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Director, Office of Council and Panel Operations, National Endowment for the Arts.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36029; File No. SR-NYSE-95-07]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Standards for Options on Securities Issued in Certain Corporate Restructuring Transactions

July 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 1, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 18, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.³ The Commission is approving the proposal, as amended, and soliciting comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its initial listing standards for options as set forth in NYSE Rule 715 in order to permit the listing of options on securities issued by public companies in connection with corporate spin-offs, reorganizations, recapitalizations, restructurings and similar corporate transactions at an earlier time than is presently the case.⁴ Similarly, NYSE

proposes to amend its options maintenance standards as set forth in Rule 716 in order to give Restructure Securities greater opportunity to meet those standards during the first months after issuance. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (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

The options exchanges currently maintain uniform standards regarding approval of underlying securities for options trading.⁵ Specifically, to be options eligible, a security shall meet the following guidelines: (1) Trading volume in all markets of at least 2.4 million shares in the preceding twelve months ("Volume Test"); (2) market price per share of at least \$7.50 for the majority of business days during the three calendar month period preceding the date of selection ("Price Test"); (3) a minimum of 7 million shares that are owned by persons other than those required to report their stock holdings under section 16(a) of the Act ("Share Requirement"); and (4) a minimum of 2,000 holders ("Number of Shareholder Requirement").⁶ The Exchange must determine that a security satisfies the above requirements, as of the date it is selected for options trading ("selection date"), before the exchange may certify the listing to the Options Clearing

Corporation ("OCC"). Depending on interest from other markets, the exchange may begin options trading three or five business days after the selection date.

The options exchanges have adopted corresponding criteria for withdrawal of approval of underlying securities.⁷ A security previously approved for options transactions shall be deemed not to meet the guidelines for continued listing if (1) trading volume in all markets is less than 1.8 million shares in the preceding twelve months ("Maintenance Volume Test"); (2) market price per share closes below \$5.00 on a majority of business days during the preceding six calendar months ("Maintenance Price Test");⁸ (3) fewer than 6.3 million shares owned by persons not required to report their stock holdings under section 16(a) of the Act ("Maintenance Share Requirement"); or (4) there are fewer than 1,600 holders ("Maintenance Number of Shareholder Requirement").⁹

The Exchange proposes to amend NYSE Rule 715 to permit the expedited listing of standardized options in certain restructuring transactions. The proposal will apply to securities ("Restructure Security") issued by a public company to existing shareholders, with existing publicly traded shares subject to options trading, in connection with certain "restructuring transactions."¹⁰

Under current standards, the Exchange is generally precluded from listing eligible options on newly issued securities for at least three months, given that the guidelines require three months of price history to determine if the underlying security meets the Price Test. Additionally, the Exchange may only list eligible options on newly issued securities, if the underlying security meets the Volume Test which requires trading volume in all markets of at least 2.4 million shares in the preceding twelve months. The proposed rule change, however, would facilitate the earlier listing of options on a Restructure Security by permitting the Exchange to determine whether the

1995) (File Nos. SR-CBOE-95-11; SR-PSE-95-04; SR-Phlx-95-12; and SR-Amex-95-07).

⁵ See NYSE Rule 715; Amex Rule 915; CBOE Rule 5.3; PSE Rule 3.6; and Phlx Rule 1009.

⁶ This proposal addresses price, volume, public ownership, and holder requirements specifically. For a Restructure Security to meet initial listing requirements, however, it must additionally comply with all requirements set forth by the Exchange in its options eligibility rules. For example, the security must be registered, and listed on a national securities exchange, or traded through the facilities of a national securities association and reported as a "national market system" ("NMS") security as set forth in Rule 11Aa3-1 under the Act, and the issuer must be in compliance with any applicable requirements of the Act. See *supra* note 5.

⁷ See NYSE Rule 716; Amex Rule 916; CBOE Rule 5.4; PSE Rule 3.7; and Phlx Rule 1010.

⁸ Additional criteria permits the underlying security under certain circumstances to trade as low as \$3.00 for a temporary period of time. See Id.

⁹ This proposal addresses maintenance criteria for market price and trading volume specifically. For a Restructure Security to meet maintenance requirements for an underlying security subject to options trading, however, it must additionally comply with all requirements set forth by the Exchange in its options eligibility rules. See *supra* note 7.

¹⁰ The proposal defines a "restructuring transaction" as a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James E. Buck, Senior Vice President, NYSE, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated July 18, 1995 ("Amendment No. 1").

⁴ The Commission notes that substantively identical proposals by the other U.S. options exchanges have been recently approved. See Securities Exchange Act Release No. 36020 (July 24,