

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 registered securities association.⁶ In particular, the Commission believes that the proposed rule change, as amended, is consistent with sections 15A(b)(2) and (6) of the Act,⁷ which require, among other things, that a national securities association be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance with the provisions of the Act, and that its rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change, as amended, provides holders of the Notes the same rights and subjects them to the same restrictions under Paragraphs C.1. and C.2. of the Certificate that currently apply to holders of Nasdaq's 4.0% Convertible Subordinated Notes due 2006, which are being retired.

Specifically, the holders will be entitled to vote on all matters submitted to a vote of the stockholders of Nasdaq. The holders' ability to vote is limited in Paragraph C.2. of the Certificate, which provides that holders of the Notes and common stock cannot vote any shares that they own excess of five percent of the then-outstanding shares of stock generally entitled to vote as of the record date in respect of such matter. Paragraph C.6.(b) of the Certificate, however, gives Nasdaq's Board of Directors ("Board") the authority to exempt certain persons from the five percent voting restriction. If the Board grants such an exemption to any person, then the holders would be permitted to receive a similar exemption from the voting restriction.⁸ The Board, however, is not permitted to grant exemptions from the five percent voting restriction to any registered broker or dealer or an affiliate thereof ("Broker Affiliate").⁹

⁶ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3(b)(2) and (6).

⁸ The Commission notes that, currently, one of the holders is a Broker Affiliate. Nasdaq represented in the Notice that if the Board were to consider granting a waiver to any person, it would have to consider that such action would trigger an exemption for the holders that would be deemed inconsistent with the provision in Paragraph C.6. See Notice, *supra* note 5, at note 9.

⁹ Nasdaq has stated that the definition of "Broker Affiliate" set forth in Paragraph C.6. includes a broker or a dealer or an affiliate thereof. See Notice, *supra* note 5, at note 11.

The Commission believes that it would be inconsistent with Nasdaq's Certificate for the Board to grant an exemption from the five percent voting restriction to any person if, as a consequence, a Broker Affiliate received a similar exemption.¹⁰

The Commission finds that, since this proposal extends the same rights and obligations under the Nasdaq Certificate to certain new holders of the Notes, the proposal is consistent with the Act. In addition, the Commission believes that the five percent voting restriction should limit the ability of any entity, particularly a registered broker or dealer, from controlling Nasdaq.¹¹

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-NASD-2005-099), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52887; File No. SR-NYSE-2005-82]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Pilot Program Relating to Minimum Numerical Standards in Section 102.01A of the Listed Company Manual

December 5, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November

¹⁰ Nasdaq states that, if in the future the Board exempts any Broker Affiliate from the five percent voting restriction, the holders of the Notes would automatically receive the same percentage voting rights or the highest percentage voting rights to which their Notes and shares held entitled them at the time. As noted, Paragraph C.6. prohibits the Board from granting any exemption from the five percent voting restriction to a Broker Affiliate. Accordingly, the Board is not permitted to grant such an exemption under its current authority and any change to this authority would have to be filed with, and approved by, the Commission pursuant to Section 19(b) of the Act.

¹¹ See Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000) (SR-NASD-00-27).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

23, 2005, 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 and II below, which Items have been prepared by the NYSE. On December 1, 2005, NYSE filed Amendment No. 1 to the proposed rule change.³ NYSE has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit 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 is proposing to amend, on a six-month pilot program basis (the "Pilot Program"), to expire on May 31, 2006, section 102.01A of the Exchange's Listed Company Manual (the "Manual") regarding the minimum numerical listing standards.⁶ The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the principal office of the NYSE, and at the Commission's Public Reference Room.

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.

³ In Amendment No. 1, NYSE made a technical change to Exhibit 5 (text of the proposed rule change). The correction to Exhibit 5 does not make any changes to the current initial listing distribution criteria for companies listing in connection with a transfer or quotation, but only adds missing rule text that was inadvertently excluded in the filing submitted by the Exchange on November 23, 2005.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Annemarie Tierney, Assistant General Counsel, NYSE, on December 2, 2005 (clarifying that the pilot program expires on May 31, 2006).

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

1. Purpose

The Exchange is proposing to introduce a Pilot Program to amend certain of its minimum numerical standards for the listing of domestic equity securities on the NYSE. Section 102.01A of the Manual sets out minimum initial requirements for size and volume that must be met in order for a company to be listed. Currently, companies that are listing in conjunction with an initial public offering are required to demonstrate that there are at least 2,000 or more round lot holders⁷ of the security to be listed in order to be authorized to list. If a company cannot confirm that it satisfies the 2,000 round lot holder threshold prior to the date that trading commences, the security is ineligible for listing.

The Exchange states that it is increasingly being approached by companies that are ultimately unable to list due to special circumstances that result in the company's inability to satisfy the 2,000 round lot holder requirement prior to commencement of trading. For example, companies listing following emergence from bankruptcy and companies affiliated with a currently listed company that were created in conjunction with a private placement or similar transaction generally do not meet the round lot holder threshold unless the company conducts a public offering simultaneously with listing. To accommodate the listing of these types of companies absent a public offering, the Exchange proposes to adopt alternative round lot holder distribution standards for affiliated companies and companies listing upon emergence from bankruptcy so that these types of companies will be eligible to list if they can demonstrate that they have at least 400 round lot holders prior to commencement of trading. The additional distribution criteria for number of publicly held shares and aggregate market value of publicly held shares that are set forth in section 102A of the Manual are not proposed to be amended.

⁷ A "round lot" is a trading unit equivalent to 100 shares (or an otherwise defined unit of trading). Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Annemarie Tierney, Assistant General Counsel, NYSE, on December 2, 2005.

2. Statutory Basis

The Exchange believes that the basis under the Act for the Pilot Program is the requirement under section 6(b)(5)⁸ 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 Pilot Program 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 written comments on the proposed Pilot Program.

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

Because the foregoing proposed rule change, as amended: (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 for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)⁹ of the Act and Rule 19b-4(f)(6) thereunder.¹⁰

The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),¹¹ and designate the proposed rule change to become operative immediately so that the Exchange can implement its Pilot Program relating to minimum numerical initial listing standards to facilitate listings by limited categories of companies that meet the

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. NYSE has requested that the Commission waive the five-day pre-filing notice requirement. The Commission waives the five-day pre-filing notice requirement.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

Exchange's current listing standards other than the round lot holder threshold. The Commission notes that the Exchange states that the proposed round lot holder threshold for affiliated companies and companies emerging from bankruptcy is substantially similar to the listing threshold utilized by The Nasdaq Stock Market¹² and the American Stock Exchange LLC.¹³ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal to be effective and operative upon filing with the Commission.¹⁴

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.¹⁵

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. Please include File No. SR-NYSE-2005-82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-82. This file number should be included on the

¹² See NASD Rule 4420.

¹³ See Section 102(a) of the Amex Company Guide.

¹⁴ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ The effective date of the original proposed rule is November 23, 2005. The effective date of Amendment No. 1 is December 1, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 1, 2005, the date on which NYSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2005-82 and should be submitted on or before January 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52891; File No. SR-NYSE-2005-83]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Exchange's Certificate of Incorporation, Constitution and Rules to Allow Limited Liability Companies to Become Members and Related Changes to the Exchange's 2005 Price List

December 5, 2005.

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 November

28, 2005, 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 and II below, which Items have been prepared by the Exchange. On December 1, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On December 5, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Exchange has designated this proposal as "non-controversial" pursuant to section 19(b)(3)(A) of the Act,⁵ and Rule 19b-4(f)(6) thereunder,⁶ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit 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 Exchange proposes (i) to amend the Exchange's Constitution to allow limited liability companies ("LLCs") to become members of the Exchange, (ii) a related amendment to the Exchange's Certificate of Incorporation, (iii) an amendment to Exchange Rule 301 to implement the admission to membership of LLCs under certain limited circumstances in order to facilitate estate planning by individual members, and (iv) an amendment to the Exchange's 2005 Price List to reflect an application fee to be charged to new LLC members and to waive the Exchange's transfer fee payable in connection with the transfer of a leased seat, if the new lease is entered into solely as a result of a transfer to an LLC pursuant to proposed Exchange Rule 301(e). Under the proposed rule change, transfers of LLC membership interests would be prohibited other than transfers (i) to Family Members,⁷ (ii) to grantor

³ See Form 19b-4 dated December 1, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange (i) modified the Purpose section to match the proposed rule text; (ii) amended the proposed changes to the Exchange Certificate of Incorporation and included a description of such proposed changes in the Purpose section; and (iii) made technical changes.

⁴ See Partial Amendment dated December 5, 2005 ("Amendment No. 2"). In Amendment No. 2, the Exchange (i) clarified the purpose section to match the proposed rule text; (ii) made changes to the Exchange's 2005 Price List; (iii) deleted a paragraph in Section III of Exhibit 1; and (iv) made technical changes.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(1)(6).

⁷ For purposes of proposed Exchange Rule 301(e), the term "Family Member" means, with respect to any person, such person's spouse, domestic partner, children, stepchildren, grandchildren, parents,

retained annuity trusts ("GRATs") established for estate and tax planning purposes, (iii) by distribution of such interest by the trustee of each such a trust to any one or more of its beneficiaries (including a trust for the benefit of any one or more of them), or (iv) by gift or bequest, outright or in trust, by any such beneficiary, the donees and legatees of any such beneficiary or their donees and legatees, in each case subject to certain additional limitations.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

Amendment to Exchange Constitution and Certificate of Incorporation

At the Exchange's annual membership meeting on April 7, 2005, the members voted to amend the Exchange's Constitution to allow LLCs to be members of the Exchange in order to facilitate estate planning by individual members. The Exchange's Constitution currently restricts membership to natural persons. This restriction has had the effect of limiting members from being able to include memberships in estate planning.

The proposed amendment would allow members to place their seats into LLCs, allowing them to advance estate-planning objectives. The proposed amendment is also intended to prevent aggregation of control through LLCs, to maximize accountability, and to facilitate regulation and administration to the greatest extent possible.

parents-in-law, grandparents, brothers, sisters, uncles, aunts, cousins, nephews and nieces.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.