

year as consisting of more than such class's proportionate share of particular types of income, such as capital gains. Consequently, applicants state that any payments of long-term capital gains to holders of common stock require proportionate allocations of such long-term capital gains to the preferred stock, which can be extremely difficult to do.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicants state that the proposed Distribution Policies, including the fact that the distributions called for by the policies may include returns of capital to the extent that a Fund's net investment income and net capital gains are insufficient to meet the fixed dividend, will be fully described in the Funds' periodic communications to their shareholders, including the periodic report to shareholders following the institution of any such policy. Applicants state that, in accordance with rule 19a-1 under the Act, a statement showing the source or sources of the distribution would accompany each distribution (or the confirmation of the reinvestment thereof under a Fund's common stock distribution reinvestment plan). Applicants state that, for both the common stock and the preferred stock, the amount and sources of distributions received during the calendar year will be included on each Fund's IRS Form 1099-DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). Applicants state that this information, on an aggregate basis, also will be included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividend") where the dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also assert that by paying out periodically any capital gains that have occurred, at least up to the fixed

periodic payout amount, the Funds' Distribution Policies help avoid the buildup of end-of-the-year distributions and accordingly help avoid the scenario in which an investor acquires shares in the open market that are subject to a large upcoming capital gains dividend. Applicants also state that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to a specific periodic dividend and, like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment. In addition, applicants state that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, a Fund's Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by a Fund of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief with respect to the Funds' common stock shall terminate with respect to a Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of the Fund after the date of the requested order and after the Fund's initial public offering other than:

(i) A rights offering to shareholders of such Fund, provided that (a) shares are issued only within the 15-day period

immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend; (b) the prospectus for such rights offering makes it clear that common shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering; and (c) such Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization; unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48360; File No. SR-NYSE-2003-22]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Reduce the Original Listing Fee Applicable to Closed-End Funds

August 18, 2003.

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 hereby is given that on August 15, 2003, 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 NYSE has represented that the proposal meets the criteria of paragraph (f)(6) of Rule 19b-4 and, therefore, may take effect immediately. 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 NYSE proposes amending Section 902.02 of its Listed Company Manual to reduce the original listing fee

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

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

applicable to closed-end funds. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are bracketed.

\* \* \* \* \*

*Listed Company Manual*

902.00 Listing Fees

\* \* \* \* \*

902.02 Schedule of Current Listing Fees

\* \* \* \* \*

*A. Original Listing Fee*

A special charge of \$36,800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. In any event, each issuer is subject to a minimum original listing fee of \$150,000 inclusive of the special charge referenced in the preceding sentence.

The special charge is also applicable to an application which in the opinion of the Exchange is a "back-door listing". See Para. 703.08(F) for definition.

*Original listings of [C]closed-end funds are not subject to either the special charge or to the minimum original listing fee. Closed-end funds will instead pay an original listing fee based on the number of shares outstanding upon listing. Closed-end funds with up to 10 million shares outstanding will be subject to a \$20,000 original listing fee, closed-end funds with greater than 10 million shares up to 20 million shares outstanding will be subject to a \$30,000 original listing fee, and closed-end funds with more than 20 million shares outstanding will be subject to a \$40,000 original listing fee. Original listings of closed-end funds are also not subject to the initial fees described below.*

**Initial Fee**

The initial fee schedule applies to original listings,\*\* other than to original listings of closed-end funds as described above, and to the listing of additional shares of an already listed class of stock,\* new issues of preferred stock, warrants, or similar securities which are the subject of subsequent applications. New issues of additional classes of common stock of listed companies will be charged a fixed initial fee of \$5,000 in lieu of the per share schedule.

Each stock or warrant—and in the case of preferred stock, each series—shall be regarded as a separate issue.

Each application must cover the maximum number of shares that may be issued involving the particular transaction in question. However, the initial fee payable at the time of

consideration of an application will cover only the determinable number of shares to be issued at or about that time. The balance of any initial fee under this schedule will accrue when subsequent issuance is made of shares not issued and paid for at the time that application is considered. This covers items like future issuances of shares for stock options, employee stock plans, conversion of other securities, contingencies, etc. Billing for such accrued initial fees is made as soon as possible following the close of the calendar year. Payment shall be made within 30 days of date upon receipt of invoice.

The initial fee shall be paid on shares issued at the time of billing by the Exchange. The subsequent reacquisition by the company and/or surrender to it for exchange, cancellation, or retirement shall not reduce this fee. The Exchange should be advised of shares cancelled. The shares authorized for listing on the Exchange should be reduced by the number of shares cancelled as well as by the shares no longer required to be issued under a specific plan for which an application was previously filed with the Exchange.

The pertinent initial fees per million shares are:

Fee bracket	Initial fee
1st and 2nd million shares .....	\$14,750
3rd and 4th million shares .....	7,400
5th up to 300 million shares ...	3,500
In excess of 300 million shares .....	1,900

**Reduced Initial Fee**—A fee of \$15,000 will apply to a company which either changes its state of incorporation or reincorporates, forms a holding company which replaces a listed company or has a reverse stock split. This fee will be applicable only if the change in the company's status is technical in nature and providing also that shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.

Amalgamations are calculated at 25% of the applicable basic initial fee. An amalgamation is defined as the listing of shares resulting from merger or consolidation of two or more listed companies into a new company or into an unlisted company which becomes listed.

Mergers between an unlisted company and a listed company (other than back door listings (as defined in para.703.08(E))—If listing occurs within 12 months of the merger, 25% of the

applicable basic initial fee, except during the first year following the listed company's original listing, where the fee shall be the lesser of (1) 25% of the applicable basic initial fee or (2) the full fee less a credit for the fee the listed company paid at the time of its initial listing.

In all other circumstances, the full initial fee rate will apply. For example: where a change in a listed security is effected which in the opinion of the Exchange in effect represents a new issue or class of security, or where the rights or privileges or the identities of previous shareholders are altered.

**Minimum Initial Fee**—The minimum fee for the consideration of an application is \$2,500. Credit against initial fees will be limited to the determinable number of shares to be issued at or about the time the application is processed where the minimum fee applies. The minimum initial fee of \$2,500 will apply for changes such as change of name, change of par value, the title of the security, etc., since these require changes in Exchange records.

\*Fees on shares issued in conjunction with stock splits are capped at \$250,000 per split and at \$500,000 for all splits over a rolling three calendar-year period. Fees on shares issued in conjunction with a merger or acquisition (other than amalgamations) are capped at \$500,000.

\*\*Fees on shares listed in conjunction with the original listing are limited to \$250,000 [thousand] per company, inclusive of the special charge and encompassing all classes of securities.

\* \* \* \* \*

**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 regarding 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.

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

**1. Purpose**

Like many other sectors of the industry, closed-end funds have come under considerable cost pressure in

recent years. The cost pressure has been exacerbated by a 1998 accounting interpretation that required funds to cease amortizing the original listing fee over several years, requiring them to recognize the entire amount in the first year. To date in 2003, under the current schedule, the smallest fund listing on the NYSE paid an original listing fee of approximately \$44,000, and the largest closed-end funds paid the maximum original listing fee of \$250,000.<sup>3</sup>

The Exchange is, therefore, proposing to reduce the original listing fees applicable to closed-end funds. It would establish a three-tiered structure based on the number of shares outstanding. Closed-end funds with up to 10 million shares outstanding would be subject to a \$20,000 original listing fee, funds with greater than 10 million shares up to 20 million shares outstanding would be charged \$30,000, and funds with more than 20 million shares outstanding would be subject to a \$40,000 original fee.

## 2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is section 6(b)(4),<sup>4</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

The NYSE does not believe that the proposed rule change would 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 NYSE has neither solicited nor received written comments on the proposed rule change.

<sup>3</sup> Currently, the initial fee schedule in 902.02 of the NYSE Listing Company Manual provides changes that are applied to each million shares issued. Closed-end fund offerings are often substantial. The Exchange notes that its current listing fees can affect NAV. Therefore, the Exchange believes that the reduction in listing fees will benefit investors because incurred costs are paid from the investor's equity raised for the closed-end fund offering. Telephone conversation among Raymond Bell, Vice President of New Listing and Client Services, AnneMarie Tierney, Senior Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated August 18, 2003.

<sup>4</sup> 15 U.S.C. 78f(b)(4).

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

The Exchange asserts that, because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it may become effective pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup> 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.<sup>7</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission believes that lowering the initial listing fees for closed-end funds will benefit those who invest in such funds by reducing the costs associated with the issuance of the shares. Accordingly, the Commission hereby determines to waive the 30-day pre-operative period, and the proposed rule change becomes operative immediately.<sup>8</sup>

Rule 19b-4(f)(6) also requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The NYSE has requested that the Commission waive the five-day pre-filing requirement, and the Commission hereby grants that request.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>7</sup> See 15 U.S.C. 78s(b)(3)(C).

<sup>8</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. See 15 U.S.C. 78c(f).

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 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 at 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-2003-22 and should be submitted by September 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-21641 Filed 8-22-03; 8:45 am]

**BILLING CODE 8010-01-P**

## 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 September 24, 2003. If you intend to comment but cannot prepare comments promptly, 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

<sup>9</sup> 17 CFR 200.30-3(a)(12).