

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-50123; File No. SR-NYSE-2004-40)**

**July 29, 2004**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Its Original Financial Listing Standards Pilot Program**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 15, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange seeks to extend its original financial listing standards pilot program (the "Pilot Program")<sup>4</sup> until the earlier of October 31, 2004, or such date as the Commission may approve File Number SR-NYSE-2004-20,<sup>5</sup> which seeks permanent approval of the Pilot Program. The Pilot Program established revised financial standards applicable to the listing of

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR-NYSE-2003-43).

<sup>5</sup> See Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439 (July 2, 2004).

equity securities on the Exchange. The Pilot Program is currently in effect for a six-month period ending on July 30, 2004.

## **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 parts of such statements.

### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### **1. Purpose**

On January 29, 2004, the Commission granted accelerated approval to the Pilot Program on a six-month pilot basis through July 30, 2004.<sup>6</sup> Two comments were received in response to File Number SR-NYSE-2003-43.<sup>7</sup> The NYSE thereafter filed File Number SR-NYSE-2004-15 on March 16, 2004 for immediate effectiveness,<sup>8</sup> which suspended portions of the original Pilot Program regarding minimum numerical continued listing set forth in Section 802.01B of the NYSE's Listed Company Manual. In File Number SR-NYSE-2004-15, the Exchange noted its intention to publish the requirements of the original Pilot Program regarding minimum numerical continued listing standards set forth Section 802.01B for public comment on a non-accelerated

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<sup>6</sup> See Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR-NYSE-2003-43).

<sup>7</sup> See Letters to Jonathan G. Katz, Secretary, Commission, from W. Randy Eaddy, Kilpatrick Stockton LLP, dated March 11, 2004, and Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated February 25, 2004.

<sup>8</sup> See Securities Exchange Act Release No. 49443 (March 18, 2004), 69 FR 13929 (March 24, 2004).

timeframe. SR-NYSE-2004-15 did not, however, affect the Pilot Program with respect to original listing standards set forth in Sections 102.01C and 103.01B of the NYSE's Listed Company Manual or the Pilot Program's non-substantive change to the language of Section 802.01C.

On April 4, 2004, the Exchange filed File Number SR-NYSE-2004-20, which seeks permanent approval for the Pilot Program currently in effect with respect to the Exchange's original minimum listing standards, and approval of the continued minimum listing standards as originally proposed in File Number SR-NYSE-2003-43. File Number SR-NYSE-2004-20 was published in the Federal Register on July 2, 2004.<sup>9</sup> The Exchange believes it is appropriate to extend the amended Pilot Program until the earlier of October 31, 2004, or such date as the Commission may approve File Number SR-NYSE-2004-20.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>10</sup> because 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 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.

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<sup>9</sup> See Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of this 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.

Although Rule 19b-4(f)(6) under the Act<sup>13</sup> requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Exchange's request in view of the fact that the proposed rule change seeks to

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> Id.

continue the existing Pilot Program. The NYSE has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative date will allow the Exchange's Pilot Program to continue without any interruption in service to issuers and investors. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>14</sup>

#### **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. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-40 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. All submissions should refer to File Number SR-NYSE-2004-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,

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<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 20549. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).