whether the modification to the decrementation process, wherein SuperMontage can decrement only the single ECN Quote/Order that declines to trade with an order sent to it by the system, is consistent with the Act.[18] The Commission finds that it is.

The Commission notes that the amendment is essentially identical to the process as originally approved,[19] except that an ECN's Quotes/Orders would be removed from the system on an individual basis. Bloomberg stated that the proposal would not have any practical effect because it is the practice of ECNs to aggregate orders within the quote sent to SuperMontage. The Commission believes that Nasdaq has adequately responded to Bloomberg's comments. Nasdaq has correctly represented that the proposed rule change provides a new option for Order Delivery ECNs. The Commission recognizes that many proposed rule changes relating to a self-regulatory organization's trading system will require the affected market participants to either reprogram their internal trading systems or alter their business practices to ensure system compatibility and compliance. In that regard, this proposed rule change is not unique. The proposed rule change may allow ECNs that opt to change their method of quote management and submit individual orders to SuperMontage to mitigate the impact of access fee disputes on their ability to trade with participants with which no dispute exists. However, ECNs may also choose to continue aggregating multiple orders for representation, and decrementation, as a single Quote/Order in SuperMontage. Thus, while ECNs that do not reconfigure their trading systems or revise their quote management practices would not benefit from this proposed rule change, ECNs that choose to make the necessary operational and technological adjustments may benefit.

The Commission believes that Nasdaq's approach reasonably balances the interests of accommodating Order Delivery ECNs and providing an efficient trading system. Nasdaq represents that SuperMontage decrementation has eliminated the ECN access fee-related locked or crossed markets which caused the shutdown of Nasdaq's automatic execution functionality, and many internal order-execution systems, until the lock or cross was resolved. The Commission continues to believe that the SuperMontage decrementation process should help to reduce instances of locked and crossed markets and the problems associated with locked and crossed markets, while accommodating ECNs with an alternative to automatic execution.[20] The Commission also continues to believe that the reduction of locked and crossed markets in the Nasdaq market should improve market quality and enhance the production of fair and orderly quotations.[21] In the Commission's view, the NASD's proposal is reasonably designed to maintain the integrity of Nasdaq quotes by reducing the incidence of locking and crossing quotations displayed in Nasdaq. The proposal will continue to reduce locked and crossed markets because a declined order, if necessary, would decrement each ECN's individual Quote/Order. The Commission believes that the proposal, by retaining ECNs' trading interest that is not decremented by the incoming order in the system, could enhance SuperMontage liquidity and transparency, and provide ECN customers with an increased opportunity to have their orders executed by market participants that are willing to pay the ECN access fee.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–2003–81), as amended, is approved.[23]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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decisionmaking process concerning the system rules, including decrementation, and the rules finally determined the rights and obligations of the market and of each market participant who traded on the system.

[18] While the Commission acknowledges that ECN access fees maintain a significant tangential relationship to the SuperMontage decrementation process, the abolition of ECN fees is not at issue in this proposed rule change. Nasdaq recently submitted File No. NASD–2003–128 relating to ECN fees.

[19] *See* Original SuperMontage Approval Order, *supra* note 15.

[20] The Commission has concluded previously that continued locking and crossing of markets can negatively impact market quality. *Id. See also* Division of Market Regulation, The October 1987 Market Break 9–6 (February 1988) (Stating that the continued existence of locked and crossed markets indicates that the quotations for a security are suspect and may not provide an accurate reflection of the market for a security).

[21] *Id.*

[22] 15 U.S.C. 78s(b)(2).

[23] The proposed rule change will become effective within 60 days of the date of this Order. Telephone conversation between Thomas P. Moran, Associate General Counsel, Office of the General Counsel, to Marc McKayle, Special Counsel, Division, Commission on September 3, 2003.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48429; File No. SR–NYSE–2003–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Fees for ''Repackaged'' Securities

September 3, 2003.

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 August 28, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 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 NYSE proposes to amend section 902.02 of the Listed Company Manual (the ''Manual'') to implement certain changes to the continuing fees payable in connection with certain structured products known as ''repackaged'' securities and to reinstate the Exchange's ''15-year'' policy with respect to previously listed ''repackaged'' securities, as more fully described below.

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in brackets.

* * * * *

Listed Company Manual

902.00 Listing Fees

* * * * *

902.02 Schedule of Current Listing Fees

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

C. Continuing Annual Fee

* * * * *

Per Share Calculation—All issued shares including treasury shares are included in the calculation.

Continuing Annual Fees

(Effective January 1, 2003)

Per Share Rate—$930 per million

Minimum Fee—$35,000

* * * * *

Computation of Fee—Other Equity Issues—

The fee is the greater of the minimum of $5,000 per issue or the fee calculated on a per share basis. All issued shares are included in the calculation.

Special Rule for Repackaged Securities

Any issue of Repackaged Securities (as defined below), will be subject to the continuing annual fee schedule in effect at the time of listing of such issue, regardless of any changes to the fee schedule made thereafter.

For the purpose of this Para. 902.02.C., Repackaged Securities are securities listed under Para. 703.19 of this Manual, issued by a trust with a term of years, where the assets of the trust consist primarily of underlying fixed-income securities, and where the trust is funded (or a reserve is created) at issuance to cover the trust's principal obligations and associated expenses during the life of the Repackaged Securities.

Overall Fee Cap

In calculating the continuing listing fee for a listed company, the fees for all classes (or series) of listed securities of the company, excluding derivative products, fixed income products, and closed-end funds, are aggregated and the total continuing listing fee is capped at $500,000.

* * * * *

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 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

On January 1, 2003, the Exchange instituted certain changes to the Schedule of Current Listing Fees for NYSE listed securities, including an increase of continuing annual fees for NYSE listed securities and discontinuance of the ''15-year'' policy, which previously removed from the calculation of continuing annual fees any shares that have been listed on the NYSE for 15 years or more.[3] Following the implementation of these fee changes, certain of the Exchange's member firms brought to the attention of the Exchange that the increase in continuing annual fees and elimination of the Exchange's ''15-year'' policy had a significant negative impact on the economics of ''repackaged'' securities.

For purposes of this filing, a ''repackaged'' security is a security (such security referred to as a ''Repack'') issued by a trust the assets of which are primarily fixed-income securities.[4] The Repacks issued by the trust have set maturity dates which correspond to the maturity of the underlying securities and typically range from 25 to 50 years, but can be called prior to maturity, typically at par or face value. A typical Repack also offers a call protection period, generally five to seven years from issuance, and is subject also to a call of the underlying securities. The trusts themselves are structured to be relatively maintenance free and self-funded. Funds required for the maintenance of the trust, including any listing fees, are calculated based on the expected life of the Repacks and paid (or reserved for) on a present value basis at the time of initial issuance. As of January 1, 2003, there were approximately 150 Repacks listed on the Exchange.

Because of the Repack trusts' financial structure, any increase to applicable listing fees during the life of the Repack has significant economic and administrative implications for the trust and its depositor (also sometimes referred to as a trustor). The Exchange represents that when the Exchange increased its continuing annual fees for listed companies and discontinued its ''15-year'' policy,[5] the Repack trusts did not have sufficient funding to pay listing fees, and the trust depositor became responsible for providing significant additional—and unexpected—funding to the Repack trusts.

With respect to Repacks listed prior to January 1, 2003, the Exchange is proposing to (a) roll back the continuing annual fee increase that became effective on January 1, 2003, and (b) reinstate the ''15-year'' policy thereby removing from the calculation of continuing annual fees any underlying shares of Repacks listed on the NYSE for 15 years or more.[6]

In respect of Repacks listed after January 1, 2003, the Exchange proposes to provide that the continuing annual fee applicable to Repacks at the time of listing will remain in effect for the life of the security. The ''15-year'' policy will not be applicable to Repacks listed after January 1, 2003.

The Exchange believes that these fee changes will provide fee certainty for present and future Repacks by allowing trust depositors to reserve appropriately for continuing annual fees at the time of listing at the then effective fee schedule.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with the requirement of section 6(b)(4) of the Act,[7] which provides that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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 the 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 neither solicited nor received written comments on the proposed rule change.

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[3] Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (File No. SR–NYSE–2002–62).

[4] Fixed-income securities include debt and trust preferred securities. Among the Repacks listed on the Exchange are: COBALTS℠, TRUCS℠, CorTS℠, PCARS℠, CBTC℠, PPLUS℠, SATURNS℠ and CABCO℠.

[5] *See supra* note 3.

[6] Note that to the extent that Repacks are typically called prior to 15 years, the Exchange's ''15-year'' policy would not ordinarily come into play. However, for Repacks listed prior to January 1, 2003, the effect of the ''15-year'' policy was included in the calculation of the funding needed for Repacks listed, so its removal going forward adversely affected the funding calculation for those Repacks.

[7] 15 U.S.C. 78f(b)(4).

III. 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 reasons for so finding or (ii) as to which the Exchange 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.

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 NYSE. All submissions should refer to File No. SR–NYSE–2003–25 and should be submitted by October 1, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48435; File No. SR–NYSE–2003–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Repealing Exchange Rule 500 and Amending Section 806 of the Listed Company Manual

September 3, 2003.

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 August 20, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 proposes to delete Exchange Rule 500 in its entirety and amend Section 806 of the Exchange's Listed Company Manual regarding the application by an issuer to delist its securities from the Exchange. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

Rules of Board of Directors

General Rules

* * * * *

[Removal from the List Upon Request of the Issuer

Rule 500. An issuer may apply to delist a security after complying with the following procedures:

(a) Stock of a domestic issuer:

(1) The issuer's audit committee and board of directors must approve the application;

(2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 record shareholders with the largest positions in the security written notice alerting them to the proposed delisting; such notice must specify the earliest possible date of such delisting (which date shall be not less than 20 business days nor more than 60 business days (or, subject to Exchange approval, such longer period as the issuer may request) after the later of the date the notice is sent or the press release is issued) and must include a statement that the issuer complied with paragraphs (a)(1) and (a)(2) above. The issuer must contemporaneously send to the Exchange a copy of such notice.

(b) Stock of non-U.S. issuer:

(1) The issuer's board of directors must approve the application;

(2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 U.S. record shareholders with the largest positions in the security written notice alerting them to the proposed delisting. The issuer must contemporaneously send to the Exchange a copy of such notice.

(c) All listed bonds: The issuer's board of directors must approve the application.

* * * Supplementary Material:

.10 Definition of ''stock'' and ''bond.''—Exchange Rule 4 defines the term ''stock,'' and Exchange Rule 5 defines the term ''bond.''

.20 Requirement to issue a press release.—Pursuant to paragraphs (a)(2) and (b)(2) of this Rule, the issuer must publish the press release in compliance with the Procedures of Public Release of Information in Para.202.06 of the Exchange's Listed Company Manual.

.30 Application to the Securities and Exchange Commission to withdraw a security from listing.—After an issuer complies with the procedures of this Rule, the issuer may file an application with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. With respect to an issuer required to provide security holders with notice of the proposed delisting pursuant to paragraph (a) (3) of this Rule, the proposed date for such withdrawal from listing and registration must be the same date specified in its notice to security holders. The issuer must contemporaneously send to the Exchange a copy of the application.

.40 Delisting of multiple classes of securities.—If an issuer delists a class of stock from the Exchange pursuant to this Rule, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.]

* * * * *

Listed Company Manual

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806.00 Rule of the Exchange in respect of Removal From List upon Request of Company.

[Rule 500 in effect as of July 21, 1999 is as follows:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.