

However, the Commission notes that while a delivery reclaimed by an agent bank on behalf of an institution will be matched to the original delivery and the reclamation will not be recorded as a flip, a reclamation done for shares delivered from a selling group broker-dealer's IPO control account will be registered as flipped. This distinction could possibly result in discrimination between retail customers, who typically hold through broker-dealers, and institutional customers. The Commission understands that this distinction is a result of systems limitations.<sup>33</sup> The Commission urges DTC to monitor this situation once the system is operational to determine whether the limitation has a discriminatory effect. If so, DTC should consider systems modifications to address this concern.

#### IV. Conclusion

The Commission finds that DTC's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-95-27) be and hereby is approved. As stated, DTC has agreed to notify self-regulatory organizations and managing underwriters at least thirty calendar days prior to the general availability of the IPO Tracking System.<sup>34</sup>

For the Commission by the Division of Market Regulation, pursuant to delegated authority,<sup>35</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37211; International Series Release No. 978; File No. SR-NYSE-96-05]

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

May 14, 1996.

On March 18, 1996, 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")<sup>1</sup> and Rule 19b-4

<sup>33</sup> Because all movements out of an agent bank's account are monitored, DTC is able to determine exactly which shares are reclaimed. In contrast, shares are removed from a broker-dealer's free account without regard to their origin.

<sup>34</sup> *Supra* note 3.

<sup>35</sup> 17 CFR 200.30-3(a)(12) (1995).

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

thereunder,<sup>2</sup> a proposed rule change that would permit companies domiciled in Canada, Mexico, and the United States ("North America")<sup>3</sup> to include holders and trading volume in North America toward meeting the stockholder and trading volume requirements for listing on the Exchange pursuant to the domestic listing criteria.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37055 (Apr. 1, 1996), 61 FR 15546 (Apr. 8, 1996). No comments were received on the proposal.

Under the current NYSE rules, companies applying to list on the Exchange must meet the applicable listing criteria. For equity listings, there are two different standards: domestic criteria, which are available to all companies, ("domestic standards") and criteria available solely to non-U.S. companies ("worldwide standards"). Non-U.S. companies may elect to qualify for listing under the Exchange's domestic numerical standards or worldwide numerical standards. Non-U.S. companies, however, must meet all of the criteria within the standard under which they seek to qualify for listing.

Paragraph 102.01 of the NYSE's *Listed Company Manual* ("Manual") sets forth the standards for domestic companies that want to list their equity securities on the Exchange. These standards require applicants to satisfy certain minimum numerical criteria.<sup>4</sup> Under these requirements for listing, the company must have, among things, (a) 2,000 round-lot holders; (b) 2,200 total stockholders, together with an average monthly trading volume of 100,000 shares for the most recent six months; or (c) 500 total stockholders, together with an average monthly trading volume of 1,000,000 shares for the most recent 12 months.<sup>5</sup> The domestic criteria require that these standards be met only through holders and trading volume occurring in the U.S.

The Exchange proposes to amend these initial listing standards to provide that for listing applications from North American companies the Exchange will

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

<sup>3</sup> For purposes of this rule, a company is "domiciled" in the country under the laws of which it is organized.

<sup>4</sup> In deciding whether to approve the listing of an equity security, the NYSE also takes qualitative factors into consideration. These factors include whether the company is a going concern or a successor thereto, the degree of national interest in the company, the character of the market for its products, its relative stability and position in its industry.

<sup>5</sup> In determining the number of holders for the above distribution standards, the NYSE considers both beneficial and record owners.

include all North American holders and North American trading volume in applying the minimum stockholder and trading volume requirements in Paragraph 102.01 of the Manual. The Exchange believes that with continuing integration of the North American market, this market should be viewed as a whole in reviewing a company's eligibility for listing. Moreover, the Exchange believes that this will foster internationalization of the securities markets by enhancing the access of U.S. investors to the trading of Canadian and Mexican securities.

Pursuant to the proposed rule change, the Exchange would look at the number of beneficial holders resident in North America in applying the initial listing criteria of Paragraph 102.01 to North American companies. In computing trading volume, the Exchange will look to the reported volume (i) on U.S. stock exchanges, (ii) in the U.S. over-the-counter market, and (iii) on Canadian or Mexican stock exchanges.<sup>6</sup> The total volume reported from these sources must satisfy the NYSE's initial listing standards. For American Depositary Receipts ("ADRs") to be listed on the NYSE, volume in the ordinary shares would be adjusted to be on an ADR-equivalent basis.<sup>7</sup> Finally, the proposed rule change would make conforming changes to Paragraph 103.00 of the Manual, which establishes alternate initial listing criteria for non-U.S. companies.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the

<sup>6</sup> According to the NYSE, the NYSE would consider an "exchange" to be a trading market that is regulated as a stock exchange by home-country regulators. The NYSE believes that the Bolsa Mexicana de valores is the only market in Mexico that would be considered an "exchange" for this purpose. In Canada, the NYSE believes that there currently are five stock exchanges that satisfy this test: The Montreal Exchange and the Toronto, Vancouver, Winnipeg, and Alberta Stock Exchanges. See letter from Michael J. Simons, Milbank, Tweed, Hadley & McCloy, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated April 1, 1996.

<sup>7</sup> For example, assume that a Mexican company has ADRs trading in the United States and ordinary shares trading in Mexico, with each ADR representing 10 ordinary shares. If the company were to apply to list its U.S.-traded ADRs on the NYSE, the Exchange would divide the Mexican share volume by 10 in determining whether the combined ADR/share volume meets the requirements of the listing criteria. For Companies that have multiple series of shares or ADR's the Exchange will include the volume only in the specific ordinary shares and overlying ADRs that would be listed on the exchange.

requirements of Section 6(b).<sup>8</sup> Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between issuers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical of critical importance to financial markets and the investing public. Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* companies with sufficient public float, investor base, and trading interest to ensure that the market for a company's stock has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.

For the reasons set forth below, the Commission believes that the proposed rule change will provide the NYSE with greater flexibility in determining which equity securities warrant inclusion in its market, without compromising the effectiveness of the Exchange's initial listing standards.

The Commission believes that permitting North American companies to satisfy the stockholder and trading volume requirements of the Exchange's domestic initial listing standards by including the holders and trading volume in North America is not inconsistent with the purposes of the Act. With efforts such as the North American Free Trade Agreement ("NAFTA"), North America increasingly is becoming an integrated market place, and companies and investors are able to obtain easier access to markets across borders. There is active interest by U.S. investors in these markets, and Mexican and Canadian issues are actively traded on the Exchange.

The Commission believes that this amendment to the initial listing standards may assist companies domiciled in Canada and Mexico and U.S. companies with a significant presence in those countries to gain admittance to the NYSE and may promote greater investment opportunities across borders in North America. Therefore, the Commission believes that it is not unreasonable to

consider the holders and trading volume in all three countries for purposes of reviewing a company's application to list under the domestic initial listing standards on the NYSE.

Moreover, the Commission believes that the NYSE is appropriately looking only to the reported volume on the Canadian and Mexican stock exchanges in addition to the reported volume on the U.S. stock exchanges and in the U.S. over-the-counter market to calculate trading volume.<sup>9</sup> The Commission believes that the reported volume from these non-U.S. exchanges is sufficiently reliable for purposes of determining a company's listing eligibility. Finally, for ADRs, the Exchange will adjust the volume in the ordinary shares to an ADR-equivalent basis for calculating trading volume for purposes of determining eligibility.<sup>10</sup> The Commission believes that this adjustment will more accurately reflect the price of the instrument trading on the NYSE because the price of each share trading in Canada or Mexico may be a fraction of the ADR.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-96-05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37210; File No. SR-Philadep-96-04]

**Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Fee Schedule for Position Listings To Incorporate a Quantity Discount for Multiple Municipal Bond Listing Requests**

May 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 8, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange

<sup>9</sup> If the NYSE were to decide to include trading data from other sources, the NYSE would need to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act.

<sup>10</sup> See *supra* note 7.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

<sup>13</sup> 15 U.S.C. 78s(b)(1) (1988).

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by Philadep. On April 15, 1996, Philadep supplemented the filing.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

Philadep proposes to modify its fee schedule for position listing requests to incorporate a quantity discount for multiple municipal bond listing requests.<sup>3</sup>

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

In its filing with the Commission, Philadep included statements concerning the purposes of and the 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. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

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

Currently, Philadep charges \$45 for each position listing request per date, per issuer, and per CUSIP number. Philadep charges a flat fee of \$360 for twelve monthly dates per CUSIP number (*i.e.*, twelve end-of-month listings of a particular CUSIP) or \$1,300 for fifty-two weekly dates per CUSIP number (*i.e.*, fifty-two end-of-week listings of a particular CUSIP). Philadep proposes to modify its position listing fee schedule to provide a quantity discount for multiple municipal bond listing requests. The discount will be available only if the requests pertain to the same issuer for the same position listing date and if Philadep has at least ten business days from the date of the initial request by the municipality or its agent to provide the requested

<sup>2</sup> Letter from J. Keith Kessel, Compliance Officer, Philadep, to Peter R. Geraghty, Senior Counsel, Division of Market Regulation, Commission (April 10, 1996).

<sup>3</sup> A position listing indicates the participant holders of a certain security and the number of shares Philadep holds on their behalf.

<sup>4</sup> The Commission has modified the text of the summaries prepared by Philadep.

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