

Damages requested	Hear- ing proc- ess fee
Unspecified .....	2,000

## 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 Item 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

On December 11, 1997, NASD Regulation filed a proposed rule change with the Commission amending Rule 10333 of the Code to add a process fee on members named as parties to arbitration proceedings. The proposed rule change, which was submitted pursuant to Section 19(b)(3)(A) of the Act, became effective upon filing. On December 15, 1997, the Commission published a Notice of Filing and Immediate Effectiveness of the proposed rule change, announcing the filing of the amendment and that NASD Regulation would implement the new fee on January 2, 1998.<sup>1</sup>

NASD Regulation is now proposing to amend the first two Hearing Process fee brackets so that the first bracket for which a hearing process fee will be assessed will be for cases where \$25,000.01–\$50,000 is in dispute. This bracket in the fee schedule as originally filed was \$30,000.01–\$50,000. This amendment is consistent with NASD Regulation's original intent in adopting the fee. Moreover, the amendment will make the amounts in dispute of the lowest brackets in the Rule 10333(d) Hearing Process Fee Schedule consistent with the dollar amount at which the Prehearing Process fee is imposed (amounts in dispute of greater than \$25,000). NASD Regulation plans to make this proposed rule change

effective, along with the rest of the process fee, on January 2, 1998.

#### 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act<sup>2</sup> in that the proposed rule change provides for the equitable allocation of reasonable charges among members and other persons using the Association's arbitration facility and requires member firm users to absorb a reasonable share of the costs of operating the arbitration program.

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

The Association does not believe the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and subparagraph (e) of Rule 19b–4 thereunder,<sup>4</sup> in that the proposal constitutes an amendment to a fee which the NASD imposes on its members. At any time within 60 days of the filing of such 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.

## 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 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 NASD. All submissions should refer to File No. SR–NASD–97–96 and should be submitted by January 29, 1998.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 98–421 Filed 1–7–98; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39511; File No. SR–NYSE–96–26]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to NYSE Rules 342, "Offices—Approval, Supervision and Control," 440, "Books and Records," and 472, "Communications with the Public"

December 31, 1997.

#### I. Introduction

On September 12, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with 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 thereunder,<sup>2</sup> a proposed rule change to allow broker-dealers to establish reasonable procedures for reviewing registered representatives' communications with the public relating to their business. On November 7, 1996, the NYSE filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 6, 1996 ("Amendment No. 1"). Amendment No. 1 makes technical revisions to clarify the proposed changes to NYSE Rules 440, "Books and Records," and 472, "Communications with the Public." Specifically, Amendment No. 1 modifies NYSE Rule 440 to indicate that members

Continued

<sup>1</sup> See Securities Exchange Act Release No. 39451 (December 15, 1997, 62 FR 67104 (December 23, 1997)).

<sup>2</sup> 15 U.S.C. 78o–3.

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

<sup>4</sup> 17 CFR 240.19b–4(e).

change and Amendment No. 1 were published for comment in the **Federal Register** on November 19, 1996.<sup>4</sup> The Commission received three comment letters regarding the proposal.<sup>5</sup>

On November 3, 1997, the NYSE filed Amendment No. 2 to the proposal.<sup>6</sup> On November 26, 1997, the NYSE filed Amendment No. 3 to the proposal.<sup>7</sup> This order approves the proposed rule change and Amendment No. 1, and approves Amendment Nos. 2 and 3 to the proposal on an accelerated basis. The Commission also is approving a substantially identical proposal by the National Association of Securities Dealers, Inc. ("NASD").<sup>8</sup>

## II. Description of the Proposal

According to the NYSE, new technology and means of

must preserve books and records as required under SEC Rule 17a-3 and comply with the recordkeeping format, medium and retention period specified in SEC Rule 17a-4. In addition, Amendment No. 1 revises paragraph NYSE Rule 472(c) to clarify that records retained must be readily available to the Exchange, upon request. Under NYSE Rule 472(c), the names of the persons who prepared and who reviewed and approved the material must be ascertainable from the retained records.

<sup>4</sup> See Securities Exchange Act Release No. 37941 (November 13, 1996), 61 FR 58919.

<sup>5</sup> See Letter from Kenneth S. Spierer, Chairman, Technology Regulatory Subcommittee of the Securities Industry Association's ("SIA") Technology Issues Committee, to Jonathan G. Katz, Secretary, Commission, dated December 9, 1996 ("SIA Letter"); Letter from Paul Saltzman, Senior Vice President and General Counsel, PSA The Bond Market Trade Association, to Jonathan G. Katz, Secretary, Commission, dated December 10, 1996 ("PSA Letter"); and Letter from Kenneth S. Spierer, First Vice President and Assistant General Counsel, Merrill Lynch, to Jonathan G. Katz, Secretary, Commission, dated December 9, 1996 ("Merrill Lynch Letter").

<sup>6</sup> See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Katherine A. England, Assistant Director, Division, Commission, dated October 31, 1997 ("Amendment No. 2"). Prior to filing Amendment No. 2, the NYSE had planned to rescind Interpretation 342(a)(b)/04 of the *NYSE Interpretation Handbook*, thereby eliminating the Exchange's requirement that broker-dealers review all incoming correspondence. Amendment No. 2 rescinds Interpretation 342(a)(b)/04 and replaces it with Interpretation 342.16/04, which will require broker-dealers to continue to review all incoming non-electronic communications addressed to registered representatives. Incoming non-electronic communications directed to associated persons other than registered representatives, and any incoming communications received in electronic format (e.g., e-mail), will be subject to supervisory procedures established by the broker-dealer.

<sup>7</sup> See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Katherine England, Assistant Director, Division, Commission, dated November 25, 1997 ("Amendment No. 3"). Amendment No. 3 contains the final version of an information memorandum (the "Information Memo") to members which describes the new rules for supervision of public communications and provides guidance concerning implementation of the new rules.

<sup>8</sup> See Securities Act Release No. 39510 (December 31, 1997) (order approving File No. SR-NASD-97-24).

communication (e.g., e-mail and the Internet) have impacted the way that NYSE member organizations and their associated persons conduct business and communicate with customers and other members of the public. The Exchange states that it worked with a committee comprised of representatives from NYSE member organizations to study questions relating to the supervision and review of these new means of communication and, as a result of its review, developed the proposed amendments to NYSE Rules 342, "Offices—Approval, Supervision, and Control," 440, "Books and Records," and 472, "Communications with the Public."

Currently, NYSE Rule 342.16 "Supervision of registered representatives," requires supervisors to review all written and electronic correspondence of registered representatives prior to use. The NYSE proposes to amend Exchange Rule 342.16 to replace the current pre-use review requirement with a rule that will allow broker-dealers to establish reasonable procedures for review of registered representatives' communications with the public relating to their business. Under the proposal, a broker-dealer may continue to require pre-use review of all public communications,<sup>9</sup> alternatively, any broker-dealer that chooses to implement other reasonable procedures for reviewing registered representatives' public communications must, among other things: (1) Develop written supervisory policies and procedures; (2) design policies and procedures to reasonably supervise each registered representative; and (3) maintain evidence that its supervisory policies and procedures have been implemented and make that evidence available to the NYSE upon request.

A broker-dealer's policies and procedures for reviewing the public communications of registered representatives also must satisfy the requirements of new NYSE Rule 342.17, "Review of communications with the public." NYSE Rule 342.17, which will apply to the public communications of all associated persons, requires broker-dealers to develop written policies and procedures for review of public communications that are appropriate for the broker-dealer's business, size, structure, and customers. Under NYSE

<sup>9</sup> In this regard, the NYSE notes that, given the complexity and cost of establishing adequate systems for effectively reviewing electronic communications, member firms may decide to continue to require pre-use review of all communications. See Information Memo, *supra* note 7, at 2.

Rule 342.17, a broker-dealer that does not require pre-use review of public communications must: (1) Regularly educate and train employees in the firm's current policies and procedures governing review of communications; (2) document how and when employees were educated and trained; and (3) monitor and test to ensure implementation and compliance with the firm's policies and procedures.

The NYSE has developed an Information Memo<sup>10</sup> that provides additional guidance and requirements for supervisory procedures adopted pursuant to NYSE Rule 342. In addition to noting that broker-dealers must develop appropriate supervisory procedures, the Information Memo requires that broker-dealers, among other things: (1) specify, in writing, the firm's policies and procedures for reviewing each type of communication; (2) identify how supervisory reviews will be conducted and documented; (3) identify the types of communication that will be pre- or post-reviewed and the organizational position(s) responsible for conducting reviews of different types of communication; (4) specify the minimum frequency of reviews for each type of communication; and (5) periodically re-evaluate the effectiveness of the firm's procedures for reviewing public communications and consider any necessary revisions.

In addition, the Information Memo requires broker-dealers to: (1) Specify procedures for reviewing registered representatives' recommendations to customers; (2) require supervisory review of a percentage of each registered representative's public communications, including recommendations to customers; and (3) consider the complaint and overall disciplinary history (if any) of a registered representative or other employee in establishing supervisory procedures. The Information Memo also states that a broker-dealer's supervisory policies and procedures must ensure that all customer complaints, whether received via e-mail or in written form, are reported to the NYSE in compliance with NYSE Rule 351(d),<sup>11</sup> and that a broker-dealer must prohibit registered representatives' and other employees' use of electronic communications to the public unless such communications are

<sup>10</sup> See Amendment No. 3, *supra* note 7.

<sup>11</sup> Among other things, NYSE Rule 351(d) requires members and member organizations to report to the NYSE statistical information regarding customer complaints relating to matters specified by the NYSE.

subject to supervisory and review procedures by the firm.

The NYSE notes that the standards for communications provided in NYSE Rule 472 continue to apply to all communications regardless of the transmission medium used or the policies and procedures for review and supervision that a broker-dealer adopts pursuant to NYSE rule 342.<sup>12</sup>

The NYSE proposes to amend its requirements for review of incoming correspondence by rescinding and replacing current Interpretation 342(a)(b)/04 in the NYSE *Interpretation Handbook*, which requires members to review all incoming correspondence of all associated persons, with Interpretation 342.16/04.<sup>13</sup> Interpretation 342.16/04 will require broker-dealers to review all incoming non-electronic communications directed to registered representatives. Incoming non-electronic communications directed to associated persons other than registered representatives and incoming electronic communications (e.g., e-mail) will be subject to the supervisory policies and procedures established by the broker-dealer pursuant to NYSE Rule 342.

The Exchange proposes to amend NYSE rule 472(a) to clarify the types of communications that will continue to require pre-use approval. NYSE Rule 472(a) currently requires prior approval of any communication which is generally distributed or made available by a member to customers or the public. NYSE Rule 472(a), as amended, will require prior approval of each advertisement, market letter, sales literature, or other similar communication which is generally distributed or made available to customers or the public. In addition, the NYSE proposes to amend NYSE Rule 472(b) to clarify that research reports must be approved *in advance* by a supervisory analyst. The NYSE proposes to amend NYSE Rule 472(c) to provide that the names of persons who prepared and who reviewed and approved communications with the public must be readily ascertainable from the retained records.

Finally, the NYSE proposes to amend NYSE Rule 440 to indicate that members must preserve books and

records as required under SEC Rule 17a-3 and comply with the recordkeeping format, medium and retention period specified in SEC Rule 17a-4.<sup>14</sup>

### III. Comments

The Commission received three comment letters regarding the proposal.<sup>15</sup> All three commenters supported the proposal. Specifically, the SIA believes that the proposal will provide broker-dealers with needed flexibility in developing procedures for review of correspondence. In addition, the SIA notes that the proposal will not diminish the general supervisory responsibilities of firms. Instead, "[t]he burden will now be on firms to develop supervisory approaches that they can demonstrate are reasonable."<sup>16</sup>

Similarly, PSA believes that the NYSE's proposal constitutes a flexible and functional approach to regulation that will allow member firms to integrate electronic communications into their securities activities. PSA believes that procedures tailored by individual firms to meet their needs are preferable to a uniform set of detailed requirements that may be inappropriate for many firms or that may quickly become obsolete.<sup>17</sup>

Merrill Lynch also praises the flexible approach proposed by the NYSE and believes that the proposal removes a significant impediment to the use of electronic communications by eliminating the pre-use review requirement for correspondence.<sup>18</sup>

### IV. Discussion

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, the requirements of Section 6(b)(5),<sup>19</sup> in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As noted above, NYSE Rule 342.16, as amended, will allow broker-dealers to establish reasonable procedures for review of registered representatives' communications with the public relating to their business. New NYSE Rule 342.17 will require broker-dealers to develop written policies and procedures for the review of all associated persons' public

communications that are appropriate for the broker-dealer's business, size, structure, and customers. The Commission believes that the proposed rules will provide broker-dealers with some flexibility in adopting and implementing supervisory procedures for reviewing associated persons' public communications while establishing minimum requirements, guidelines, and standards governing the supervisory procedures a broker-dealer may adopt. The Commission believes that these standards and guidelines will help to ensure that broker-dealers continue to provide appropriate supervision of the public communications of their associated persons.

The Commission agrees with the analysis of the SIA that the proposal does not diminish the general supervisory responsibilities of broker-dealers.<sup>20</sup> In this regard, the Commission emphasizes, as it has stated previously, that broker-dealers must monitor the trading and sales activities of their associated persons and establish effective compliance and supervisory procedures to prevent and detect possible violations of firm policies and procedures, rules of the self-regulatory organizations, and federal and state securities laws.<sup>21</sup> The Commission believes that review of registered representatives' and other associated persons' public communications is an important component of a broker-dealer's duty to supervise its employees, and that broker-dealers have substantial supervisory obligations arising from the public communications of their associated persons. In addition, as the NYSE states in its proposal, the standards for communications set forth in NYSE Rule 472 continues to apply to all public communications, regardless of the medium of transmission or the supervisory policies and procedures a firm adopts.<sup>22</sup>

The Commission believes that the minimum standards and requirements specified in NYSE Rules 342.16 and 342.17 and in the Information Memo will help to ensure that broker-dealers continue to provide appropriate supervision of the public communications of their registered representatives and other associated persons. In this regard, the Commission notes that NYSE Rule 342.16 states that a broker-dealer's supervisory policies

<sup>12</sup> Amount other things, NYSE Rule 472 prohibits broker-dealers from using any communications with contains (i) any untrue statement or omission of a material fact or is otherwise false or misleading; (ii) promises of specific results, exaggerated or unwarranted claims; (iii) opinions for which there is no reasonable basis; or (iv) projections or forecasts of future events which are not clearly labeled as forecasts.

<sup>13</sup> See Amendment No. 2, *supra* note 6.

<sup>14</sup> See Amendment No. 1, *supra* note 3.

<sup>15</sup> See note 5, *supra*.

<sup>16</sup> See SIA Letter, *supra* note 5, at 2.

<sup>17</sup> See PSA Letter, *supra* note 5, at 2.

<sup>18</sup> See Merrill Lynch Letter, *supra* note 5, at 2.

<sup>19</sup> 15 U.S.C. § 78f(b)(5).

<sup>20</sup> See SIA Letter, *supra* note 5, at 2.

<sup>21</sup> See NASD, NYSE, North American Securities Administrators Association, Inc., and Office of Compliance Inspections and Examinations, Commission, *Joint Regulatory Sales Practice Sweep* (1996) ("Joint Sweep Report") at 1.

<sup>22</sup> See note 12, *supra*, and note 24, *infra*, for discussions of the requirements of NYSE Rule 472.

and procedures must be designed to reasonably supervise each registered representative. Under NYSE Rule 342.17, a broker-dealer that chooses not to require pre-use review of public communications must educate employees about the firm's current communications policies and procedures, document the employees' education and training, and ensure that the firm's policies are implemented and adhered to.

In addition, the NYSE Information Memo requires broker-dealers to: (1) Specify, in writing, the firm's policies and procedures for reviewing different types of communications; (2) identify how supervisory reviews will be conducted and documented; (3) identify what types of communications will be pre-reviewed or post-reviewed; (4) identify the organizational position(s) responsible for conducting reviews of the different types of communications; (5) specify the minimum frequency of reviews for different types of communications; (6) monitor the implementation of and compliance with the firm's procedures for reviewing public communications; and (7) periodically re-evaluate the effectiveness of the firm's procedures for reviewing public communications and consider any necessary revisions.

The Commission believes that these requirements will provide guidance to broker-dealers in developing policies for supervising public communications and to associated persons in complying with the firm's policies. The requirements should help to ensure that broker-dealers carefully consider the supervisory procedures appropriate for different types of communications, closely monitor compliance with their firm's policies, and periodically re-evaluate their firm's policies and procedures. The Commission expects broker-dealers to monitor the effectiveness of their supervisory policies and procedures and to promptly make any necessary revisions.

The Information Memo also requires broker-dealers to: (1) Specify procedures for reviewing registered representatives' recommendations to customers; (2) require supervisory review of some of each registered representative's public communications, including his or her recommendations to customers; (3) consider the complaint and overall disciplinary history, if any, of registered representatives and other employees in developing procedures for supervising their communications with the public; (4) provide that all customer complaints, whether received via e-mail or in written form from the customer, are reported to the NYSE in compliance

with NYSE Rule 351(d); and (5) prohibit employees' use of electronic communications to the public unless the communications are subject to supervisory and review procedures developed by the firm.

The Commission believes that these standards will help to ensure that broker-dealers adopt effective and appropriate supervisory procedures. For example, reviewing at least some of a registered representative's recommendations<sup>23</sup> and providing for the reporting of customer complaints in compliance with NYSE Rule 351(d) may help firms to identify potential sales practice problems. Similarly, considering a registered representative's complaint and overall disciplinary history will help to ensure that broker-dealers implement supervisory procedures appropriate for each representative. In this regard, the Commission would expect a broker-dealer to consider providing heightened supervision for a registered representative with a history or pattern of customer complaints, disciplinary actions or arbitrations.<sup>24</sup> Moreover, the Commission notes that the requirements specified in NYSE Rule 342 and in the Information Memo are minimum requirements; the Commission expects each broker-dealer to implement any additional procedures the broker-dealer believes are necessary to provide appropriate supervision of all of its associated persons.

The Commission believes that several requirements specific to electronic communications will further help to ensure that firms adopt appropriate supervisory procedures. In this regard, the Commission notes that the Information Memo provides that a firm's policies and procedures must prohibit

registered representatives' and other employees' use of electronic communications to the public unless those communications are subject to supervisory and review procedures developed by the firm. The NYSE Information Memo also states that the Exchange expects members to prohibit communications with the public from employees' home computers or through third party computer systems unless the firm is capable of monitoring the communications.

The Commission believes that the provisions for review of incoming correspondence also are designed to protect investors. In this regard, the Commission notes that the NYSE amended its proposal to adopt Interpretation 342.16/04 in the NYSE *Interpretation Handbook*, which will continue to require review of all incoming non-electronic correspondence directed to registered representatives.<sup>25</sup> The Commission believes that this requirement may provide a broker-dealer with early notice of sales practice problems and help to ensure proper handling of customer funds. Incoming non-electronic correspondence directed to associated persons other than registered representatives, and all incoming communications in electronic format, will be subject to the policies and procedures the firm establishes pursuant to NYSE Rules 342.16 and 342.17.

The NYSE represents that it will review members' procedures and systems periodically to ensure that they are reasonable in view of the firm's structure, the nature and size of its business, and its customer base.<sup>26</sup> The Commission expects the NYSE to monitor closely the policies and procedures firms adopt pursuant to the proposal to ensure that they satisfy the requirements of the NYSE Rules 342.16 and 342.17. In addition, the Commission expects the NYSE to review NYSE Rule 342.16 and 342.17 as it gains experience with the rules and to consider any necessary revisions, including additional minimum requirements for broker-dealers' communications policies.

The Commission believes that the NYSE's proposed amendments to NYSE Rule 472 are reasonable and consistent with the Act. Specifically, the Commission believes that it is reasonable for the NYSE to amend NYSE Rule 472(a) to require prior approval of each advertisement, market

<sup>23</sup> With regard to recommendations, the Commission notes that NYSE Rule 472.40, "Specific Standards for Communications," requires, among other things, that a recommendation have a basis which can be substantiated as reasonable and that members make certain disclosures when making recommendations. Regardless of the supervisory procedures a broker-dealer adopts, the broker-dealer must continue to ensure compliance with NYSE Rule 472.40.

<sup>24</sup> Similarly, the Joint Sweep Report stated that "[f]irms that hire registered persons that have a history or pattern of customer complaints, disciplinary actions, or arbitrations are responsible for imposing close supervision over these persons. 'Normal' supervision is simply not enough; firms must craft special supervisory procedures tailored to the individual representatives." See Joint Sweep Report, *supra* note 21, at iv. See also NASD Notice to Members 97-19 (firm that hires a registered representative with a recent history of customer complaints, final disciplinary actions involving sales practice abuse or other customer harm, or adverse arbitration decisions should determine if it is necessary to develop and implement special supervisory procedures tailored to the individual registered representative).

<sup>25</sup> See Amendment No. 2, *supra* note 6.

<sup>26</sup> See NYSE Information Memorandum, *supra* note 7, at 5.

letter, sales literature, or other similar communication (rather than any communication) which is generally distributed or made available to customers or the public in order to make NYSE Rule 472(a) consistent with NYSE Rule 342, as amended. In addition, the Commission believes that the NYSE's proposal to amend NYSE Rule 472(b) to provide that research reports must be approved *in advance* by a supervisory analyst will clarify NYSE Rule 472(b) and ensure that broker-dealers review research reports in accordance with NYSE Rule 472(b). The Commission believes that amendment NYSE Rule 472(c) to provide that the names of persons who prepared and who reviewed and approved communications with the public must be readily ascertainable from the retained records, and that the retained records must be readily available to the NYSE, will clarify the NYSE's rule and facilitate examination of broker-dealers.

Finally, the Commission believes that it is reasonable for the NYSE to amend NYSE Rule 440 to indicate that members must preserve books and records as required under SEC Rule 17a-3 and comply with the recordkeeping format, medium and retention period specified in SEC Rule 17a-4<sup>27</sup> in order to clarify the recordkeeping requirements applicable to broker-dealers.

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 is designed to protect investors by requiring broker-dealers to continue to review all non-electronic incoming communications directed to registered representatives. Amendment No. 3 strengthens the NYSE's proposal by incorporating the Information Memo into the Exchange's proposal. As discussed more fully above, the Information Memo provides additional requirements and guidelines for broker-dealers' supervisory policies. Accordingly, the Commission believes that granting accelerated approval of Amendment Nos. 2 and 3 is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.<sup>28</sup>

#### V. 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 reason 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.

#### VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. 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. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR-NYSE-96-26 and should be submitted by January 29, 1998.

#### VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-NYSE-96-26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-422 Filed 1-7-98; 8:45 am]

BILLING CODE 8010-01-M

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

#### Trade Policy Staff Committee (TPSC); Request for Comments Concerning Compliance With Telecommunications Trade Agreements

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of Request for Public Comments.

**SUMMARY:** Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, (19 U.S.C. § 3107), the Office of the United States Trade Representative (USTR) seeks comments on the operation and effectiveness of telecommunications trade agreements with Japan, Canada, Mexico, Korea, and Taiwan and on implementation of the World Trade Organization (WTO) Basic Telecommunications Agreement (the Fourth Protocol to the WTO General Agreement on Trade in Services). Section 1377 requires USTR to conduct an annual review of telecommunications trade agreements and to determine whether any country is not in compliance with the terms of such agreements or otherwise denies "mutually advantageous market opportunities" to U.S. telecommunications products and services. The USTR will conclude the review on March 31, 1997.

**DATES:** Submissions must be received on or before February 6, 1997 with respect to telecommunications trade agreements with Japan, Canada, Mexico, Korea, and Taiwan, and on or before February 16, 1997 with respect to the WTO Basic Telecommunications Agreement.

**ADDRESSES:** Comments must be submitted to the Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

**FOR FURTHER INFORMATION CONTACT:** Jonathan McHale (202-395-5656), Office of Industry or Joanna McIntosh (202-395-7203), Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

**SUPPLEMENTARY INFORMATION:** Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, (19 U.S.C. § 3107), requires USTR to review annually the operation and effectiveness of all trade agreements regarding telecommunications products and services that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy or practice of a country that has entered into a telecommunications trade agreement is not in compliance with the terms of such agreement, or otherwise denies to U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities.

Specifically, for the current review, USTR seeks information on whether:

<sup>27</sup> See Amendment No. 1, *supra* note 3.

<sup>28</sup> 15 U.S.C. §§ 78f(b)(5) and 78s(b)(2).

<sup>29</sup> 15 U.S.C. § 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).