Although the ISE and CBOE rules are not identical, both ISE Rule 717(f) and CBOE Rule 6.8A permit non-marketable limit orders that improve the price to be sent to the exchange and routed to the relevant trading mechanism for execution. As it stated with respect to its approval of ISE Rule 717(f), the Commission is unable to conclude that the new CBOE Rule violates any statutory requirements.

In its comment letter, Susquehanna asked the Commission to clarify that orders entered with a single keystroke are subject to the Rule.[14] Susquehanna expressed concern that professional traders may attempt to circumvent the Rule by ''having a person enter a keystroke to send an electronically generated order . . . so that the order can be deemed ''manual'.'' [15] In response, the CBOE stated that it agrees with Susquehanna that this practice could potentially undermine the purpose of the Rule. In such a case, the CBOE believes that it can effectively address the issue by adding an Interpretation to Rule 6.8A that clarifies the scope of the Rule.[16] Such an Interpretation would be subject to the filing requirements of Section 19(b) of the Act.

In sum, the Commission notes that the Rule does not prohibit electronically generated orders from being sent to the CBOE; rather, it merely prevents them from being entered into ORS. Thus, electronically generated orders will be routed to the trading crowd and represented in open outcry. Once the order arrives at the trading crown, CBOE rules require that the order be executed at the CBOE's displayed bid or offer at the time the order is represented in the crowd.[17] Depending upon the circumstances, the order may be filled at a price better than the CBOE's displayed bid or offer. Therefore, although electrically generated orders will not be eligible for automatic execution on RAES under the Rule, they will still be entitled to receive an execution price that is as good as or better than the CBOE's displayed bid or offer.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

[14] *Supra* note 7, at 4.

[15] *Id.*

[16] Telephone conversation between Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, Commission (September 10, 2000).

[17] *See* CBOE Rule 8.51.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–00–01), as amended, adopting Rule 6.8A, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 00–24128 Filed 9–19–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 43288; File No. SR NYSE 99 50]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Continued Listing Standards

September 13, 2000.

I. Introduction

On December 21, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the Exchange's continued listing standards. On March 27, 2000, the Exchange submitted Amendment Nos. 1 and 2 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on April 7, 2000.[4] No comments were received on the proposal. This order approves the NYSE's proposal, as amended.

II. Description of The Proposal

The proposal would modify several of the Exchange's existing continued listing criteria.[5] First, the Exchange proposes to define the term ''market capitalization'' in so far as it applies to the continued listing standards. Second, the Exchange proposes to clarify what is meant by ''shareholders equity'' in the context of partnerships. Third, the Exchange proposes to specify a set of circumstances in which it will exercise some discretion in determining the listing status of a company that has filed or has announced an intent to file for bankruptcy, and that is below the financial continued listing standards specified in Para. 802.01B of the *Listed Company Manual.*

(A) Market Capitalization Definition

The proposal specifies that for purposes of its continued listing standards, the term ''market capitalization'' will encompass all common stock outstanding, whether publicly traded or not, so long as the Exchange is able to accurately attribute a value to it [6] on the day the market capitalization is calculated. Thus, if such a security is publicly traded common stock, the closing price from the previous trading day will be the price used for purposes of the calculation.

In addition, the proposal would permit the Exchange to provide its staff with the discretion to evaluate the capital structure of the issuer and include common stock that would be issued upon conversion of an instrument that constitutes the issuer's capital. Traditional debt, related to financing activities, will be excluded. Similar to the procedure discussed above, but for convertible publicly-traded securities other than common stock, the applicable price will be the closing price of the common stock into which it is convertible from the previous trading day.[7]

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE made several clarifications to the intent and proposed interpretation of the proposed rule change. The Exchange expanded its discussion regarding the use of convertible securities in calculating the market capitalization of an issuer, and provided several examples of the proposed rule's application. The Exchange also explained the IRS-related basis for the proposed changes to the calculation of market capitalization for partnerships. Finally, the Exchange clarified that the proposed change to the bankruptcy provision would not restart the eighteen-month clock for an Exchange-approved plan. *See* Letter to Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated March 21, 2000 (''Amendment No. 1''). In Amendment No. 2, the Exchange made several technical changes to the rule text which were reflected in the notice. *See* Letter to Belinda Blaine, Associate Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated March 24, 2000 (''Amendment No. 2'').

[4] Securities Exchange Act Release No. 42579 (March 27, 2000), 65 FR 18412.

[5] The Exchange recently revised its continued listing standards, and to this point several issues have come to light that necessitate clarification. *See* Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999).

[6] For example, a privately-held Class B common stock convertible into the listed Class A common stock would be included and valued on an as-converted basis.

[7] For example, if a convertible preferred security trades at $15 and the common stock into which it is convertible trades at $10, the price utilized would be the closing price of the common stock on the previous day (not the higher price of the preferred security) and the market capitalization would be computed on an as-converted basis.

Finally, if the issuer has outstanding privately-held securities, the calculation would be made as described above for convertible securities based upon the previous day's closing price of the publicly-traded security. Thus, a privately held Class B common stock convertible into the publicly-traded Class A would be valued at the price of the Class A. Likewise, a privately-held preferred Series A convertible into the publicly-traded Class A would be valued at the price of the Class A on an as-converted basis.

The proposal would also permit the Exchange to review any applicable conversion restrictions when conducting its market capitalization analysis and factor any such restrictions into the computations as appropriate.

(B) ''Shareholders' Equity'' and ''Market Capitalization'' of Partnerships

The proposal would enable the Exchange to evaluate the formation of the current capital structure of a partnership and, where appropriate, to include other publicly-traded securities in the calculation as a substantial equivalent to common stock. Furthermore, the proposal would amend the stockholders' equity test to clarify that both general and limited partners' capital is the measure for the applicable calculation. The Exchange believes that this clarification is necessary because the concept of ''shareholders' equity'' is not applicable to partnerships. Instead, the notion of capital captures the appropriate analogous concept with respect to partnerships.

The Exchange's intent in codifying the concept of analyzing the creation of the current capital structure stems primarily from the recent expiration of an IRS grandfather provision that resulted in numerous recapitalizations of partnerships. The Exchange believes it is not equitable to penalize these partnerships for restructuring in order to prevent, among other things, double taxation. Thus, for instance, if a holder of $50 of partnership units prior to the conversion were to receive $25 in partnership units and $25 in debt, the ''market value'' of the holdings has not changed and should be calculated at $50 for purposes of determining the continued listing status of the company. Consistent with the principles articulated above, the proposal would require that the non-equity instrument be publicly traded so as to assure the ability to value the instrument.

(C) Companies That Have Filed for Bankruptcy and That Are Below the Financial Continued Listing Criteria

The proposal would give the Exchange the authority to analyze the financial status of companies that have filed or that have announced an intent to file for bankruptcy, and that are also below the Exchange's financial continued listing criteria, on a case-by-case basis.[8] However, if a company has previously filed an Exchange approved plan to meet the Exchange's continued listing standards within 18 months, application of this provision to the company does not restart the 18-month clock. Thus, for instance, a company that declares bankruptcy mid-stream through an Exchange-approved plan would still only have the remainder of the plan to come into compliance. It would not be afforded an additional 18 months, but would incorporate the projected effect of the bankruptcy into its Plan and resubmit it for consideration.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act[10] in that it clarifies certain maintenance criteria for listing on the NYSE. Listing standards serve as a means for a marketplace to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor based, and trading interest to maintain fair and orderly markets. Once an issuer has been approved for initial listing, the maintenance criteria allow a marketplace to monitor the status of that issuer. Accordingly, the Commission believes that by clarifying the NYSE's continued listing standards, the proposal should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[11]

First, the proposal would elucidate the term ''market capitalization'' as used in the *Listed Company Manual.* The proposal would explain that market capitalization encompasses all common stock outstanding, whether publicly traded or not, so long as the exchange is able to accurately attribute a value to it on the day the market capitalization is calculated. In addition, the proposal would give Exchange staff the discretion to evaluate the capital structure of an issuer and include common stock that would be issued upon conversion of an instrument that constitutes the issuer's capital, excluding traditional debt related to financing activities. Outstanding privately-held securities also would be considered in the market capitalization computation. Finally, the proposal would allow the Exchange to review any applicable conversion restrictions when conducting its market capitalization analysis and factor any such restrictions into the computations as appropriate. The Commission finds that the proposed clarifications and the additional discretion given to the Exchange's staff to evaluate a company's financial status are reasonable. Specifically, the Commission believes that such changes to the Exchange's existing rules are not inappropriate measures for determining a company's market capitalization and should aid the Exchange by producing a more accurate determination of a company's market capitalization.

Second, the proposal would enable the Exchange to evaluate the formation of the current capital structure of a partnership and, where appropriate, include other publicly-traded securities in the calculation as a substantial equivalent to common stock. The proposal would also amend the stockholders' equity test to clarify that both general and limited partners' capital is the measure for the applicable calculation. Given the unique nature of a partnership, the Commission finds that the proposed clarifications explaining which measures should be used to evaluate a partnership's financial status are reasonable.

Finally, the proposal would give the Exchange the authority to analyze the financial status of companies that have filed or that have announced an intent to file for bankruptcy, and that are also below the Exchange's financial continued listing citeria, on a case-by-case basis. However, if a company has previously filed an Exchange-approved

[8] The Exchange represents that there are instances where companies meeting these criteria should be afforded the opportunity to submit a financial plan for evaluation. For instance, a company that is profitable (or that has a positive cash flow), or is demonstrably in sound financial health despite the bankruptcy proceedings, should not be delisted if it can demonstrate that, within 18 months, it will be in compliance with the Exchange's financial criteria.

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

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

plan to meet the Exchange's continued listing standards within 18 months, application of this provision to the company does not restart the 18-month clock. The Commission believes that certain flexibility in applying continued listing standards may occasionally be necessary when establishing procedures to uphold the quality of the market. Accordingly, the Commission believes it is reasonable to provide the Exchange with the discretion to evaluate a company's status to prevent premature, automatic delisting of a company otherwise qualified for continued listing. The Commission also believes that it is appropriate that a company that has previously submitted a plan to come into compliance with the Exchange's continued listing criteria not be extended additional time to come into compliance by filing or declaring an intent to file for bankruptcy. The Commission believes that this strikes a reasonable balance between providing companies an opportunity to cure any deficiencies and continue to list on the Exchange and protecting investors and the public interest by not continuing to list companies that cannot meet the Exchange's continued listing criteria during the initial 18 month period.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–99–50), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–24129 Filed 9–19–00; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice Number 3410]

Shipping Coordinating Committee, Facilitation Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, October 11, 2000, in room 1303 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC, 20593–0001.

The purpose of the meeting is to review the agenda items to be considered at the twenty-eighth session of the Facilitation Committee (FAL 28) of the International Maritime Organization (IMO), which is scheduled for October 30–November 3, 2000, at the IMO headquarters in London. Proposed U.S. positions on the agenda items for FAL 28 will be discussed.

The major items for discussion for FAL 28 will include the following:

—Convention on Facilitation of International Maritime Traffic
—Consideration and adoption of proposed amendments to the Annex to the Convention
—Electronic Data Interchange (EDI) messages for the clearance of ships
—Application of the Committee's Guidelines
—General review of the Convention
—Formalities connected with the arrival, stay and departure of ships
—Formalities related to cargo—Facilitation aspects of the multimodal transport of dangerous goods
—Formalities connected with the arrival, stay and departure of persons—Stowaways
—Facilitation aspects of other IMO forms and certificates
—Ship-port interface
—Technical co-operation sub-program for facilitation

Members of the public may attend this meeting up to the seating capacity of the room.

Interested persons may seek information by writing: Chief, Office of Standards Evaluation and Development, U.S. Coast Guard Headquarters, Commandant (G–MSR), room 1400, 2100 Second Street, SW, Washington, DC, 20593–0001 or by calling Mr. David A. Du Pont at: (202) 267–0971.

Dated: September 13, 2000.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 00–24179 Filed 9–19–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–96–1436]

Docket Management System (DMS)

AGENCY: Office of the Secretary, DOT.

ACTION: Notice requesting comments.

SUMMARY: The Office of the Secretary (OST) is requesting the public to comment on the DOT Docket Management System (DMS). Five years ago, DOT consolidated nine separate docket facilities and converted from a paper-based system to an electronic storage system that we later placed on the Internet. We have continued to make improvements and would like public comment on the current system and our plans for future changes.

DATES: Comments must be submitted by November 20, 2000.

ADDRESSES: Mail or hand deliver comments to the US Department of Transportation, Docket Management Facility, Docket No. OST–96–1436, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at http://dmses.dot.gov/submit/. The Docket Management Facility, Room PL–401, is open for public inspection and copying of comments from 9 a.m. to 5 p.m. ET Monday through Friday, except Federal Holidays. See **SUPPLEMENTARY INFORMATION** for additional information on comment acknowledgment and electronic submission.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Y. Beard, Chief, Docket Operations and Media Management, SVC–124, (202) 366–5149.

SUPPLEMENTARY INFORMATION:

Background

This notice is intended to inform the public about, and to solicit public comment on, the features and functions of the DMS. Five years ago, DOT consolidated nine separate docket facilities and converted from a paper-based system to an optical ''imaging'' system, which keeps a picture of the document, for more efficient storage, management, and retrieval of docketed information. The new system now provides the public with 24-hour access and electronic filing of comments through the world-wide web. DOT would like to take this opportunity to obtain additional suggestions and feedback on the DMS.

Comment Acknowledgement

Any person wishing acknowledgement of comment receipt should include a self-addressed stamped postcard, or print the acknowledgement page after submitting comments electronically.

Electronic Access and Filing

You may submit comments online through the DMS at *http://dmses.dot.gov/submit/.* Acceptable formats include: MS Word (Versions 95–97), MS Word for Mac (Versions 6–8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and Word Perfect (WPD) (Versions 7–8). Electronic Submission Help and Guidelines are available under the Help section of the web site.