its obligations on the listed debt securities.

Preferred Stock, Guaranteed Railroad Stock and Similar Issues

- Aggregate market value of publicly-held shares is less than—\$2,000,000

- Publicly-held shares is less than—100,000]

802.01B. *Numerical Criteria for Capital or Common Stock—*

If a company falls below any of the following criteria, it is subject to the procedures outlined in Paras. 802.02 and 802.03:

- *Total global market capitalization is less than \$50,000,000 and total stockholders' equity (or net assets for Funds) is less than \$50,000,000 (C); or*

- *Average global market capitalization over a consecutive 30 trading-day period is less than \$15,000,000; or*

For companies that qualify under the "global market capitalization" standard:

- *Total global market capitalization is less than \$500,000,000 and total*

revenues are less than \$50,000,000 over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other standards) (C) OR

- *Average global market capitalization over a consecutive 30 trading-day period is less than \$100,000,000.*

Funds—Until a fund has operated for three years, it shall be held to a continued listing standard of \$30,000,000 in both total market capitalization and net assets. Regardless of the length of time a fund has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined at the beginning of this Para. 802.01B. At all times, all funds must (1) maintain their closed-end status and (2) maintain a minimum market capitalization of \$15,000,000.

REITs—Until a REIT has operated for three years, it shall be held to a continued listing standard of \$30,000,000 in both total market capitalization and stockholders' equity. Regardless of the length of time a REIT has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined at the beginning of this Para. 802.01B. At all times, all REITs must (1) maintain their REIT status (unless the resultant entity qualifies as an original listing as a corporation), and (2) maintain a minimum market capitalization of \$15,000,000.

Bonds—

- *The aggregate market value or principal amount of publicly-held bonds is less than—\$1,000,000*

- *The issuer is not able to meet its obligations on the listed debt securities.*

Preferred Stock, Guaranteed Railroad Stock and Similar Issues—

- *Aggregate market value of publicly-held shares is less than—\$2,000,000 Publicly-held shares is less than—100,000*

(C) A company that is determined to be below this continued listing criteria must re-establish both its market capitalization and its stockholders' equity (or net assets for Funds) or revenues, as applicable, to be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03.

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 within the 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. 802.02 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 six-month 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.

802.01D. Other Criteria—

If any of the following factors apply to a listed company, the Exchange may in its sole discretion subject the company to the procedures outlined in Paras. 802.02 and 802.03:

* * * * *

Bankruptcy and/or Liquidation—

An intent to file under any of the sections of the bankruptcy law has been announced or a filing has been made or liquidation has been authorized and the company is committed to proceed. If a company files or announces an intent to file for reorganization relief under the bankruptcy laws (or an equivalent foreign law), the Exchange may exercise its discretion to continue the listing and trading of the securities of the company. However, if a company that is below any continued listing standard enumerated in Para. 802.01B above (which may be determined on the basis of price indications) files or announces an intent to file for relief under any provisions of any bankruptcy laws, it is subject to immediate suspension and delisting. Similarly, if a company that files or announces an intent to file for relief under any provisions of any bankruptcy laws subsequently falls below any continued listing standard enumerated in Para. 802.01B above (which may be determined on the basis of price indications), it is subject to immediate suspension and delisting.

* * * * *

The Exchange is not limited by the criteria set forth above. Rather, it may make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets or fails to meet any enumerated criteria. Other factors which may lead to a company's delisting include:

* * * * *

- Unsatisfactory financial conditions and/or operating results.

• Most recent independent public accountant's opinion on the financial statements contains a:

- Qualified opinion;
- Adverse opinion;
- Disclaimer opinion; or
- Unqualified opinion with a "going concern" emphasis.

* * * * *

802.02 Continued Listing Evaluation and Follow-Up Procedures for Domestic Companies

* * * * *

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

If the company did meet continued listing standards at the end of the 18-month Plan period but, within twelve months of the end of the 18-month period, it is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

* * * * *

802.03 Continued Listing Evaluation and Follow-up Procedures for Non-U.S. Companies

* * * * *

If the Exchange accepts the Plan, the Exchange will review the company on a semi-annual basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting

procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange will promptly initiate suspension and delisting procedures.

* * * * *

If the company did meet continued listing standards at the end of the 18-month Plan period but, within twelve months of the end of the 18-month period, it is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

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.

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.10 General.

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The Exchange is *not* limited by what is set forth under the heading "Numerical and Other Criteria." Rather, it may make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets or fails to meet any enumerated criteria. Many factors might be considered in this connection, e.g., the failure of a company to make timely, adequate, and accurate disclosures of information to its shareholders and the investing public or to observe good accounting practices in reporting earnings and financial position; other conduct not in keeping with sound public policy; unsatisfactory financial conditions and/or operating results; *most recent independent accountant's opinion on the financial statements contains a (a) qualified opinion, (b) adverse opinion, (c) disclaimer opinion, or (d) unqualified opinion with a "going concern" emphasis;*

* * * * *

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.

[Furthermore, w] Where a listed company which falls below any of these criteria proposes to effect a combination with an unlisted company in a manner in which, in the opinion of the Exchange, would result in the acquisition of the listed company by the unlisted company, regardless of which company is the survivor in the combination, the Exchange will normally not approve the listing of the additional shares arising out of the combination unless the company resulting from the combination meets the original listing standards of the Exchange in all respects.

* * * * *

The Exchange would normally give consideration to suspending or removing from the list a security of a company, *whether it be a domestic or non-U.S. issuer, when:*

* * * * *

[3. Aggregate market value of publicly-held shares, * subject to adjustment ** depending on market conditions, is less than \$8,000,000.

* Shares held by officers, directors, or their immediate families and other concentrated holding of 10% or more are excluded in calculating the number of publicly-held shares.

** Value subject to adjustment as described below:

Calculation of Adjustment

On January 15 and July 15 of each year the New York Stock Exchange Composite Index at the close of business for that date, or on the next succeeding business day if the Exchange is closed, would be divided by the base value of 55.06, the NYSE Composite Index for July 15, 1971 and also the date on which the \$5,000,000 criterion was adopted, and then multiplied by the \$5,000,000 criterion, and then rounded to the nearest \$100,000.

Example:

NYSE Composite Index July 15, 1975
51.24

= $93.1\% \times \$5,000,000 = \$4,700,000$

NYSE Composite Index Base Year
55.06

The adjustment is made only when the Composite Index is lower than that of the base value, and is limited to a maximum reduction of 50% to a \$2,500,000 criterion, and will be in

effect for the succeeding six months following the calculation.

4. Aggregate market value of shares outstanding (excluding treasury stock) is less than—\$12,000,000 and

Average net income after taxes for past 3 years is less than—\$600,000

5. Net tangible assets available to common stock are less than—\$12,000,000 and

Average net income after taxes for past 3 years is less than—\$600,000

[6.] 3.

4. Total global market capitalization is less than \$50,000,000 and total stockholders' equity (or net assets for Funds) is less than \$50,000,000. A company that is determined to be below this continued listing criteria must re-establish both its market capitalization and its stockholders' equity (or net assets for Funds) to be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03.

5. Average global market capitalization over a consecutive three-month period is less than \$15,000,000.

6. For companies that qualify under the "global market capitalization" standard:

- Total global market capitalization is less than \$500,000,000 and total revenues are less than \$50,000,000 over the past 12 months. A company that is determined to be below this continued listing criteria must re-establish both its market capitalization and its revenues to be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03. OR

- Average global market capitalization over a consecutive 30 trading-day period is less than \$100,000,000

7. Funds—Until a fund has operated for three years, it shall be held to a continued listing standard of \$30,000,000 in both total market capitalization and net assets. Regardless of the length of time a fund has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined in sections 4–6 above. At all times, all funds must (1) maintain their closed-end status, and (2) maintain a minimum market capitalization of \$15,000,000.

8. REITs—Until a REIT has operated for three years, it shall be held to a continued listing standard of \$30,000,000 in both total market capitalization and stockholders' equity. Regardless of the length of time a REIT has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined in sections 4–

6 above. At all times, all REITs must (1) maintain their REIT status (unless the resultant entity qualifies as an original listing as a corporation), and (2) maintain a minimum market capitalization of \$15,000,000.

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 within the 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 six-month 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.

* * * * *

[11.] 14. Bankruptcy and/or Liquidation.—An intent to file under any of the sections of the bankruptcy law has been announced or a filing has been made of that liquidation has been authorized and the company is committed to proceed. If a company files or announces an intent to file for reorganization relief under the bankruptcy laws (or an equivalent foreign law), the Exchange may exercise its discretion to continue the listing and trading of the securities of the company. However, if a company that is below any continued listing standard enumerated in sections 4–6 above (which may be determined on the basis of price indications) files or announces an intent to file for relief under any provisions of any bankruptcy laws, it is subject to immediate suspension and delisting. Similarly, if a company that files or announces an intent to file for relief under any provisions of any bankruptcy laws subsequently falls below any continued listing standard enumerated in sections 4–6 above (which may be determined on the basis of price indications), it is subject to immediate suspension and delisting.

{Renumber current paragraphs 7 through 20 of Rule 499.20 as paragraphs 10 through 23, respectively, of Rule 499.20.}

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 Exchange proposes to modify several of its existing continued listing criteria, to codify certain Exchange policies regarding its continued listing criteria, to replace certain of the current criteria with new continued listing criteria, and to create subsections in the continued listing section.

The Exchange's current numerical continued listing criteria include requirements regarding size, earnings, and share distribution.⁶ The Exchange believes that, in contrast to the current standards' focus on earnings and net tangible assets, a company's market capitalization, the breadth of its shareholder base and the size of its stockholders' equity are better gauges for evaluating the continued listing status of a company.

Specifically, the Exchange proposes to replace its current criteria with a financial standard subjecting a company to suspension and delisting if: (i) its global market capitalization and its stockholders' equity (or net assets for closed-end investment companies registered under the Investment Company Act of 1940 ("Funds")) each fall below \$50 million, or (ii) its average global market capitalization is below \$15 million over 30 consecutive trading days. In the context of delisting, the Exchange believes the more appropriate focus is on the size and the amount of stockholders' equity in a company, rather than on what may be transitory earning trends. These two standards would apply to every company, whether domestic or non-U.S., and whether it

listed under the "adjusted earnings" or "cash flow" standard.

The Exchange is also proposing a new continued listing standard for those companies that qualify for initial listing under the "global market capitalization" standard.⁷ Such a company would be subject to delisting if: (i) its total global market capitalization is below \$500 million and its total revenues are below \$50 million over the past 12 months,⁸ or (ii) its average global market capitalization is below \$100 million over 30 consecutive trading days. In the event that such a company can qualify under one of the other original listing criteria, however, it would not be subject to delisting.

Finally, the Exchange is also proposing to adopt a price criteria applicable to all issuers. Specifically, the Exchange proposes to add a new minimum continued listing standard that would be triggered when a security's average closing price over a 30-trading-day period falls below \$1.00. Once this standard is triggered, companies would have six months to cure the deficiency.

With respect to the \$50 million market capitalization and \$50 million stockholders' equity standard, a company that falls below this continued listing criteria would be permitted 18 months to re-establish both its market capitalization and its stockholders' equity to be considered in conformity with continued listing standards. (See Paras. 802.02 and 802.03 of the Manual). With respect to the \$15 million minimum for average global market capitalization, upon notification, the company would be required to restore its market capitalization to at least \$15 million within 18 months.

With respect to the closing price minimum of \$1.00, once notified, a company would have six months to return its average stock price to above \$1.00. As an alert mechanism for issuers, the Exchange intends to notify a company whose average price falls below \$5.00 over a 30-trading-day period of the consequences of a further decline in its share price to below \$1.00.

⁷ The standard is currently effective on a three-month pilot period that commenced on May 27, 1999. The Exchange expects to seek permanent approval of this listing standard prior to September 3, 1999, the date the pilot is scheduled to expire. See Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088 (June 4, 1999) (notice and order granting partial accelerated approval to File No. SR-NYSE-99-17).

⁸ The review is based on the unaudited Quarterly Reports. Consequently, if a company were to restate its financials, the NYSE would re-evaluate the company's eligibility for continued listing on the Exchange. Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Deborah Flynn, Special Counsel, Division, SEC, on July 12, 1999.

Each company so identified and notified would then be tracked by the Exchange and its price monitored. If this is the only criteria that causes a company to fall below the Exchange's continued listing standards, the Exchange generally would not commence suspension and delisting procedures for six months. However, the company must notify the Exchange within 10 business days of receipt of its notification of its intent to cure this deficiency or be subject to immediate suspension and delisting. In the event that, at the expiration of the six-month cure period, at \$1.00 share price is not attained, the Exchange will commence suspension and delisting procedures.

The Commission recently approved a codification of the Exchange's initial listing standard for Funds with less than three years of operating history.⁹ This standard requires a minimum net asset value of \$60 million. The Exchange now proposes to codify a specific delisting criteria for these newly-formed Funds of \$30 million in both market capitalization and net assets. The Exchange is proposing a lower continued listing standard for newly-formed Funds that recognizes that they qualify originally at a lower amount (50% of the original qualification threshold). In addition, the Exchange proposes to incorporate into the Funds section its general standard of a minimum of \$15 million in market capitalization. Finally, the Exchange is proposing to codify its existing policy that Funds are immediately delistable upon conversion to open-ended status. The Exchange notes that, upon attainment of three years of operating history, the Funds would be subject to the numerical criteria generally applicable to capital or common stock proposed above.

The Commission recently approved an original listing standard for REITs with less than three years of operating history.¹⁰ The Exchange now proposes to codify a specific delisting criteria for these newly-formed REITs of \$30 million in both market capitalization and stockholders' equity. Similar to Funds, the Exchange is proposing a lower continued listing standard for newly-formed REITs that recognizes that they qualify at a lower amount (50% of the original qualification threshold). In addition, the Exchange proposes to incorporate into the REIT section the

⁹ The Exchange has specifically tailored listing standards for IPOs, Funds and real estate investment trusts ("REITs") that address the nature of these listings and their operations. See Securities Exchange Act Release No. 41346 (April 29, 1999), 64 FR 24435 (May 6, 1999).

¹⁰ See Release No. 41502.

⁶ Currently, the Exchange's financial criteria subject a company to delisting if it has: an aggregate market value of its policy-held common stock of less than \$8 million; or net tangible assets or an aggregate market value of its common stock of less than \$12 million and average net income of less than \$600 thousand for the past three years; or for "cash flow companies," an aggregate market value of shares outstanding (excluding treasury stock) of less than \$25 million and average "adjusted net income" for the past three years of less than \$6.5 million. In addition, there are requirements related to the number of total stockholders and number of publicly held shares.

minimum standard of \$15 million of market capitalization. Finally, the Exchange is proposing a new policy that a REIT is immediately delistable upon the loss of its REIT status if the resultant entity is unable to qualify as an original listing as a corporation (or other operating company) at that time. The Exchange notes that upon attainment of three years of operating history, the REIT would be subject to the numerical criteria generally applicable to capital or common stock proposed above.

The Exchange proposes to clarify and codify its policy whereby a company that files or announces an intent to file for reorganization under the bankruptcy laws is not subject to automatic delisting. In such a situation, the Exchange could exercise discretion to continue the listing and trading of the securities of the company. Once such a company is identified, the Exchange monitors its performance against the remaining continued listing standards, the compliance with which may be determined on the basis of price indications, as opposed to a 30-trading-day average. If a company that is below any continued listing standard enumerated in proposed Para. 802.01B of the Manual ("Numerical Criteria for Capital or Common Stock") files or announces an intent to file for such relief (or if a company having filed for bankruptcy becomes below another continued listing standard), it would be subject to immediate suspension and delisting. Notwithstanding the preceding, the Exchange may at any time exercise its discretion to proceed with suspension and delisting procedures based solely upon a bankruptcy filing.

The Exchange proposes an additional delisting criteria to address non-numerical indications in financial statements of unsatisfactory financial performance. These additional criteria could lead to the delisting of a company that may otherwise continue to meet the specifically-enumerated numerical criteria in Section 802.01 of the Manual. The Exchange views the disclosure contained in the independent accountant's opinion that the company receives on its financial statements as providing one such indication. Independent public accountant's opinions that might indicate unsatisfactory financial performance include: (i) a qualified opinion, (ii) an adverse opinion, (iii) a disclaimer opinion, or (iv) an unqualified opinion with a "going concern" emphasis.

In addition, if a company that emerges from being below continued listing standards again falls below continued listing standards within 12 months, the

Exchange will scrutinize the original methods of financial recovery taken by the company. In this regard, the Exchange would also examine the relationship of the two incidents of falling below continued listing standards. Exchange staff would then take the requisite action, which may include truncating the procedures described in Paras. 802.02 and 802.03, or immediately initiating suspension and delisting procedures.

The Exchange proposes to codify and provide more specificity to its current policy of requesting companies that trigger one or more of the factors outlined in "Other Criteria" to comply with the procedures outlined in Paras. 802.02 and 802.03 of the Manual when it determines it is appropriate to do so. For instance, the Exchange has historically requested additional information from companies it has identified as having a significant reduction in operating assets. Such information has often taken the form of a "plan" as defined in Paras. 802.02 and 802.03 of the Manual.

Upon the Commission's approval of this Pilot, all listed companies will immediately become subject to these new continued listing standards, and the 30-day clock for computing the various averages in the proposed standards will begin. The Exchange anticipates that there will be a number of listed companies that are mid-stream through an approved financial plan due to having fallen below the current continued listing standards, which will also be below the new proposed continued listing standards. With regard to these companies, the Exchange notified them of the new standards at the time it filed with the Commission to prepare them for the transition and to give them an opportunity to prepare new plans with new goals. These companies will be notified upon Commission approval and given 45 days from receipt of the notice to submit a plan (unless the current plan is already financially sufficient) to the Exchange delineating how they intend to come into compliance with the new standards within 12 months. However, if the company is solely below the proposed \$1.00 threshold, it would only have the six-month period discussed above to cure its deficiency.

The Exchange also notes that there are companies currently identified as below continued listing standards that will not be below continued listing standards under the new proposed standards. While this proposal is pending Commission action, the Exchange intends to stay the plan submission process for these companies. In doing

so, the Exchange intends to avoid placing an unfair burden on these issuers by forcing them to expend capital and personnel resources to develop a six-quarter plan, the goals of which will become obsolete in the immediate future. Finally, with regard to all listed companies that are currently in good financial standing, the Exchange intends to afford those companies that are identified as below the new continued criteria at the time of Commission approval 18 months from the effective date of this Pilot to return to good standing pursuant to the procedures detailed in Paras. 802.02 and 802.03 of the Manual.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)¹¹ 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, 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 comments on the proposed rule change.

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant

¹¹ 15 U.S.C. 78f(b)(5).

to Section 19(b)(2) of the Act,¹² for approving the establishment of the Pilot which would expire on November 1, 1999 (or until such earlier time as the Commission grants the Exchange's request for permanent approval of the program), prior to the thirtieth day after publication in the **Federal Register**.

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, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-99-29 and should be submitted by August 23, 1999.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the portion of the proposed rule change relating to the establishment of the Pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public.

The Commission finds that the revisions and codification of the continued listing criteria set forth in the

proposed Pilot, which should ensure that companies that final to satisfy the continued listing criteria are identified, reviewed, and then subjected to specified delisting procedures, are consistent with the Act and should enhance investor protection. Moreover, the Pilot should ensure that those companies falling below the NYSE's continued listing criteria are provided with transparent, detailed procedures for addressing their status. The Commission further believes that the proposed Pilot is consistent with the Exchange's obligation to perfect the mechanism of a free and open market by codifying its continued listing criteria, thereby encouraging the NYSE to apply uniformly its criteria in listing and, if necessary, delisting securities on the Exchange. Lastly, the Commission believes that the proposed continued listing criteria, established in the Pilot, should help to ensure the stability of the marketplace, as well as protect investors, by enabling the NYSE to identify listed companies that may not have sufficient trading depth and liquidity to warrant continued listing.

The Commission finds good cause for approving the Pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that accelerated approval of the Pilot will enable the Exchange to minimize the interruption in its continued listing and delisting of these securities and allow for an orderly transition for its issuers, while providing the Commission adequate time to carefully consider the Exchange's proposal seeking permanent approval of the proposed changes to its continued listing criteria.¹⁵

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the Pilot program proposed by the Exchange (File No. SR-NYSE-99-29) is approved until November 1, 1999, or until the Commission approves the proposal permanently.

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

Margaret H. McFarland,

Deputy Secretary.

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¹⁵ The Commission's approval of the Pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3099]

Registration for the Diversity Immigrant (DV-2001) Visa Program

ACTION: Notice of registration for the seventh year of the Diversity Immigrant Visa Program.

This public notice provides information on the procedures for obtaining an opportunity to apply for one of the 55,000 (maximum) immigrant visas to be made available in the Diversity Immigrant Visa (DV) category during Fiscal Year 2001. This notice is issued pursuant to 22 CFR 42.33(b)(2) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(G)).

Entry Procedures for Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 2001

ENTRIES FOR THE DV-2001 MAIL-IN PERIOD MUST BE *RECEIVED* BETWEEN NOON (EASTERN TIME) ON MONDAY, OCTOBER 4, 1999 AND NOON (EASTERN TIME) ON WEDNESDAY, NOVEMBER 3, 1999. Entries received before or after these dates will be disqualified regardless of when they are postmarked. Entries sent to an incorrect address will also be disqualified.

How Visas Are Apportioned

Visas are apportioned among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. No one country can receive more than 7 percent of the diversity visas issued in any one year. For DV-2001, natives of the following are NOT ELIGIBLE to apply:

CANADA
CHINA (mainland and Taiwan, except Hong Kong S.A.R.)
COLOMBIA
DOMINICAN REPUBLIC
EL SALVADOR
HAITI
INDIA
JAMAICA
MEXICO
PHILIPPINES
POLAND
SOUTH KOREA
UNITED KINGDOM (except Northern Ireland) and its dependent territories
VIETNAM

¹² 15 U.S.C. 78s(b)(2).

¹³ In approving this Pilot, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).