

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

The Exchange did not solicit or receive written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Securities Exchange Act of 1934 and subparagraph (f)(1) of the Securities Exchange Act Rule 19b-4. 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.<sup>7</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and 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, NW, Washington, DC 20549-0609. 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 the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-99-50 and should be submitted by March 17, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Dated:  
Margaret H. McFarland,  
Deputy Secretary.  
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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42433; File No. SR-NYSE-00-06]

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

February 16, 2000.

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> notice is hereby given that on February 14, 2000, the New York Stock Exchange, Inc. ("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.

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

The Exchange proposes to extend the effectiveness of the pilot fees ("Pilot Fee Structure") currently set forth in Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material," (collectively the "Rules"). The Rules provide 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 Pilot Fee Structure is presently scheduled to expire on February 15, 2000. The Exchange proposes to extend the Pilot Fee Structure through September 1, 2000.

In addition, the Exchange proposes to define the term "nominee" as it relates to calculation of the nominee coordination fee. The proposed

definition would limit the universe of nominees in respect of whom the nominee coordination fee is payable.

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.

As first adopted, the Pilot Fee Structure 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.<sup>3</sup> The Pilot Fee Structure has been modified and extended several times,<sup>4</sup> most recently by Commission order dated December 30, 1999.<sup>5</sup>

The Exchange believes that an extension of the Pilot Fee Structure through September 1, 2000, will give the

<sup>3</sup> See Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

<sup>4</sup> See Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from \$.55 to \$.50); 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); 41669 (July 29, 1999), 64 FR 43007 (Aug. 6, 1999) (order extending Pilot Fee Structure through November 1, 1999); and 42086 (Nov. 1, 1999), 64 FR 60870 (Nov. 8, 1999) (order extending Pilot Fee Structure through January 3, 2000).

<sup>5</sup> See Securities Exchange Act Release No. 42304 (Dec. 30, 1999), 65 FR 1212 (Jan. 7, 2000) (order extending Pilot Fee Structure through February 15, 2000).

<sup>7</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 17 CFR 200.30-3(a)(12)

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

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

Commission additional time to consider the Pilot Fee Structure without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the Pilot Fee Structure (*i.e.* the fees in effect prior to March 14, 1997) would return to effectiveness after February 15, 2000. The Exchange believes that such a result could be counterproductive and cause confusion among NYSE member organizations and issuers.

The Exchange also proposes to limit the universe of nominees in respect of whom the nominee coordination fee set forth in the Rules is payable. The proposed limitation would specify that, to receive the nominee coordination fee in respect of a nominee, a distribution intermediary such as Automatic Data Processing ("ADP") must provide the nominee's name to the issuer and must transmit the proxy or other issuer communication material to the nominee's beneficial owners.

Although the Exchange continues to believe that the nominee coordination fee should be charged only for coordinating mailings to nominees that are known to the issuer, the Exchange seeks to include certain "secondary" nominees in the proposed definition of nominee. Under the Exchange's proposal, a distribution intermediary could collect the nominee coordination fee for any nominee that: (1) has the right to vote the shares in respect of which it acts as nominee; and (2) is a record holder,<sup>6</sup> respondent bank,<sup>7</sup> or respondent broker or dealer.<sup>8</sup>

The proposed nominee provisions recognize that, as a practical matter, distribution intermediaries in the past have coordinated mailings and assessed nominee coordination fees for secondary nominees, which fact NYSE issuers have sometimes misunderstood. To date, NYSE issuers have paid \$20 for each secondary nominee, without knowing the identity of the secondary nominee or having the ability to verify the distribution intermediary's performance of nominee coordination functions. The Exchange believes that its proposal addresses this lack-of-knowledge issue by requiring notice of the identity of secondary nominees.

The Exchange also believes that the proposed definition of nominee

establishes an equitable balance that provides motivation for distribution intermediaries to continue providing coordination services to secondary nominees, yet establishes a reasonable fee for those services. The Exchange believes the proposal serves the purposes of issuers as well as distribution intermediaries because it will make the important services that intermediaries provide to issuers more transparent and readily available.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>9</sup> 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)<sup>10</sup> 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.<sup>11</sup>

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

The Exchange believes that 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 engaged in ongoing dialogue regarding various aspects of the Pilot Fee Structure, including this proposed rule change, with representatives of the Securities Industry Association (on behalf of NYSE member firms) and the American Society of Corporate Secretaries (on behalf of NYSE issuers). The Exchange believes that these industry representatives support the proposed rule change. The Exchange has not otherwise solicited, and does not intend to solicit, comments on the proposed

rule change. Nor has the Exchange received any unsolicited comments from members or other interested parties.

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

### A. Commission Findings

Because the foregoing proposed 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; the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) 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 become operative no later than February 15, 2000. The Exchange believes that immediate effectiveness would allow the current Pilot Fee Structure to continue uninterrupted and would provide the Commission with additional time to consider the Pilot Fee Structure.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing for the following reasons. The proposed rule change extends the expiration date of the Pilot Fee Structure from February 15, 2000, to September 1, 2000. The extension of the Pilot Fee Structure will provide the Commission with additional time to review and evaluate the Pilot Fee Structure.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rates for proxy materials distributed after February 15, 2000, will revert to those in effect prior to March 14, 1997. The Commission believes that such a result could be confusing and counterproductive.

Based on these reasons, the Commission believes it is consistent

<sup>6</sup> The Exchange proposes to use the definition in Rule 14a-1(i) under the Act to define the term "record holder."

<sup>7</sup> The Exchange proposes to use the definition in Rule 14a-1(k) under the Act to define the term "respondent bank."

<sup>8</sup> The Exchange proposes to define the term "respondent broker or dealer" as "a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer."

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

with the protection of investors and the public interest that the proposed rule change become operative immediately upon the date of filing, February 14, 2000. 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 purposes of the Act.

#### *B. Commission Request for Additional Information*

As part of the extension of the Pilot Fee Structure through September 1, 2000, the Commission will continue to examine the permissible fees. To perform an effective review, and assess on an ongoing basis the reasonableness of the Pilot Fee Structure, the Commission requires current information on the costs associated with the proxy distribution process. Because ADP controls nearly 100% of the market for delivery of proxy materials to security holders whose securities are held in street name, the Commission believes that ADP is the most appropriate source of comprehensive and timely information. Therefore, as a condition to the extension of the Pilot Fee Structure through September 1, 2000, ADP shall be required to provide to the Commission, as soon as practicable, copies of ADP's audited financial statements for the fiscal years ended June 30, 1999, and June 30, 2000. The Commission notes that ADP most recently provided such information for its fiscal year ended June 30, 1998.

The Commission also seeks to clarify the scope of each fee that is permissible under the Pilot Fee Structure. For example, it appears that some uncertainty currently exists in identifying the specific coordination services that are encompassed within the nominee coordination fee. Because the Exchange administers the Pilot Fee Structure as part of its rules, the Commission requests that the Exchange provide within 45 calendar days a thorough description of each fee that is permissible under the Pilot Fee Structure. The description should clearly identify the circumstances in which a distribution intermediary may assess a particular fee. Specifically, what conditions must be satisfied and what services must be performed before a fee may be assessed? The Commission also requests that ADP provide within 45 calendar days the same type of description and analysis of each fee permissible under the Pilot Fee Structure.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and 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, NW., Washington, DC 20549-0609. Copies of the submissions, 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 persons, 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, NW., Washington, DC 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-00-06 and should be submitted by March 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-42434; File No. SR-NYSE-00-04]**

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Implementation of the Exchange's Audit Committee Rules**

February 16, 2000.

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> notice is hereby given that on February 4, 2000, 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 Exchange. 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 consists of a clarification of the transition policy for the recently approved rules governing audit committees.<sup>3</sup>

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

In its filing with the Commission, the NYSE 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 NYSE 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 purpose of the proposed rule change is to clarify that a listed company that does not have an audit committee member with "accounting or related financial management expertise" has eighteen months from December 14, 1999, the date of approval of SR-NYSE-99-39, to recruit an individual with such experience. Thus, regardless of the number of members of a company's audit committee, the company need only ensure that by June 14, 2001, the requisite individual is added to its audit committee. The Exchange intends to disseminate this clarification in a letter that will specifically state that, in pertinent part, "Companies will also have until June 14, 2001 (eighteen months from the date of Commission approval) to appoint an audit committee member who satisfies the requirement for one member with financial management expertise. [303.01(B)(2)(c)]." The foregoing clarification has no effect on the implementation of the "financial literacy" requirement set forth in Section 303.01(B)(2)(b), as described in SR-NYSE-99-39.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Rel. No. 42233 (Dec. 14, 1999), 64 FR 71529 (Dec. 21, 1999) (approving SR-NYSE-99-39).