

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

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*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**

CBOE has asserted that, because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder. 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.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day pre-operative waiting period, which will allow the Exchange to continue the pilot program without interruption. CBOE contends that, with the continuation of the pilot program, market makers will continue to have greater incentive to compete effectively for orders in the crowd, which benefits investors and promotes the public interest. In addition, CBOE argues that, given the widespread use of the 100 Spoke RAES Wheel in equity options trading stations, requiring the Exchange to discontinue use of the 100 Spoke RAES Wheel as of August 29, 2001, would cause disruption to those trading

stations and, thus, be disruptive to investors and the public interest. In light of these considerations, the Commission, consistent with the protection of investors and the public interest, has determined to designate the proposed rule change as operative immediately.<sup>14</sup>

In addition, Rule 19b-4(f)(6) requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. CBOE has requested that the Commission waive the five-day pre-filing requirement. Consistent with CBOE's request, the Commission has determined to waive the pre-filing requirement.

**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 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-CBOE-2001-47 and should be submitted by September 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-22239 Filed 9-4-01; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44750; File No. SR-NYSE-2001-22]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by 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**

August 29, 2001.

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 August 13, 2001, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 NYSE is proposing to extend the pilot fee structure ("Pilot Fee Structure") regarding Exchange Rules 451 and 465 (the "Rules").<sup>3</sup> Among other things, the Rules establish guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing of proxy materials and other issuer communications (collectively, "Material") with respect to security holders whose securities are held in street name. The current pilot period regarding the Rules is scheduled to expire on September 1, 2001.<sup>4</sup> NYSE proposes extending the pilot through April 1, 2002.

**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

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

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

<sup>3</sup> The text of NYSE Rule 451 also is included at Paragraph 402.10(A) of the Exchange's *Listed Company Manual*.

<sup>4</sup> See Securities Exchange Act Release No. 43603 (November 21, 2000), 65 FR 75751 (December 4, 2000).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> See U.S.C. 78s(b)(3)(C).

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*

**I. Purpose**

Among other things, the Pilot Fee Structure lowers certain guidelines concerning the reimbursement of fees for the distribution of Material, creates incentive fees to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees. The proposed rule change would extend the Pilot Fee Structure's termination date from September 1, 2001, to April 1, 2002.

An extension of the Pilot Fee Structure will give the Commission additional time to consider the pilot program, without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the pilot program would return to effectiveness after September 1, 2001, which could create confusion in the market.<sup>5</sup>

**2. Basis**

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) of the Act<sup>6</sup> that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In addition, the Exchange believes that the basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>7</sup> 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 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*

NYSE has engaged in an on-going dialogue regarding the Pilot Fee Structure as well as other aspects of its proxy reimbursement guidelines with Commission staff as well as with the Proxy Voting Review Committee, which is a private initiative designed to review the proxy process that includes representatives of the securities industry, corporate issuers, institutional investors, NYSE and the largest provider of proxy intermediary services. The only written comment received by NYSE is a copy of a letter sent to the Commission from the Proxy Voting Review Committee, which unanimously supports NYSE's request for the extension.<sup>8</sup> NYSE has not otherwise solicited, and does not intend to solicit, comments on this proposed rule change. NYSE has not otherwise 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 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) does not become operative for 30 days after the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to 30 days after the date

of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. NYSE seeks to have the proposed rule change become operative on or before September 1, 2001, in order to allow the Pilot Fee Structure to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change to extend the Pilot Fee Structure until April 1, 2002 operative immediately. The extension of the Pilot Fee Structure will provide the Commission with additional time to review and evaluate the pilot fees. Further, the Commission notes that it received a letter from the Proxy Review Committee, which supports the NYSE's extension request.<sup>12</sup>

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rates for Material distributed after September 1, 2001, 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 that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately through April 1, 2002. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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, 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

<sup>5</sup> The Commission notes that a Proxy Voting review Committee was established as a private initiative to review the proxy voting process, which includes fees. The Committee has been meeting and plans to ultimately submit a report to the Commission, self-regulatory organizations, and the public. Accordingly, the extension will provide additional time to consider the committee's comments on this issue. See also Item II.C. *infra*.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See letter from Stephen P. Norman, Chairman, Proxy Review Committee, to Kelly Riley, Division of Market Regulation, SEC, dated August 10, 2001.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change.

<sup>12</sup> See note 8 *supra*.

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 NYSE. All submissions should refer to File No. SR-NYSE-2001-22 and should be submitted by September 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-22240 Filed 9-4-01; 8:45 am]

**BILLING CODE 8010-01-M**

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed amendments to the Sentencing Commission's Rules of Practice and Procedure. Request for public comment.

**SUMMARY:** This notice sets forth proposed amendments to the Commission's Rules of Practice and Procedure. The Commission invites public comment on these proposed amendments.

**DATE:** Public comment should be received not later than October 5, 2001.

**ADDRESSES:** Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2-500, South Lobby, Washington, DC 20002-8002, Attention: Public Affairs-Amendment of Rules Comment.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** Section 995(a)(1) of title 28, United States Code, authorizes the Commission to establish general policies and promulgate rules and regulations as necessary for the Commission to carry out the purposes of the Sentencing Reform Act of 1984. The Commission originally adopted the Rules of Practice and Procedure in July 1997 and now proposes to make amendments to these rules. Specifically, the proposed amendments clarify various rules pertaining to public access and generally provide updated information regarding how the public can contact the Commission. In accordance with Rule 1.2 of its Rules of

Practice and Procedure, the Commission hereby invites the public to provide comment on the proposed amendments.

**Authority:** 28 U.S.C. 995(a)(1); USSC Rules of Practice and Procedure 1.2.

**Diana E. Murphy,**

*Chair.*

**Proposed Amendments:** Part I of the Rules of Practice and Procedure is amended by striking the introduction in its entirety.

Part I of the Rules of Practice and Procedure is amended in Rule 1.1 by striking the last sentence and inserting the following:

"These rules are not intended to create or enlarge legal rights for any person."

Part II of the Rules of Practice and Procedure is amended in Rule 2.2 in the first paragraph by striking "public" following "and vote in"; and in the fourth paragraph by striking the last sentence and inserting the following:

"Such matters include the approval of budget requests, legal briefs, staff reports, analyses of legislation, administrative and personnel issues, notices regarding Commission amendment priorities, technical and clerical amendments to these rules, and decisions to hold a nonpublic meeting."

Part III of the Rules of Practice and Procedure is amended in Rule 3.1 by adding at the end the following paragraph:

"Members may participate in meetings from remote locations by electronic means, including telephone, satellite, and video conference devices."

Part III of the Rules of Practice and Procedure is amended in Rule 3.2 by adding at the end of the first paragraph the following:

"Except as provided in Rule 3.3, meetings of the Commission with outside parties shall be conducted in public."

Rule 3.3 is amended to read as follows:

"Rule 3.3—Nonpublic Meetings  
The Commission may hold nonpublic meetings (*i.e.*, meetings closed to the public) for purposes of the following: (1) To transact business of the Commission that is not appropriate for a public meeting (*e.g.*, discussion and resolution of personnel and budget issues); (2) to receive information from, and participate in discussions with, Commission staff and any person designated by an ex-officio commissioner as support staff for that commissioner; and (3) upon a decision by a majority of the members then serving, to receive or share information,

from or with any other person, that is inappropriate for public disclosure (one example of which would be information from a law enforcement agency, the public disclosure of which would reveal confidential investigatory techniques or jeopardize an ongoing investigation)."

Part III of the Rules of Practice and Procedure is amended by striking Rule 3.4 in its entirety; and by redesignating Rules 3.5 and 3.6 as Rules 3.4 and 3.5, respectively.

Part V of the Rules of Practice and Procedure is amended in Rule 5.1 by striking "Office of Legislative and Public Affairs" and inserting "Office of Publishing and Public Affairs"; and by striking the second paragraph in its entirety and inserting the following:

"'Public comment' means (1) any written comment submitted by an outside party, including an agency represented by an ex-officio commissioner, pursuant to a solicitation by the Commission; and (2) any other written submission, from an outside party, that the Chair or a majority of the members then serving has not precluded from being made available to the public. 'Public comment' does not include any internal communication between and among commissioners, Commission staff, and any person designated by an ex-officio commissioner as support staff for that commissioner."

Part V of the Rules of Practice and Procedure is amended in Rule 5.2 by adding at the end the following paragraph:

"Subsequent to the deadline for comment on the tentative priorities, the Commission shall publish in the **Federal Register**, and make available to the public for inspection, a notice of priorities for Commission inquiry and possible action."

Part V of the Rules of Practice and Procedure is amended in Rule 5.3 by striking "Data and Reports" in the title and inserting "Information"; by striking "relevant data and reports for consideration" and inserting "relevant data, reports, and other information for consideration"; and by striking the last sentence and inserting the following:

"Upon authorization by the Staff Director, the Office of Publishing and Public Affairs shall make the data, reports, and other information available to the public as soon as practicable."

Part VI of the Rules of Practice and Procedure is amended in Rule 6.1 by striking "(202) 273-4500" and inserting "(202) 502-4500"; by striking "(202) 273-4529" and inserting "(202) 502-4699"; and by adding at the end "The e-mail address is [pubaffairs@ussc.gov](mailto:pubaffairs@ussc.gov)."

Rule 6.2 is amended to read as follows:

<sup>13</sup> 17 CFR 200.30-3(a)(12).