

membership, corporate governance, and disciplinary information be published in the Weekly Bulletin. The Weekly Bulletin contains information which includes the offering price of a membership sold by the Board, the list of meetings of stockholders after proxy material has been reviewed by the Exchange, notice of proposed admission to membership of proposed members and member organizations, and publication of Exchange disciplinary decisions. Such information is now posted on the Nasdaq Trader web site, thereby reaching a wider audience. Existing references in the Constitution and Rules to the Exchange's bulletin board, located on the trading floor of the Exchange, will remain unchanged. All information contained in the Weekly Bulletin will be available to Amex members and others involved in trading on the Exchange trading floor, and will become available to the general public through the Nasdaq Trader web site. Moreover, information posted on the Nasdaq Trader web site will be available by mail for individuals who do not frequent the trading floor or who do not have access to a computer.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) ² of the Act in general and furthers the objectives of section 6(b)(5) ³ in particular in that it is 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 investor and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The proposed rule change will impose no burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing, including whether the proposed rule change 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by October 8, 1999.

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

The Commission has reviewed carefully the Amex's proposed rule change and believes, for the reasons set forth below, finds that the proposal is consistent with the requirements of Section 6 of the Act ⁴ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act ⁵ because it will reduce duplication in the circulation of information and will facilitate the dissemination of information to a wider audience.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that such information is available on the Internet and on the trading floor, so changing the content of the Weekly Bulletin should have no adverse impact on exchange members. In addition, information posted on the Internet will be available by mail for those individuals without access to a computer. By approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**, the Exchange will immediately reduce the costs associated with making such information available

in the Weekly Bulletin. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.⁶

It is therefore ordered, pursuant to Section 19(b)(2) of the Act ⁷ that the proposed rule change (SR-Amex-99-31) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23993 Filed 9-14-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41834; File No. SR-NYSE-99-17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change Permanently Approving the Pilot Program for the Listing Standards for Domestic and Non-U.S. Companies

September 3, 1999.

I. Introduction

On April 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 relating to the Exchange's original listing standards. On May 19, 1999, the Exchange submitted Amendment No. 1 to its proposal.³

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 4, 1999,⁴ and the Commission granted accelerated approval to the pilot program relating to an alternative listing eligibility criteria for U.S. and non-U.S.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 18, 1999 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088 (June 4, 1999).

² 15 U.S.C. 78f(b).

³ 15 U.S.C. 78f(b)(5).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

companies ("Pilot") until September 3, 1999, or until the Commission approves the Exchange's request for permanent approval of the Pilot. On July 15, 1999, the Exchange filed Amendment No. 2⁵ to the proposal and on August 30, 1999, the Exchange filed Amendment No. 3.⁶ The Commission received one comment letter regarding the proposal.⁷ This notice and order approves the proposed rule change, as amended, and solicits comments from interested person on Amendment Nos. 2 and 3.

II. Description of the Proposal

The purpose of the proposed rule change is to add a new original listing standard to the Exchange's domestic and non-U.S. numerical listing criteria and to modify its current original listing criteria applicable to non-U.S. issuers. The Exchange's numerical listing criteria currently include requirements regarding size, earnings and share distribution of a company. The Exchange is proposing to add a new alternative standards that focuses on global market capitalization and revenues for large, global companies.

The specific proposed amendments to the Exchange's original listing criteria are:

1. The Exchange is proposing a Capitalization Standard alternative to its other financial listing eligibility criteria. Under the proposed amendment to Paragraphs 102.01 and 103.01 of the NYSE's Manual, a company with a total global market capitalization of \$1 billion and revenues of \$250 million in its most recent fiscal year would be eligible for listing on the Exchange without satisfying any additional financial eligibility requirements. However, the company would have to meet the Exchange's other original listing criteria. The Exchange believes that companies of this magnitude would be appropriate for listing and trading on the NYSE even if they do not have earnings because the lack of earnings could be indicative of

the company's stage of development, or the transitional nature of its home economy, or the fact that a company could be undergoing short-term variations in profitability. This listing standard is proposed for both domestic and non-U.S. companies.

For companies listing in connection with an initial public offering ("IPO"), the valuation of the company's market capitalization would need to be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by the parent company's investment banker, other financial advisor, or transfer agent, if applicable) of the size of the offering as it pertains to the total market capitalization of the company upon completion of the offering (or distribution). For all other companies, the average market capitalization over the preceding six months would be used to determine the market capitalization of the company. In computing the six month average, the Exchange proposes to take advantage of the daily figures (i.e., share price and shares outstanding) over the preceding six-months.

2. The Exchange currently has alternative numerical listing criteria for non-U.S. companies with limited U.S. distribution.⁸ The Exchange proposes to amend its pre-tax earnings standard for these companies by requiring \$25 million in pre-tax income in each of the two most recent fiscal years. Currently, the company need only have pre-tax earnings of \$25 million in any one of the three most recent years. Thus, to qualify under the proposed criteria, a non-U.S. issuer would need to demonstrate pre-tax income of \$100 million in the aggregate for the last three fiscal years together with a minimum of \$25 million of pre-tax income in each of the two most recent fiscal years.

The Exchange notes that its past experience indicates that non-U.S. companies tend to follow U.S. GAAP/SEC disclosure guidelines, which only require U.S. GAAP reconciliation for the most recent two years and any relevant interim period. Thus, the third year back is generally reported only in local GAAP and, therefore, is of little quantitative value to the Exchange without reconciliation to U.S. GAAP. As a result the proposed rule change would

obviate the need to reconcile the third year back to U.S. GAAP except where the Exchange determines that that information is necessary to assure the Exchange that the aggregate \$100 million threshold has been satisfied.

III. Summary of Comments

The Commission received one comment letter from the National Association of Securities Dealers, Inc. ("NASD"), which opposed the proposal.⁹ The Exchange responded to this letter.¹⁰

In its letter, the NASD opposed the adoption of new listing criteria that would increase the number of large Nasdaq issuers eligible for listing on the NYSE, while the NYSE retains rules restricting companies from voluntarily delisting from the NYSE¹¹ and restricting off-board trading activity by NYSE members.¹² The NASD contends that the proposal, in conjunction with NYSE Rules 500 and 390, provides the NYSE with an unfair competitive advantage. Therefore, the NASD contends that the NYSE should not be allowed to adopt any rule change that increases the Exchange's ability to obtain or retain issuer listings while NYSE Rules 500 and 390 remain in effect.

In response, the Exchange argued that the NASD's argument is unrelated to the current proposal and further, that the proposed rule change is principally an additional listing standard to allow large companies to list on the Exchange. The Exchange noted that the decision whether to list on the Exchange is a decision made by the issuer.

IV. Discussion

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.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

⁵ In Amendment No. 2, the Exchange made technical changes to conform its proposed rule language to reflect the Exchange's rule language, as amended by a previously submitted rule proposal. See Letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated July 14, 1999 ("Amendment No. 2).

⁶ In Amendment No. 3, the Exchange made technical changes to conform its proposed rule language to reflect the Exchange's rule language, as amended by a previously submitted rule proposal. See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated August 26, 1999 ("Amendment No. 3).

⁷ See Letter from Frank G. Zarb, Chairman and Chief Executive Officer, NASD, to Jonathan G. Katz, Secretary, Commission, dated July 19, 1999 ("NASD Letter").

⁸ The Exchange applies the general financial listing standards in Paragraph 102.01 of its Manual both to domestic companies and to non-U.S. companies that have the required distribution and trading volume in the United States (or North America, for North American companies). However, the section and paragraph headings in the Manual suggest that those standards apply only to U.S. companies. The Exchange is proposing to change the non-U.S. heading to remove that implication by incorporating the word "alternative."

⁹ See NASD Letter, *supra* note 7.

¹⁰ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary Commission, dated September 2, 1999.

¹¹ NYSE Rule 500.

¹² NYSE Rule 390.

¹³ In approving this rule change, 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).

general, to protect investors and the public. The Commission believes that the Exchange's alternative financial listing standard for companies with \$1 billion in market capitalization and \$250 million in revenues in the most recent fiscal year is an acceptable standard for listing very large companies that the Exchange believes will prove to be financially successful, although they may not have been profitable in recent years. The Commission believes that the proposed rule change is consistent with the Exchange's obligation to remove impediments to and perfect the mechanism of a free and open market by providing issuers another alternative for trading in the U.S. marketplace without undermining the NYSE's listing standards, which play an important role in protecting investors.

The Commission also believes that it is reasonable for the Exchange to accept a written representation from an underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker or other financial advisor) for an IPO or spin-off, since by definition it could not satisfy the requisite market capitalization standard.

With respect to the "pre tax earnings" standard, the proposal amends its standard by requiring \$25 million in pre-tax income in each of the two most recent fiscal years. Thus, a non-U.S. issuer would need to demonstrate pre-tax income of \$100 million in the aggregate for the last three fiscal years together with a minimum of \$25 million of pre-tax income in each of the two most recent fiscal years. Reconciliation to U.S. GAAP of the third year back is required only if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate \$100 million threshold is satisfied. The Commission believes that the proposed change appropriately simplifies the non-U.S. company listing criteria because it parallels the benchmark applied in the "adjusted cash flow" standard for non-U.S. companies.¹⁵

The Commission carefully considered the concerns expressed by the NASD in its letter opposing the proposal. Without taking a position in this Order on the continued propriety of NYSE rules 390 and 500, the Commission was not persuaded by the NASD's contention that in light of those rules a proposal such as the current one that could reduce the burden for companies to list

on the NYSE is by its nature inappropriately anti-competitive.

The Commission finds that Amendment Nos. 2 and 3 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes Amendment Nos. 2 and 3 are consistent with the Section 6(b)(5)¹⁶ requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system by conforming the proposed rule language with the text of the NYSE rule language recently approved by the Commission.¹⁷

The Commission finds good cause for approving Amendments Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amendments merely conform the proposed rule language to the Exchange's actual rule language and do not make substantive changes to the text of the rule. In addition, accelerated approval will enable the Exchange to simultaneously make all relevant modifications to its *Listed Company Manual* and avoid any potential confusion due to recent rule revisions. Accordingly, the Commission finds that granting accelerated approval of Amendments No. 2 and 3 is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.¹⁸

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendments 2 and 3 are consistent with the Act. Persons making written statements 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 in Washington, DC. 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-99-17 and should be submitted by October 6, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (File No. SR-NYSE-99-17), as amended, relating to the listing criteria for U.S. and non-U.S. companies, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99-23994 Filed 9-14-99; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 15, 1999. If you intend to comment but cannot prepare comments properly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See Securities Exchange Release No. 41502 (June 9, 1999) 64 FR 32588 (June 17, 1999). In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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).

¹⁵ See Securities Exchange Act Release No. 41502 (June 9, 1999) 64 FR 32588 (June 17, 1999).