

assistance for market surveillance, investigative, enforcement, and other regulatory purposes.

Under the proposed rule change, the Exchange also makes explicit that persons or entities, required to furnish information or testimony pursuant to a regulatory agreement, will be afforded the same rights and procedural protections that such persons or entities would have if the Exchange had initiated the request for information or testimony.

III. 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. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,⁴ which requires 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.

This proposal, which is similar to other exchanges' proposals that were approved by the Commission,⁵ grew out of a meeting of the Intermarket Surveillance Group ("ISG") to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.⁶ The Commission believes that the proposed rule change achieves a reasonable balance between the need for regulatory cooperation and protection of the procedural rights of Exchange members and others from whom information or testimony is requested. The rule would provide the Exchange with the authority to seek cooperation by certain persons with respect to inquiries and investigations resulting from regulatory agreements between the Exchange and another SRO while explicitly providing any person or entity required to furnish information or testimony pursuant to the rule with the same procedural rights that they would have if the request was pursuant to an

Exchange-initiated inquiry or investigation.

The Commission believes that the proposed rule change will further the interest of the public and provide for the protection of investors by allowing the Exchange to assist other SROs conduct prompt inquiries into possible trading violations and other possible misconduct. As the marketplaces become more global and interlinked, the Commission believes that it is important that the SROs coordinate their investigatory activities to prevent fraudulent and manipulative acts and practices in all marketplaces.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CSE-98-03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41044; File No. SR-NYSE-99-6]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Rules Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 10, 1999, the New York Stock Exchange, Inc. (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

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

The Exchange seeks to extend the current pilot period regarding Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material" (collectively the "Rules"). The Rules establish guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The present pilot period regarding the Rules is scheduled to expire on February 12, 1999. The Exchange proposes to extend the pilot period through March 15, 1999.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The "Initial Filing"³ revised the Rules to lower certain reimbursement guidelines, create incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees. The Commission approved the Initial Filing as a one-year pilot, and designated May 13, 1998, as the date of expiration. In the "February Filing,"⁴ the Exchange extended the pilot period through July 1, 1998, and lowered the rate of reimbursement for mailing each set of initial proxies and annual reports

³ See Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Initial Filing contains a detailed description regarding the background and history of the Rules.

⁴ See Securities Exchange Act Release No. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998).

⁴ 15 U.S.C. 78f(b)(5).

⁵ See, e.g., Securities and Exchange Act Release Nos. 39557 (Jan. 16, 1998), 63 FR 3940 (Jan. 27, 1998) (notice of filing and immediate effectiveness of SR-CHX-97-33); and 35646 (April 25, 1995), 60 FR 21227 (May 1, 1995) (order approving SR-PSE-95-02).

⁶ The ISG is an organization of securities industry SROs formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. To promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions.

from \$.55 to \$.50. In the "July Filing,"⁵ the Exchange extended the pilot period through October 31, 1998, and kept intact the five cent fee reduction implemented by the February Filing. The "October Filing"⁶ likewise maintained the five cent fee reduction and extended the pilot period through February 12, 1999. This proposed rule change would extend the pilot period through March 15, 1999, and also keep intact the five cent fee reduction.

In March 1998, the Commission published for public comment an Exchange filing ("March Filing") that proposed a revision to the Rules regarding "householding" and proposed extending the pilot period through June 30, 2001.⁷ The extension of the pilot period would give the Commission additional time to consider the March Filing, without a lapse in the current rules. Thus, absent an extension of the pilot period, the fees in effect prior to the Initial Filing would return to effectiveness, creating confusion among NYSE member organizations and issuers. Furthermore, the extension will provide the Commission with additional time to review the 1998 Audit Report of the pilot fee structure prepared by the Exchange's independent auditor.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁹ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirement under Section 6(b)(5)¹⁰ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in

general, protect investors and the public interest.

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

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date (or such shorter time period as designated by the Commission); the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act¹¹ and Rule 19b-4(e)(6)¹² thereunder.

A proposed rule change filed under Rule 19b-4(e)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(e)(6)(iii)¹³ permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may take effect immediately upon its filing. The immediate effectiveness would: (i) Continue to make available the five cent fee reduction regarding the distribution of each set of initial proxies and annual reports; (ii) provide the Commission with sufficient time to complete its review of the March Filing and analyze the 1998 Audit Report concerning the pilot fee structure; and (iii) allow the current pilot fee structure to continue uninterrupted.

The Commission, consistent with the protection of investors and the public

interest, has determined to make the proposed rule change effective immediately upon filing for the following reasons. The proposed rule change would continue to make available the five cent fee reduction regarding the distribution of each set of initial proxies and annual reports. This fee reduction should continue to benefit NYSE issuers and public investors in the form of lower costs and expenses. As the Commission noted in the March Filing, the fee reduction is based upon the Exchange's experience with the reimbursement guidelines and better reflects the actual costs incurred by NYSE member organizations.

The proposed rule change also extends the expiration date of the pilot period from February 12, 1999, through March 15, 1999. The extension of the pilot period will provide the Commission with additional time to complete its review of the March Filing¹⁴ and the opportunity to further evaluate the proposal. In addition, the Exchange recently provided the Commission with the 1998 Audit Report examining the proxy distribution process with respect to securities held in street name. The extension will therefore provide the Commission with the necessary time to analyze the 1998 Audit Report in connection with its review of the pending March Filing.

The Commission notes that unless the current pilot period's expiration date is extended, the reimbursement rates for proxy materials distributed after February 12, 1999, will revert to those in effect prior to the pilot period. The Commission believes such a result could be confusing and counterproductive, especially given that the March Filing proposing to extend the pilot period through June 30, 2001, is still pending with the Commission.

For all of the reasons set forth above, the Commission believes it is reasonable that the proposed rule change become immediately effective upon the date of filing, February 10, 1999. At any time within 60 days of the filing of the 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 purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

⁵ See Securities Exchange Act Release No. 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998).

⁶ See Securities Exchange Act Release No. 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998).

⁷ See Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 1998).

⁸ As noted in the March Filing, the Exchange committed to undertake an independent audit of the pilot fee structure during the 1998 proxy season. The Exchange submitted the 1998 Audit Report to the Commission on December 24, 1998.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(e)(6).

¹³ 17 CFR 240.19b-4(e)(6)(iii).

¹⁴ The Commission received approximately 47 comment letters on the March Filing. As part of its review of the March Filing, the Commission will consider the substance of those comment letters.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 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-99-6 and should be submitted by March 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41041; File No. SR-NYSE-98-45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 80A

February 11, 1999.

I. Introduction

On December 8, 1998, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Rule 80A relating to limitations on program trading.

The proposed rule change was published for comment in the **Federal**

Register on December 23, 1998.³ Three comment letters were received on the proposal.⁴ This order approves the NYSE proposal.

II. Description of the Proposal

The NYSE proposes to eliminate the "sidcar" provisions contained in Rule 80A. As discussed below, current Rule 80A(a) provides that, under the sidcar, program trading orders in stocks in the Standard & Poor's ("S&P") 500 Stock Price Index are temporarily diverted into separate electronic files for a five-minute period if the primary S&P 500 futures contract declines by 12 points from its previous close. If the sidcar is triggered, current Rule 80A(b) also imposes limitations on the entry of certain types of stop orders or stop limit orders. Both of these provisions would be eliminated under the Exchange's proposal.

The NYSE also proposes to revise the trigger levels for the "collar" provisions of Rule 80A. Currently, NYSE Rule 80A(c) provides for limitations on index arbitrage trading in any component of the S&P 500 Stock Price Index whenever the Dow Jones Industrial Average⁵ ("DJIA") moves up or down 50 points from its previous close. If the market advances by 50 points or more, all index arbitrage orders to buy must be stabilizing (buy minus); similarly, if the market declines, all index arbitrage orders to sell must be stabilizing (sell plus). The stabilizing requirements are removed if the DJIA moves back to or within 25 points of the previous day's close. The NYSE proposes to replace the current 50-point and 25-point triggers with thresholds set at a "two-percent value" and a "one-percent value" of the DJIA. These percent values would be translated into specific point levels at the beginning of each calendar quarter based on an average for the DJIA over the preceding month.

The NYSE is also proposing to delete the provisions, contained in current

Rule 80A(d), relating to purchases and sales of a "basket" (as that term is defined in Rule 800(b)(iii)), because the basket product is no longer traded on the Exchange.

Finally, the Exchange is proposing to clarify its definition of index arbitrage in Supplementary Material .40 to Rule 80A to include some forms of "basis trading."⁶

III. Summary of Comments

As previously stated, the Commission received three comment letters on the Exchange's proposal. Two of the commenters, the CME and the Broker-Dealers, were generally supportive of the proposal, while one commenter, Neuberger, opposed parts of the proposal.

The CME "applaud[ed] the efforts of the NYSE to liberalize the provisions of Rule [80A]" because it "has long regarded Rule 80A as an artificial constraint to the interplay of U.S. equity markets."⁷ The CME cited studies that it asserted would refute the efficacy of the rule.⁸ While the CME stated that "further expansion of the trigger or the elimination of the collar altogether is a worthy objective[,] it also 'understand[s] that progress is often realized in graduated steps rather than in leaps.'⁹

The Broker-Dealers also generally supported the NYSE's proposals to eliminate the sidcar procedures and to widen the thresholds for the restrictions on index arbitrage imposed by Rule 80A's collar provisions. Nevertheless, the Broker-Dealers stated that they agree with members of The President's Working Group on Financial Markets ("Working Group"),¹⁰ that the index arbitrage collar provisions do not appear to be appropriate and may hamper legitimate intermarket trading activities and result in market inefficiencies. Like the CME, the Broker-Dealers believe that the Commission should approve the Exchange's current revisions to Rule

³ Securities Exchange Act Release No. 40797 (December 23, 1998), 63 FR 71176.

⁴ The comment letters have been placed in Public File SR-NYSE-98-45, which is available for inspection in the Commission's Public Reference Room. See Letters from T. Eric Kilcolin, President and Chief Executive Officer, Chicago Mercantile Exchange ("CME"), dated January 11, 1999 ("CME Letter"); Pikku Thakkar, Senior Counsel, Neuberger Berman, LLC ("Neuberger") dated January 15, 1999 ("Neuberger Letter"); and Paul A. Merolla, Vice President, Associate General Counsel, Goldman, Sachs & Co., Christine A. Sakach, Director and Senior Counsel, Merrill Lynch & Co., Robin Roger, Principal and Counsel, Morgan Stanley & Co. Incorporated, and Andrew Constan, Managing Director, Salomon Smith Barney Inc. (collectively, "Broker-Dealers"), dated January 20, 1999 ("Broker-Dealer Letter").

⁵ "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

⁶ A description of the types of basis trading included in Supplementary Material .40 is provided in *infra* note 24.

⁷ CME Letter at 1, *supra* note 4.

⁸ See Harris, L., Sofianos, G., and Shapiro J. 1994, "Program Trading and Intraday Volatility" *The Review of Financial Studies* Vol. 7, No. 4, Winter 1994; and Overdahl, J., and McMillan, H. 1998, "Another Day, Another Collar: An Evaluation of the Effects of NYSE Rule 80A on Trading Costs and Intermarket Arbitrage," *Journal of Business* Vol. 71, No. 1, 1998.

⁹ CME Letter at 2, *supra* note 4.

¹⁰ The Working Group consists of the Under Secretary of Finance of the Department of the Treasury and the Chairmen of the Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System. The Working Group's concerns over NYSE Rule 80A are discussed below.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.