

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 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 rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR-NSCC-2002-08 and should be submitted by December 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-31555 Filed 12-13-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46960; File No. SR-NYSE-2002-62]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Fees for Domestic and Non-U.S. Issuers, Technical Original Listing Fees, and Supplemental Listing Applications Fees (Sections 902.02, 902.03, and 902.04 of the NYSE Listed Company Manual)

December 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

notice is hereby given that on November 20, 2002, the New York Stock Exchange, Inc. ("NYSE") 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 NYSE. 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 is proposing to amend Sections 902.02, 902.03, and 902.04 of the NYSE's Listed Company Manual (the "Manual") to increase and simplify the continuing annual listing fee pricing for all listed companies (excluding closed-end funds), and to increase the fee for technical original listings and supplemental listing applications. The NYSE is also proposing to make permanent an overall \$1 million per issuer fee cap that has been in effect on a pilot basis, scheduled to expire on December 31, 2002.<sup>3</sup> The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

#### 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.

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

###### 1. Purpose

The NYSE is proposing changes to certain of its original and continuing annual listing fees, all of which it proposes will become effective on January 1, 2003.

The NYSE in recent years has reduced or capped listing fees in several respects.<sup>4</sup> However, the NYSE has

<sup>3</sup> See Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR-NYSE-00-16).

<sup>4</sup> For example, see Securities Exchange Act Release No. 42270 (December 22, 1999), 65 FR 312 (January 4, 2000) (SR-NYSE-99-41), (capping

determined that certain listing fee increases have now become necessary to ensure that revenue is adequate to satisfy increasing costs for operations, technology, regulation and infrastructure. The proposed revisions to listing fees are intended to increase revenue, simplify the continuing annual fee structure and change a historical policy that has kept the continuing fees of certain companies at unusually low levels. While the NYSE believes these proposed fee increases will impact listed companies, it should be noted that the NYSE is also increasing fees applicable to members and member organizations. Such member fee increases are being filed in a separate rule proposal.

The NYSE believes the simplest of the changes proposed herein are increases to the "technical original" listing fee and the minimum fee charged for consideration of a listing application. Section 902.02B of the NYSE Listed Company Manual provides for a "reduced initial fee" of \$5,300 when a company makes a technical change in the nature of the company without substantively affecting the equity position or rights of its common shareholders. This fee, often referred to as a "technical original" listing fee, applies when, for example, a company changes its state of incorporation or reincorporates, forms a holding company which replaces the listed company, or does a reverse split. The NYSE is proposing to increase this fee from \$5,300 to \$15,000.

Section 902.02B of the NYSE Listed Company Manual also specifies that the minimum fee for the consideration of any listing application is \$1,500. When shares are being issued concurrently with the application, the company is charged the greater of the per share rate or this minimum fee. (Similarly, the minimum fee would not be payable when the company pays the higher "technical original" listing fee described in the immediately preceding paragraph.) However, this \$1,500 fee is

original listing fees at \$500,000); Securities Exchange Act Release No. 43164 (August 16, 2000), 65 FR 51387 (August 23, 2000) (SR-NYSE-00-15), (implementing a flat initial listing fee for tracking stocks, later modified to cover all additional classes of common stock); Securities Exchange Act Release No. 45995 (May 29, 2002), 67 FR 39089 (June 6, 2002) (SR-NYSE-2002-20) (implementing a flat initial listing fee for tracking stocks to cover all additional classes of common stock); Securities Exchange Act Release No. 43163, 65 FR 51389 (August 23, 2000) (SR-NYSE-00-16), (capping total listing fees per issuer in any given calendar year at \$1 million); and Securities Exchange Act Release No. 43700 (December 11, 2002), 65 FR 79147 (December 18, 2000) (SR-NYSE-00-48), (reducing the original listing fee cap to \$250,000 and imposed a new allocation fee on NYSE specialists).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

payable either when shares are listed as part of a reserve for future issuances (since the per share fee is not applied until that future date), or when the company makes a technical supplemental application that does not involve the listing of additional shares, such as an application to record a change of corporate name, or a change to the par value or title of a security. The NYSE is proposing to increase this fee from \$1,500 to \$2,500.

The NYSE proposes to amend Section 902.02 of the NYSE Listed Company Manual, which relates to the continuing annual listing fee.<sup>5</sup> This fee is payable annually on each security listed on the NYSE and traded as an equity on the NYSE's trading floor. The NYSE believes that the changes being proposed will represent an overall increase in continuing annual fee revenue to the NYSE, but will also significantly simplify the fee schedule, making the NYSE's fees more easily understandable to listed companies and others.

It should first be noted that the NYSE considers it appropriate to ameliorate the immediate impact of these changes on any particular company. Accordingly, the impact of these proposed changes to the continuing annual fee as described below will be capped for each issuer at \$75,000 for calendar 2003, and at \$150,000 for calendar 2004.<sup>6</sup> For a company hitting both those caps, the full impact of these price changes would not be borne until calendar 2005.

Continuing annual fees for each issuer are based on the number of its securities listed (including American Depositary Securities represented by American Depositary Receipts), and there is a schedule of per share rates set forth in Section 902.02C (Section 902.04C for non-U.S. companies) of the NYSE Listed Company Manual. Currently that schedule is tiered, with a per share rate

of \$1,650 per million shares for the first and second million shares, and a per share rate of \$830 per million shares for additional shares beyond two million. The NYSE is proposing to eliminate the tiers, so that the per share rate will simply be \$930 per million shares subject to a minimum continuing annual fee of \$35,000, as provided for in Section 902.04C of the proposed rule change to the NYSE Listed Company Manual.

The NYSE's current price schedule, as set forth in Section 902.02C of the NYSE Listed Company Manual, includes a concept informally referred to as "range minima," in which issuers with up to 50 million shares listed pay a minimum continuing annual fee of \$35,000, those with up to 100 million shares listed pay a minimum continuing annual fee of \$48,410, those with up to 200 million shares listed pay a minimum of \$64,580, and those with more than 200 million shares listed pay a minimum of \$80,440. In a further effort to simplify our pricing structure, the NYSE is proposing to eliminate these "ranges," leaving only the basic minimum fee of \$35,000 referred to above.

Continuing annual fees, which are set forth in Section 902.02C and Section 902.04C of the NYSE Listed Company Manual, are assessed separately on each class of security issued. Because some companies have more than one class of common stock listed on the NYSE, the NYSE currently provides that if one class pays the \$35,000 minimum fee, the other class(es) are subject to lower minima (ranging from \$16,170 to \$32,320) depending on the number of shares listed. To simplify this structure, the NYSE is proposing that when a company has multiple classes of common stock listed on the NYSE, the class with the greatest number of shares outstanding will be subject to the \$35,000 minimum, and each additional class of common stock will be subject to a minimum fee of \$20,000 per class.

Under Section 902.02C of the NYSE Listing Standards, classes of securities other than common stock are currently subject to the same continuing annual fee rate schedule as common stock, but with a lower minimum fee of \$3,600, rather than \$35,000. Accordingly, the NYSE proposes that the new rate schedule of \$930 per million shares will apply to these securities, and the applicable minimum will be raised from \$3,600 to \$5,000. Also, the NYSE notes that in the case of companies with listed preferred stock that do not have common stock listed here, the original listed preferred issue will be subject to the \$35,000 minimum annual fee,

although other classes listed will be subject to the \$5,000 minimum.

"Short-term securities" are those securities having a term of seven years or less (e.g., index warrants, foreign currency warrants, contingent value rights, etc.). Section 902.03B of the NYSE Listed Company Manual currently provides for a special set of "range minima" applicable to such securities, that actually subjects such issues to higher minimum continuing annual fees than are otherwise applied to non-common stock securities as described in the preceding paragraph. To eliminate this anomaly, the NYSE proposes to amend Section 902.03B of the NYSE Listed Company Manual to apply to such "short term securities" the new rate schedule of \$930 per million shares, and to also apply the same \$5,000 annual minimum as is applicable to other non-common securities.

Finally, Section 902.02C of the NYSE Listed Company Manual currently removes from the calculation of continuing annual fees any shares which have been listed for a period of 15 years or more. This policy results in companies having disparate continuing annual fees despite having similar amounts of stock listed on the NYSE. The NYSE proposes to eliminate this policy for all listed companies with the exception of closed-end funds.

Separate and distinct from the foregoing price changes, the NYSE also proposes to make permanent a per issuer overall \$1 million fee cap that was implemented starting with the 2000 calendar year.<sup>7</sup> That cap, codified in Section 902.02, by its terms was put into effect on a pilot basis for three years, through calendar 2002. The NYSE's experience with this rule has demonstrated that it is an appropriate limitation to avoid overburdening any particular company in an unusual year, and the NYSE proposes to make the pilot permanent.

## 2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>8</sup> which provides 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.

<sup>7</sup> See Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR-NYSE-00-16).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> At this time, the NYSE is not making any change to the continuing annual fees as applied to closed end funds listed on the NYSE, which continue to be subject to the fee schedule currently in effect. The Commission notes, however, that the NYSE is in the process of developing a revised fee schedule for closed-end fund issuers. Telephone conversation between Annmarie Tierny, Senior Counsel, Office of General Counsel, NYSE and Tim Fox, Law Clerk, Division of Market Regulation, December 5, 2002. In addition, no changes are being proposed to the several specific pricing provisions provided in Section 902.02C for "fund families" with a number of funds listed on the NYSE.

<sup>6</sup> The Commission notes that the NYSE represented that it communicated these fee caps to issuers in a letter sent to the issuers during calendar year 2002. Telephone conversation between Annmarie Tierny, Senior Counsel, Office of General Counsel, NYSE and Tim Fox, Law Clerk, Division of Market Regulation, Commission, December 5, 2002.

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

The NYSE does not believe that the proposed rule change would result in 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.

*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 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, 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 in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2002-62 and should be submitted by December 31, 2002.

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

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

[FR Doc. 02-31553 Filed 12-13-02; 8:45 am]  
**BILLING CODE 8010-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3473]**

**State of Alaska**

As a result of the President's major disaster declaration on December 4, 2002, I find that the Kenai Peninsula Borough, Kodiak Island Borough, and Chignik Bay area to include Chignik, Chignik Lake, Chignik Lagoon in the State of Alaska constitute a disaster area due to damages caused by severe winter storms, flooding, coastal erosion and tidal surge occurring on October 23, 2002 and continuing through November 12, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 3, 2003 and for economic injury until the close of business on September 4, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

In addition, applications for economic injury loans from small businesses located in the following areas and jurisdictions may be filed until the specified date at the above location: Lake and Peninsula Borough, Matanuska-Susitna Borough, Municipality of Anchorage, Chugach Regional Educational Attendance Areas (REAA), and Iditarod Area REAA in the State of Alaska.

*The interest rates are:*

|  | Percent |
|--|---------|
| For Physical Damage:   |         |
| Homeowners with credit available elsewhere: .....  | 5.875   |
| Homeowners without credit available elsewhere: .....                                     | 2.937   |
| Businesses with credit available elsewhere: .....  | 6.648   |
| Businesses and non-profit organizations without credit available elsewhere: .....        | 3.324   |
| Others (including non-profit organizations) with credit available elsewhere: .....       | 5.500   |
| For Economic Injury:   |         |
| Businesses and Small Agricultural Cooperatives without credit available elsewhere: ..... | 3.324   |

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

The number assigned to this disaster for physical damage is 347311. For economic injury the number is 9T6600 for Alaska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)  
Dated: December 9, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

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**BILLING CODE 8025-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**International Standards on the Transport of Radioactive Materials; Conference**

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Notice of international conference.

**SUMMARY:** This notice is to advise interested persons that the International Atomic Energy Agency (IAEA), International Maritime Organization, and the Universal Postal Union are co-sponsoring an international conference on the safe transport of radioactive materials. The conference will take place at the Austria Centre, Vienna, Austria from July 7 through July 11, 2003. The objective of the conference is to exchange information on issues related to the safe transport of radioactive material and to formulate recommendations regarding further international co-operation in this area.

**FOR FURTHER INFORMATION CONTACT:** Richard Boyle, Radioactive Materials Branch, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; Phone: (202) 366-2993, Facsimile: (202) 366-3753, email: [rick.boyle@rspa.dot.gov](mailto:rick.boyle@rspa.dot.gov).

**SUPPLEMENTARY INFORMATION:** The conference is directed to a broad spectrum of professionals dealing with the safe transport of radioactive material. The preliminary agenda includes topical sessions on: adequacy and effectiveness of the international transport regulations; effectiveness of radiation protection in transport; packaging and transport of nuclear fuel cycle material; packaging and transport of non-nuclear fuel cycle material; compliance and quality assurance programming; liability in the transport of radioactive material; and emergency response and preparedness. There is no