

If a claim identifies when the transaction at issue occurred or when the claim arose, or is amended to provide such information, it is served on the respondents. Once the claim is served, the respondents can decide whether or not the challenge the eligibility of the claim. If a respondent submits a motion to dismiss on eligibility grounds, the claimants will have an opportunity to respond, and the motion and the responses will be forwarded to the arbitrators for a decision.

NASD Regulation has also determined that where a case was filed prior to August 1, 1996, and the staff has made a preliminary eligibility ruling in response to a respondent's motion, the moving papers will be forwarded to the arbitrators with a reminder that the arbitrators must review the issue de novo and must not accord the staff's preliminary ruling any weight.

NASD Regulation notes, as described above, that eligibility determinations have always involved an element of staff discretion. Thus, adoption of the policy set forth above is not a substantive change in Rule 10304 or its interpretation; it is a change in the manner in which the staff exercises its discretion to administer the arbitration process under the Rule.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b) (6) of the Act⁴ in that amending the policy for applying the eligibility provision of the Code serves the public interest by enhancing the perception of fairness of such proceedings by the parties to such proceedings. Unless otherwise expressly provided for in the Code, dispositive motions should be decided by the arbitrators because the arbitrators are the designated adjudicators of all issues of fact, law and procedure in an arbitration. To the extent the parties to such proceedings express increased satisfaction with the resolution of eligibility issues, the goal of providing the investing public with a fair, efficient and cost-effective forum for the resolution of disputes will have been advanced.

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

Regulation does not believe that the proposed rule change will 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

NASD Regulation proposed rule change SR-NASD-96-37 was filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act on October 15, 1996. The Commission published notice of the filing of SR-NASD-96-37 in the Federal Register⁵ and received thirteen comment letters in response.⁶ Filing SR-NASD-96-37 is being withdrawn simultaneously with the submission of this rule filing, which is substantively the same as SR-NASD-96-37.

Because there is insufficient time to adequately address the comment letters received in response to SR-NASD-96-37 at this time, NASD Regulation will respond to them when addressing the comment letters received in response to this filing.

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

Within 35 days of the 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 the 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. 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. 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 NASD. All submissions should refer to File No. SR-NASD-96-47 and should be submitted by January 16, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-38058; File No. SR-NYSE-96-36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Transmission of Proxy and Other Shareholder Communication Material.

December 18, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 6, 1996, 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 self-regulatory organization. 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 Exchange is proposing changes to Rules 451 and 465 (the "Rules") on a three-year pilot basis. The Rules establish guidelines for the reimbursement of expenses by issuers to NYSE member organizations for the processing of proxy materials and other issuer communications with respect to security holders whose securities are held in street name. The text of the proposed rule change is available at the Exchange or the Commission.

⁵ Securities Exchange Act Release No. 37875 (October 28, 1996), 61 FR 56594 (November 1, 1996).

⁶ Comment letters were received from A.G. Edwards & Sons, Inc.; Scot D. Bernstein, Esq.; Gail E. Boliver, Esq.; Michael R. Casey, Esq.; Dean Witter, Discover & Co.; Philip J. Hoblin, Jr., Esq.; Investor Advocates; C. Thomas Mason, III; Merrill Lynch; Public Investors Arbitration Bar Association; Harold W. Sellner; Smith Barney; and the Securities Industry Association.

⁷ 17 CFR 200.30-3(a)(12).

⁴ 15 U.S.C. 780-3(b)(6).

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 self-regulatory organization 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 Items IV below. The self-regulatory organization 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

Background to the Proposed Rule Change

Exchange member organization holding securities in street name solicit proxies and deliver communications to and from beneficial owners of securities on behalf of issuers.¹ For this service, issuers reimburse the member organizations for all out-of-pocket expenses, reasonable clerical expenses, postage and other expenses incurred in a particular circulation. The Rules set guidelines for the amount of the reimbursement.

While member organizations initially handled proxy processing internally, beginning in the late 1960's and continuing to the present, firms have increasingly used outside contractors for these types of services. In particular, a firm will contract with a service bureau, such as Automatic Data Processing ("ADP"), for the solicitation of proxy voting instructions, and the distribution of reports to shareholders.² However, the identity of the soliciting broker remains on all communications.

Since the level of reimbursement was last reviewed in 1986, the Exchange has found that proxy solicitation and report distribution costs have increased, due in large part to general cost increases in the economy. Postage itself has doubled since 1979. Brokers pass these costs to the issuers. Aggregate costs also have

increased due to a substantial increase in the number of beneficial owners, which results from increased participation of individual investors in the rising securities market.

While the number of individual investors has increased, the percentage of holdings of securities through institutional investors, mutual funds, pension and savings plans also has increased. Such institutions have an obligation, or, in some cases, a statutory duty, to vote the shares being held. Institutions have developed a variety of mechanisms to vote their shares in conformity with their own internal policies and governing regulations. While these procedures require time, many institutional investors have difficulty voting on a timely basis during the spring proxy season. Over 40 percent of all annual meetings occur within a few weeks. Some large institutions tend to vote very close to the meeting date, particularly during the proxy season, due to the immense increase in paperwork.

The Exchange has determined that, in addition to the changing stock ownership patterns, stock holdings continue to migrate from registered to street or nominee ownership. Street name holdings are concentrated with approximately 1,000 nominees, and the Exchange believes that an efficient infrastructure is necessary to coordinate these nominees and their customers. Service bureaus, as contract agents of the nominees, build and maintain such systems. Nominees and their agents also have developed communications systems for obtaining shareholder votes electronically rather than through a physical proxy. To accommodate this, the Exchange recently amended its rules to permit telephone voting. However, the Exchange has found that the current fee structure does not recognize the value that these systems provide to issuers in reducing the costs of coordination and solicitation.

Despite the progress that has been made in the distribution and proxy solicitation process, issuers often express their belief that mailing fees are unnecessarily high and that the procedures are not responsive to the needs of the issuers. In this regard, unit fees for large issuers are the same as those for small issuers, ignoring economies of scale. Two matters are of particular concern to issuers: whether they will have a quorum at their meeting and whether large blocks of votes will be received relatively close to the meeting date. In many cases, addressing these concerns has led to significantly increased solicitation costs for issuers. At the same time, the

interests of institutions in having their voted counted in the tabulation must also be recognized, and any changes must preserve the rights of all shareholders in the corporate suffrage process.

Limitations of the Current Fee Structure

While there have been changes in the nature of securities holdings and enhancements in technology, the proxy fee structure generally has been unchanged since the Rules were first adopted in 1938. In the Exchange's view, the current structure does not provide incentives for nominees and other intermediaries to use the most current and efficient technology. The Exchange believes that this structure needs to be reconsidered and that there should be incentives for market-driven innovations, such as electronic proxy services, touch-tone voting, and electronic vote reporting.

Funding to operate these communication and voting systems presently comes from the unit mailing fees that issuers pay under the NYSE reimbursement guidelines. A decrease in fees could reduce the use of these systems, which are increasingly being relied upon in the voting process. Without financial incentives, it is unlikely that new cost-reducing technology will be implemented. In addition, there is no incentive for brokers and intermediaries to reduce the mailing of printed material. Paper, printing and postage generally represent between 80 and 90 percent of the cost of the average proxy mailing. By the development and use of new technologies and electronic distribution, these costs can be reduced.

Finally, the Rules also do not recognize the cost of coordinating multiple nominees and the value that consolidating material distribution and vote collection provides to issuers. These services, which are not expressly required by any regulation, include: (i) sending a single search card for multiple nominees; (ii) coordinating multiple nominees to generate a single material request for each issuer; (iii) delivering material to a single place for multiple nominees; (iv) sorting bulk mail across multiple nominees for maximum discounts; (v) daily reporting of votes for multiple broker and bank nominees; and (vi) consolidating multiple nominees into a single invoice.

The Exchange's Proposal

The proposed rule change would amend the Rules to reduce the suggested rate of reimbursement from 60¢ or 70¢ to 55¢ for each set of proxy material, *i.e.*, proxy statement, form of proxy and

¹ Street ownership encompasses shares purchased through a broker or bank (referred to as a nominee). The shares are then registered in the name of that nominee, or in the nominee name of a depository such as The Depository Trust Company ("DTC"). Recent analysis indicates that, on average, approximately 70 to 80 percent of all outstanding shares are held in street name.

² The Commission notes that ADP is currently the only intermediary offering these services to broker-dealers.

annual report, when mailed as a unit. The present distinction between proposals that require beneficial instructions and those that do not would be eliminated. According to the Exchange, this will produce substantial savings for all issuers. Further, the rate for mailing other reports, primarily quarterly reports, would be reduced from 20¢ to 15¢. The rate of reminder notices would remain at 40¢ unless a proxy fight is involved. The special fee of 60¢ for mailing only to shareholders who have not voted would be eliminated. These are the first reduction in the basic rates since the Rules were adopted in 1938.

The proposal treats reimbursement for mailings during proxy fights differently. These contests require significant efforts by all participants in the proxy process and can occur under difficult circumstances. The time for distribution is short and requires maximum effort. Thus, the proposal includes a new fee of \$1 for each set of proxy materials mailed.

A significant aspect of the proposed rule change is a new \$20 fee per nominee. To earn this fee, the intermediary will need to provide coordination for a series of functions across a multitude of nominees (brokers, banks).³ In effect, this fee compensates an intermediary for all the services it provides and upon which issuers and institutions have come to rely, such as:⁴

- Searches: Rule 14a-13 under the Act requires an issuer to inquire of each record holder to determine the number of beneficial owners holding shares through nominees. If an intermediary coordinates multiple nominees, the issuer incurs only the expense of performing one “search” for all the nominees, saving the issuer significant expenses.
- Search responses: Nominees must respond to an issuer’s search request within seven business days of receipt. This process often is complicated since there are multiple levels of entities. In that case, an intermediary can consolidate responses (in some cases, responses of over 1,000 entities), this saving administrative expenses for

issuers and increasing the accuracy of ordering material.

- Delivering materials: Providing material to hundreds of nominees requires an issuer to sort and ship a parcel to each nominee. If this task is not done by the issuer, it must be done by a proxy solicitor or some other vendor. Since an issuer pays a fee and a freight bill for each of these shipments, and intermediary can save issuers a significant expense if it can make one material delivery for hundreds of nominees.
 - Use of bulk mail: For issuers who use bulk mail, a significant amount of the savings realized today would not occur unless intermediaries continue to combine nominees. Issuers reimburse nominees for postage, and bulk postage rates are available only for large shipments. Unless consolidated, the majority of nominees would not be able to qualify individual small shipments for bulk discounts.
 - Preliminary voting information: To help issuers judge whether they have a quorum, many brokers currently report a discretionary vote ten or fifteen days before a meeting in accordance with NYSE Rule 451(b)(1), and again at the time of the meeting. As the proxy process has evolved, large intermediaries voluntarily have provided daily voting updates for issuers. ADP now sends daily consolidated vote reports 15 or 10 days before a meeting, and then every business day until the night before the meeting. Without this service, many issuers would need to hire a proxy solicitor to obtain voting estimates. Obtaining the vote from a single source for hundreds of nominees can save the issuer substantial expense, and daily voting updates provide comfort to the issuer as the meeting date approaches.
- The Exchange has determined that this coordination fee is consistent with current Exchange rules that authorize the payment of a coordination fee for agents that coordinate providing information regarding non-objecting beneficial owners (“NOBOs”).⁵ The impact of the nominee fee will vary with the issuer and the nature of its

shareholders. However, the Exchange has observed that smaller issuers tend to have fewer nominee holders. The Exchange estimates that the smallest 4,000 U.S. issuers would pay, on average, an intermediary nominee coordination fee of only \$800. This will be partially offset by the lower basic rate and lower expense.

To clarify the policy with respect to out-of-pocket expenses, the proposed rule provides for reimbursement only of actual costs, such as: outgoing postage (plus third class sorting fee); envelopes and business reply envelopes; and custom printing of envelopes and ballots. The business reply postage would be billed at the Business Reply Mailing Accounting System (BRMAS) rate. Additional savings are possible by sorting mail to obtain postal discounts, as well as through other efforts undertaken by nominees or their agents to reduce issuers’ postage expenses. These savings could be shared between the issuer and the processor.

The Exchange also is proosing a new incentive fee to compensate member organizations for eliminating the need to send materials in paper form. This will encourage member organizations to apply technology to sort materials in a way that multiple proxy instruction forms are included in a single envelope, with a single set of materials to be mailed to the same household. The Rules address this area through the concept of “householding.” A member firm or intermediary could earn this paper elimination fee by distributing multiple proxy instruction forms electronically or be distributing all material to a household electronically. An additional fee of 50¢ (10¢ for a quarter report) is proposed for each set of material that is not mailed.

The Exchange provides the following examples of the cost savings that are possible by eliminating mailings:

1. A person having three accounts—such as an individual account, an “IRA” retirement account, and a trust account—could receive one set of materials through “householding.” The cost comparison is:

	Unit cost	Without householding	Householding (3 accounts)
Proxy Fee	\$.55	\$1.65	\$1.65
Householding Fee .....	.50	0	1.00
Annual Report & Proxy Statement	2.00	6.00	2.00
(Estimated, cost will vary):			
Bulk Rate .....	.65	1.95	.65

³ “Nominees” are those names that appear on either the list of record shareholders or on an omnibus proxy sent to the issuer on the record date by a depository, but who are, in fact, acting for

someone else. In practice, they are self-clearing brokers, banks, or other financial institutions participating in DTC or some other depository.

⁴ As noted above, ADP is the only intermediary that currently offers these services to broker-dealers.

⁵ See Exchange Rule 451.92

	Unit cost	Without householding	Householding (3 accounts)
Outgoing Postage			
Envelopes .....	.08	.24	.08
Return Postage .....	.34	1.02	.34
Total		\$10.86	\$5.72

As this example makes clear, the potential savings are greatest in the areas of postage and printing, and these savings will occur even in the first year. Also note that this example assumes the

use of bulk rate mailings. The savings would be greater for issuers using first class postage.

2. Savings from elimination of mailings also are possible through use of

the Internet. Even for an individual with only one account, the savings can be shown as follows:

	Unit cost	Mail return	Electronic return
Proxy Fee	\$.55	\$.55	\$.55
Householding Fee .....	.50	0	.50
Annual Report & Proxy Statement	2.00	2.00	0
(Estimated, cost will vary):			
Outgoing Postage .....	.65	.65	0
Envelopes .....	.08	.08	0
Return Postage .....	.34	.34	0
Total		\$3.62	\$1.05

In this example, the Internet cost is paid by the user. Investors who request to receive information electronically simply would receive an "e-mail" message indicating that the annual report and proxy are available. The Exchange believes that such use of the Internet would be consistent with Commission policies in this area.⁶

Finally, as to the manner in which the fees are collected, the Exchange notes that ADP is the data processor for many of the brokerage firms that are Exchange members. These firms subcontract the data processing functions of the proxy solicitation process to ADP, but retain all the obligations to comply with the relevant Exchange rules. As a general matter, the firms subcontract for these services at less than the full fee that the issuer pays. The firms also maintain some staff in a proxy department to handle such tasks as balancing depository positions on record date, changing investor records, answering inquiries and performing other work not covered by the subcontract.

The firm's systems department also needs to maintain proxy-related programs—including programs for separating wrap accounts—and the communications equipment to interface electronically with an intermediary on both search date and record date. In addition, the compliance department of the firm is required to ensure that the firm fully complies with Exchange and

Commission rules since subcontracting does not relieve a firm of its legal responsibilities.

To simplify the administrative difficulties that would result if each issuer had to pay many brokers, ADP has developed a "single invoice" procedure for all of the brokers with whom they have subcontracted. Under this procedure, ADP bills issuers on behalf of literally hundreds of brokers and banks. ADP remits to their clients the amounts specified in their contracts, which the firms will retain to cover their own costs.

The Exchange believes that this billing procedure does not affect issuer costs. In this regard, if the brokers billed issuers directly, the issuers would pay the same amount, but to several brokers, rather than to a central data processor. In the Exchange's view, there is no economic difference in the brokerage firms retaining part of the costs paid by the issuers or such firms receiving the same amount paid by ADP through the single invoice system. This billing process also is consistent with other types of outsourcing transactions. Indeed, issuers benefit from this procedure since they are able to pay a single processor, rather than multiple brokerage firms.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Summary of the Comment Letters

The Exchange solicited comments on the proposed rule change from listed companies, member firms and other industry organizations involved in the proxy solicitation process pursuant to a Request for Comment dated September 18, 1996. The Exchange received 261 comments letters.⁷ While it is difficult to categorize some of the letters, the

⁶ See Securities Act Release No. 7233 (Oct. 6, 1995).

⁷ The Exchange informally circulated a draft of the Request for Comment on July 19, 1996. That draft was substantially similar to the final proposal, and a number of commentators responded only to the July 19th request for comments. Thus, the 261 letters include those letters received in response to the July draft.

Exchange has concluded that 181 letters generally supported the proposal and 80 letters opposed the proposal. Of the 181 letters supporting the proposal, 52 letters also expressed reservations about certain aspects of the proposal.

Those letters supporting the proposal believed that it would lead to cost reductions, increased technological efficiencies and consolidation of services. These commentators saw the savings from the fee reductions more than compensating for the cost of the new nominee fee. Even some companies facing increased fees in the short term supported the proposal, believing that they would reap long-term gains through decreases in internal printing costs and increased efficiencies in the years ahead. Some commentators also thought that the proposal could result in an increased voting response in the proxy process.

In addition, supporters believed that the new fee structure would more equitably distribute the costs of the proxy process among market participants. To the extent that these commentators had reservations regarding the proposal, they noted that any difficulties could be addressed following the end of the three-year pilot period.

Commentators objecting to the proposal focused primarily on the new nominee fee. The main objection to that fee was that it would result in increased costs, especially to smaller issuers. There are suggestions that the Exchange (i) abandon the nominee fee, (i) adopt tiered nominee fees, with small issuers not being subject to the full \$20 fee, and (iii) restructure the nominee fee so that it would be progressive, based on how many shareholder accounts an issuer has.

Some commentators asked for a more precise definition of "nominee." Others expressed the general view that brokers should be responsible for the costs of communicating with street name holders (and some recommended that the Exchange not establish guidelines at all in this area). Some commentators also objected to the proposed incentive fees. These commentators argued that the proposed fee was unrelated to any additional service provided by an intermediary, and that the intermediaries should be expected to provide for additional efficiencies without the need for further reimbursement.

As to the letters with mixed opinions, some commentators said they needed more time to review the proposal. Others found it difficult to estimate the proposed savings or thought that any possible savings would be minimal. A

number of commentators supported the overall thrust of the proposals, but questioned certain aspects of it, such as suggesting that it was counterproductive to authorize the nominee fee while lowering fees generally. Some commentators supported the proposal, but urged that the Exchange lower fees even further. Finally, a number of commentators made specific suggestions on how to structure the review of the pilot program.

The Exchange's Response to the Comment Letters

Well over half the comment letters expressed support for the proposals. The Exchange believes that this indicates that the proposal accurately balances the interests of the issuers, broker-dealers, intermediaries and investors. In particular, many commentators noted that the proposal would provide a more rational fee structure and would encourage the use of enhanced technology to facilitate the shareholder communication and voting process. As discussed, even a number of issuers whose proxy solicitation costs would increase supported the proposal, noting that the new fee structure likely would yield long-term savings.

Those commentators who voiced opposition to the proposed rule change focused almost entirely on the possibility of increased costs, especially through the nominee fee. Many of these commentators argued that the fee was unfair and that it covered services that already were being provided. Some of these commentators believed that the proposed nominee fee would benefit large issuers at the expense of smaller issuers.

In response, the Exchange first notes that this fee is cost-related and is intended to compensate intermediaries for the services they provide. As discussed above, intermediaries conduct searches for determining how many sets of material to mail, coordinate mailings (often through the use of bulk mail) and help provide preliminary voting information. The proposed rule change attempts to establish a more accurate fee schedule by isolating these services and establishing a separate fee for recovering the costs of providing these services. By charging separately for these discreet services, the Exchange is able to lower the general fees for mailing materials.

The Exchange also believes that the commentators who objected to the nominee fee do not fully recognize the cost savings that will result under the new fee schedule. These commentators simply added the total fees that they would have to reimburse intermediaries under the fee schedule, but failed to

consider the other cost savings, particularly "out of pocket savings," that the Exchange believes they are likely to achieve. In addition, for example, the new incentive fees are likely to result in fewer mailings, thus decreasing printing and mailing costs. Similarly, the fee structure encourages the use of new technology, especially with respect to voting, and thus should result in a more efficient proxy system.

As to the other objections that commentators raised, the Exchange notes:

- **Definition of nominee:** The Exchange believes that the term "nominee" is well-known in the securities industry and will not give rise to interpretive issues. The Exchange's request for comment made clear that a "nominee" is a name appearing on a list of record holders who, in fact, is acting for someone else. They are "participants" of the Depository Trust Company, such as self-clearing banks, brokers and other financial institutions.

- **Need for reimbursement guidelines:** The Exchange has provided fee reimbursement guidelines since 1938 to provide a service to its constituents and to help ensure that investors receive proxy and other information from issuers on a timely basis. The system has worked well over the years, and the current process of reviewing the fees indicates that the Exchange continues to play a critical role in facilitating (i) the flow of information from issuers to shareholders and (ii) the flow of votes from shareholders to issuers.

- **Incentive fees:** A number of commentators questioned the adoption of incentive fees as a means to reduce mailings. These commentators believed that intermediaries already should be taking steps to reduce costs. However, the Exchange states that the current fee structure provides little incentive for intermediaries to limit the number of mailings to shareholders. This results in increases in both mailing costs and, more significantly, printing costs, for issuers. The incentive fee could have a dramatic effect in encouraging intermediaries to eliminate multiple mailings.

- **Non-U.S. issuers:** Non-U.S. issuers are exempt from most of the Commission's proxy rules pursuant to Rule 3a12-3 under the Act. Nevertheless, non-U.S. issuers generally do provide U.S. shareholders with proxy and related information and seek the vote of their U.S. holders. Thus, broker-dealers and other intermediaries face the same reimbursement issues with non-U.S. companies as they do with U.S. companies. The Exchange has not been presented with any compelling

reasons to treat these classes of issuers differently.

Finally, the Exchange recognizes that it is impossible to establish a final fee structure without actual market experience. Thus, the Exchange is proposing the new fee structure for a three-year pilot term. An industry Committee consisting of representatives of the Exchange and all the major constituency groups affected by the new fee structure will monitor the effect of the new fees throughout the pilot. The Committee will be able to propose changes as needed and will make final recommendations to the Exchange at the conclusion of the pilot period.

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

Within 35 days of the 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 the 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. Commenters are invited specifically to provide information that will assist the Commission in assessing whether each of the various elements of the proposed fee structure—the mailing reimbursement fees for non-contested and contested solicitations, respectively, the nominee fee, and the “householding” incentive fee—considered separately and/or as a whole, are consistent with: (1) issuers’ obligation under Rule 14a-13(a)(5) of the Act to reimburse broker-dealers, banks, and other nominees for the “reasonable expenses” they incur in mailing proxy soliciting materials and annual reports to beneficial holders of such issuers’ voting securities and/or (2) broker-dealers’ ability under Rule 14b-1(c)(2) of the Act not to deliver proxy soliciting materials and annual reports pursuant to Rule 14b-1(b)(2) of the Act, or provide NOBO information under Rule 14b-1(b)(3) of the Act absent a particular issuer’s “assurance of reimbursement of * * * reasonable expenses, both direct and indirect.” Should such “reasonable expenses” within the meaning of any or all of these

Commission rules be construed to encompass an intermediary’s costs of: (1) coordinating an issuer’s proxy mailings to multiple nominees and/or (2) operating an electronic proxy voting system whereby street-name customers of broker-dealer clients may instruct the intermediary on how to vote the securities in which they hold a beneficial ownership interest? Should the determination of “reasonableness” with respect to any of the foregoing fees vary with the size of the issuer, whether measured in terms of its total market capitalization or public float, or any other criterion?

Should this reasonableness determination take into account any fee-sharing arrangements between a intermediary and its broker dealer clients? In this connection, to what extent should such arrangements reflect actual allocation of costs between an intermediary and such clients? In addressing this question, commenters should attempt to quantify to the extent possible the costs that continue to be borne by those broker-dealers that outsource proxy processing and/or voting obligations to an intermediary, and the relationship of such costs to fulfillment of obligations under Rule 14b-1 of the Act and/or Exchange Rules.

Moreover, the Commission solicits comment on whether an independent audit during the three-year pilot period would be helpful in assessing the reasonableness of the costs passed through to issuers. Finally, the Commission also solicits comment on whether the proposed NYSE nominee fee and incentive fee should be deemed to apply to reimbursement by non-NYSE issuers to NYSE member firms.

In view of the extensive comments requested, the Commission is providing a 45-day comment period. 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. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-96-36 and should be submitted by [insert date 45 days from date of publication].

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-32717 Filed 12-24-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38059; File No. SR-PTC-96-07]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Proposed Rule Change Relating to the Right of Set-off Upon the Default of a Participant

December 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on December 2, 1996, the Participants Trust Company (“PTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change (File No. SR-PTC-96-07) as described in Items I, II, and III below, which items have been prepared primarily by PTC. 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 relates to PTC’s right to set-off credit balances in an account of a defaulting participant against an unpaid debit balance of the defaulting participant.

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

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by PTC.