as the Commission may designate up to ninety 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 such proposed rule change or

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

**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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–00–03 and should be submitted by March 30, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–5758 Filed 3–8–00; 8:45 am]

**BILLING CODE 8010–01–M**

[5] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42487; File No. SR–NYSE–99–34]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend the Exchange's Allocation Policy

March 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 20, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. On February 7, 2000, the Exchange submitted Amendment No. 1 to its proposal.[2] The proposed rule change, as amended, is described in Items I, II and III below, which Items have been prepared by the Exchange. 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 proposed rule change consists of changes to the Exchange's Allocation Policy and Procedures (''Policy'').

**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 and is set forth in Sections A, B, and C below.

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

**1. Purpose**

The intent of the Exchange's Policy is to (1) ensure that the allocation process for securities is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) provide an incentive for ongoing enhancement of performance by specialist units; (3) provide the best possible match between a specialist unit and security; and (4) contribute to the strength of the specialist system.

Since 1987, the Exchange's Quality of Markets Committee has appointed a number of Allocation Review Committees (''ARCs'') to review the Policy and make recommendations with respect to changes.[3] In February, 1999, the Quality of Markets Committee again appointed in ARC, ARC V, to review the Policy and make recommendations with respect to improvements in the allocation process. Those recommendations, which the Exchange is proposing as changes to the Policy, are discussed below.

**Composition of Allocation Committee**

Currently, the Allocation Committee is composed of nine members, consisting of seven floor brokers (including three broker Governors (one of whom may be an independent/two dollar broker) and four other floor brokers from the Allocation Panel (one of whom must be an independent/two dollar broker)) and two allied members[4] from the Market Performance Committee[5] or the Allocation Panel. The Allocation Committee presently does not have representation from institutional investor organizations. The Exchange believes that these organizations are significant participants in the securities markets, including the Exchange and therefore, that such representation enhances the expertise and objectivity of the Allocation Process. The proposal would add one institutional investor representative member to the Allocation Committee drawn from the Allocation Panel or from the institutional investor members of the Market Performance Committee.

In connection with this change, however, the Exchange does not believe it is necessary to expand the size of the Committee. Therefore, the NYSE proposes to decrease the number of floor brokers on the Committee from seven to six. This would be accomplished by decreasing from four to three the number of other floor brokers from the Allocation Panel (one of whom must be an independent/two dollar broker).

**Composition of Allocation Panel**

The Allocation Panel (''Panel'') is the resource from which the Allocation Committee is assembled. A Panel is appointed by the Exchange's Quality of Markets Committee from among

[1] 5 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the Exchange provided additional information regarding the allocation of target stocks and merged companies; clarified the selection process for institutional investors and the definition of a senior officer; and revised its procedures so that members of the committee eligible for election as chairman include brokers with four months remaining in their committee term. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Terri Evans, Attorney, Commission, dated February 4, 2000 (''Amendment No. 1'').

[3] *See* Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 20, 1997) (containing recommendations made by ARCs I through IV).

[4] *See* Sec. 3(c) of Art. I of the NYSE Constitution.

[5] The Market Performance Committee is appointed by the Exchange's Board of Directors to develop and administer procedures designed to improve the performance of members on the floor. It consists of floor Directors, floor Governors, allied members and representatives of institutional investor organizations.

individuals nominated by the Exchange's membership. The Panel consists of 28 floor brokers; twelve allied members (including the four allied members serving on the Market Performance Committee); the eight floor broker Governors who are part of the Panel by virtue of their appointment as Governors; and a minimum of five Senior Floor Official brokers. The Exchange proposes three changes to the composition of the Panel.

First, the Exchange proposes to expand the Panel to add nine institutional investor organization representatives, including the five serving on the Market Performance Committee, to be consistent with the proposal to add institutional investor representatives to the Allocation Committee. Representatives from institutional investor organizations will be chosen in the same manner as other Panel members (*i.e.,* through nominations from the membership and appointment by the Quality Markets Committee).[6]

The second proposed change relates to the number of floor Governors on the Panel. Floor Governors are Floor Officials who have been appointed as Governors by the Chairman of the Exchange. In 1998, the Exchange increased the number of floor Governors appointed under Exchange Rule 46 from 16 to 20.[7] These 20 governors consist of ten specialists active on the floor and ten-floor brokers. The floor broker Governors are automatically members of the Market Performance Committee and the Panel. The Exchange now proposes to increase the number of floor broker Governors on the Panel from eight to ten to reflect the increased number of floor Governors. In addition, at the time the number of floor Governors was increased, the number of allied member representatives on the Market Performance Committee was increased from four to five. The Exchange proposes to amend the composition of the Panel to reflect this increase.

The new composition of the Allocation Panel would be 28 floor brokers; 13 allied members (including the five allied members serving on the Market Performance Committee); nine institutional members (including the five representatives of institutional investor organizations serving on the Market Performance Committee); the ten floor broker Governors who are part of the Panel by virtue of their appointment as Governors; and a minimum of five Senior Floor Official brokers.

**Allocation Committee Quorum Requirement**

The Exchange is not proposing to alter the Committee's existing quorum requirement that there be at least six floor brokers, at least two of whom are Governors, and one allied member. The presence of the institutional representative would not be required for a quorum because, at times, it may be difficult to obtain the participation of a representative of an institutional investor organization.

**Contact Between Listing Companies and Specialist Units**

Currently, specialist units or any individual acting on their behalf are prohibited from having any contact with a company that has applied for listing from the date applications (known as ''green sheets'') are solicited from specialists for the purpose of allocating the stock to a specialist organization. The Exchange proposes to change this non-contact period to the earlier of the date written notice is given that the listing company filed its listing application with the Exchange or the date allocation applications are solicited, (*i.e.,* the date the ''green sheet'' is posted). The Exchange presently publishes this notice of listing application in its Weekly Bulletin. This proposal would move the start of the period as to when contact is prohibited to an earlier date in those cases where the ''green sheet'' is issued after the Weekly Bulletin notice of an application to list has been published. The Exchange believes this is appropriate since once the application is made public, the listing process has begun, and specialist contact with the listing company should be prohibited during this period.

**Listing Company Request for Additional Specialist Information Following Interviews**

Under the Policy, a listing company may choose to pick its specialist unit after interviewing a pool of three, four, or five units selected by the Allocation Committee. Currently, any follow-up questions conveyed to the Exchange from a listing company regarding specialist unit(s) it interviewed are restricted to questions regarding publicly-available information. The Exchange must approve the request and all units in the group of units interviewed must be notified by the Exchange of the request.

The NYSE proposes that if a listing company has a follow-up question for any specialist unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange will contact the unit(s) to which the question pertains and will provide any information received from the unit(s) to the listing company. The NYSE purposes to eliminate the requirement that only publicly-available information be provided and the language requiring Exchange approval. The requirement that the Exchange notify other units of the company's request also would be deleted to make the process more efficient. The Exchange believes that the listing company should have the ability to selectively request information of a unit it has interviewed. For example, at times, an issue may be discussed at subsequent interviews and the listing company would like similar information from a unit it had already interviewed. Or, a listing company may have further questions of the units it has selected for final consideration. The Exchange believes that it would be an unnecessary burden on the listing company and all the units to require information that is not of interest to the listing company.

**Common Stock Listing After Preferred**

Currently, the Policy does not address the situation involving a common stock being listed after its preferred stock has been allocated. The Exchange is proposing that the allocation of the common stock of a company listing after its preferred stock has been listed would be open to all units. The company may select Option 1 (in which the Allocation Committee selects the specialist unit to be allocated the company's stock) or Option 2 (in which the company selects a specialist unit from among a group of units chosen by the Allocation Committee). If Option 2 is selected, the specialist unit that trades the preferred stock must be included in the group of units comprising the interview pool. The company will not be able to select the specialist unit trading the preferred stock without going through the allocation process.

**Listed Company Mergers**

Currently, when two listed companies merge, the merged entity is assigned to the specialist in the company that is determined to be the survivor-in-fact (dominant company). Where no surviving entity can be identified, the matter is referred to the Allocation Committee and all specialists are invited to apply. The merged company may request either Option 1 or Option 2, with no provisions to include or exclude any unit from consideration by

[6] *See* Amendment No. 1, *supra* note 2.

[7] *See* Securities Exchange Act Release No. 40539 (October 9, 1998), 63 FR 56281 (October 21, 1998). The Exchange stated at the time the increase was needed to maintain sufficient levels of floor Governor supervision and timely response, in the face of an increase in trading volume and number of listed securities in recent years.

the Allocation Committee. There is no provision for the merged company to select a unit that trades one of the listed companies which is merging without going through the allocation interview process.

The Exchange is proposing several changes to the Policy. Where no surviving entity can be identified, the listing company would be permitted to select one of the units trading the merging companies without going through the allocation interview process. This would make the allocation process more efficient and less time consuming for the listing company in those instances in which the company ultimately may have decided that it will select one of the units which traded the merging companies. The Exchange believes that requiring the interview process would be more form over substance. If the listing company determines to go to allocation, it may select Option 1 or Option 2. Under Option 1, the company would not be able to request that the Allocation Committee not allocate the stock to one of the units trading the merging companies. If the company chooses Option 2, the interview pool would consist of the specialist units of the merging companies and must include additional units. The number of additional units must be consistent with the Policy requirement that each pool consists of three to five units. Under Option 2, the company would not be permitted to request that any of the units trading the merging companies be excluded from the interview pool.

The Exchange believes that this approach strikes an appropriate balance between the interests of specialist units, who have developed a relationship and a history of market making performance with a listed company, and the interests of listed companies in choosing the most appropriate unit to be their specialist. Should be merged entity choose to remain with the current specialist (or either of the current specialists), it is free to do so. The distinction in this situation from the one discussed below regarding target stocks is that the merged entity's management team is customarily a combination of the two existing management terms, and the Exchange believes that the current specialist(s) ought to have a reasonable opportunity to present its case to this new management, without, of course, any guarantee of receiving the allocation. A portion of the management team from the pre-merged entities should not have the right to exclude a specialist(s) from even being considered for the allocation. The Exchange believes that such specialist should be given the opportunity to be considered for the allocation, and if it is determined not to be the best candidate for the allocation, then the unit will not be selected. In the viewpoint of the Exchange, based on experience gained over a long history of managing stock allocations, the proposed approach is the fairest to all parties, while furthering the overall objectives of the Policy. [8] The Exchange believes that these changes will make the Policy more consistent in its approach in providing the opportunity for input and choice on the part of the listing company.

**Listed/Unlisted Company Mergers**

Currently, if the unlisted company is the survivor-in-fact, the company may chose to remain registered with the unit that traded the listed company involved in the merger or may request that the matter be referred to allocation, with applications invited from all units. The company may request that the unit trading the listed company not be allocated the stock (and, as a result, not be included in the pool of units under Option 2) and the Allocation Committee must honor that request.

The Exchange is proposing to conform this Policy to the proposed Policy involving listed company mergers with no survivor-in-fact. Therefore, the Policy would be amended to preclude the unlisted company from excluding the specialist unit that trades the listed company from consideration by the Allocation Committee. Further, the Policy would require that if the unlisted company chooses Option 2, the unit trading the listed company must be included in the allocation pool.

**Issuance of Tracking (''Target'') Stock**

These securities (also known as ''letter stock'') typically are ''targeted'' to a specific aspect of an issuer's overall business. There are two instances in which ''target'' stocks are being listed. The first involves situations in which the ''target'' stock is being ''uncoupled'' from the listed company, and itself listing on the Exchange. Under the current Policy, when such a security is ''uncoupled'' and becomes an independent listing, it remains with the specialist registered in the stock prior to its separate listing (''original stock''), unless the listing company requests that the new stock be referred to the Allocation Committee. The Allocation Committee must honor the company's request not to be allocated to the specialist unit that had traded the original stock. This provision will remain unchanged. However, the Policy is being amended to require the Allocation Committee to honor the listing company's request to include as well as exclude from the allocation pool, the specialist unit that had traded the original stock. This will conform this Policy to that proposed for the second type of ''target'' stock situation.

The second type of ''target'' stock involves a listed company issuing a ''target'' stock to track a separate business line. In these instances, the issue is assigned by Exchange staff to the specialist in the listed company issuing the ''target'' stock. As a result, the new listing company (the ''target'' stock) has no input in the allocation decision. The Exchange proposes to amend the Policy to conform with the spin off/related company policy. The Exchange believes that these situations should be treated consistently under the Policy, since they are similar situations.

Target stocks, whether the target stock itself is joining the Exchange as a separate listing (*e.g.,* Con Edison Inc. issuing distinct securities of Con Edison of New York) or where the target stock represents a tracking of a bsuiness line of the current listed company (*e.g.,* GM and GMH), will be treated in the same manner as spin-offs and listing of related companies. This is due to the existing relationship of the specialist with the currently listed company (herein-after referred to as the ''Parent'') and to the management of the Parent. The policy for allocating such securities is that the listing company may choose to stay with the specialist unit registered in the related listed company or be referred to the Allocation Committee. In the latter case, the company may request not to be allocated to the Parent's specialist and the Allocation Committee will honor such request. Alternatively, the listing company may request the exclusion or inclusion of the Parent's specialist in the allocating pool if the listing company elects Option 2.[9]

Target stocks have a similar relationship with the Parent's specialist and the Exchange believes they should have the option to either include or exclude the Parent's specialist from the pool of specialists determined by the Allocation Committee. According to the Exchange, the rationale for this is two-fold. First, if the Parent company is unsatisfied with the specialist's performance to date, the Exchange believes it is unnecessary to include this unit in the pool if the company so requests. In the same vein, if the Parent company is satisfied with the specialist's performance but wishes to avail itself of the opportunity to

[8] *See* Amendment No. 1, *supra* note 2.

[9] *See* Amendment No. 1, *supra* note 2.

interview other units, the company should have the option of including such specialist in the interview pool along with other specialists determined by the Allocation Committee. Finally, it is important to bear in mind that, often, senior management of the subject companies is the same as that of the Parent (or there is substantial overlap), and, therefore, the choice of a specialist will be influenced by an assessment of the current relationship and market making performance.[10]

**Allocation Sunset Policy**

When the Exchange allocates a company that is listing its shares from its initial public offering, that allocation decision remains effective for three months. If the company does not list within that time, the matter is referred again to the Allocation Committee. The policy balances the interests of the Exchange in preventing a listing company from delaying listing in order to select a different specialist versus the legitimate economic interests of a listing company to delay an IPO due to market conditions. However, if the selected specialist unit merges or is involved in a combination within the three-month period, the Exchange is proposing to amend the Policy to permit the listing company to choose whether to stay with the merged specialist unit, or be referred to allocation. This recognizes that the listing company may wish to reconsider its choice in light of the changed circumstances regarding the specialist unit it chose.

**Listing Company Attendees at Specialist Interviews**

The current Policy requires that a senior official of the listing company of the rank of Corporate Secretary or above be present at the interviews with specialists under Option 2. In the case of structured products' listings,[11] the corporate makeup contemplated by the existing requirement often does not exist. The Exchange proposes to amend the Policy to clarify that any senior officer[12] of the issuer may be present at the interview to satisfy the requirement.

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)[13] that an Exchange have rules that are designed 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. The Exchange believes that the proposed changes are consistent with these objectives in that they would enable the Exchange to ensure fairness and equal opportunity in the allocation process.

*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 written 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 approved the proposed rule change, or

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

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. 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–99–34 and should be submitted by March 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–5759 Filed 3–8–00; 8:45 am]

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[10] *See* Amendment No. 1, *supra* note 2. In terms of listing standards, target stocks are treated in the same way as any other second class of stock of the issuer. *See* Amendment No. 1, *supra* note.

[11] A structured product is a security whose value is based on the value of another security.

[12] The structured product company will designate which of its officers is a senior officer. *See* Amendment No. 1, *Supra* note 2.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 C.F.R. 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42490; File No. SR–NYSE–00–01]**

## Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Listing Fees for Canadian Companies

March 2, 2000.

On January 4, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to 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 for calculating continuing annual fees for all Canadian companies. The proposed rule change was published for comment in the **Federal Register** on January 25, 2000.[3] No comments were received on the proposal. This order approves the proposal.

It has been the custom and practice of the Exchange to calculate the continuing annual fee for Canadian companies listed before September 8, 1989 on the basis of total worldwide shares, with a 50% discount for companies with more than half of their operations outside the United States. The continuing annual fee for Canadian companies listed after September 8, 1989 and all other non-U.S. companies has been calculated based on shares issued in the U.S. The proposed change will calculate continuing annual fees for all Canadian companies based on shares issued in the

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42350 (January 19, 2000), 65 FR 4007.