

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. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASDA Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In general, the Commission believes that the proposed rule change, eliminating position and exercise limits for FLEX Equity Options for members of the NASD who are not also a member of an Options Exchange, is appropriate given that the Commission recently approved similar proposed rule changes for the Options Exchanges.¹¹ In the approval order for the Options Exchanges, the Commission cited several reasons for approving the elimination of position and exercise limits for FLEX Equity Options on a pilot basis. Those reasons apply here as well. First, the FLEX Equity Options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts to open a transaction in a new series, FLEX Equity Options are designed to appeal to institutional investors, and it is unlikely that retail investors would be able to engage in options transactions at that size. Second, all of the Options Exchanges' other current rules and provisions governing FLEX Equity Options remain

applicable. Third, the Options Clearing Corporation will serve as the counterparty guarantor in every exchange-traded transaction. Fourth, the elimination of position and exercise limits for FLEX Equity Options potentially could expand the depth and liquidity of the FLEX Equity Option market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Finally, the Exchanges' surveillance programs and enhanced monitoring procedures will be applicable to the trading of FLEX Equity Options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the current rules have the effect of placing certain NASD member firms and their customers at a competitive disadvantage to Options Exchange member firms with respect to FLEX Equity Options position and exercise limits because the latter are not subject to the NASD's position and exercise limits. The Commission believes that accelerated approval of the proposed rule change will conform the NASD rules concerning position and exercise limits for FLEX Equity Options with those of the Options Exchanges, thereby resulting in consistent application of the position and exercise limits for FLEX Equity Options. Accordingly, the Commission believes that it is consistent with Section 15A of the Act to approve the proposed rule change on an accelerated basis.

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, 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 Exchange. All submissions should refer to File No. SR-NASD-98-15 and should be submitted by April 16, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-98-15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39774; File No. SR-NYSE-98-05]

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

March 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 6, 1998, 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 seeks to extend the pilot period during which recent changes to Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material" (collectively the "Rules"), became operative. The Rules establish guidelines for the reimbursement of expenses by issuers to NYSE member

¹¹ See Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

¹² 15 U.S.C. § 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

organizations for the processing of proxy materials and other issuer communications ("Materials") with respect to security holders whose securities are held in street name. The Rules also allow NYSE member organizations to employ the practice of "householding" to eliminate multiple mailings of Materials to beneficial security holders at the same address.

On March 14, 1997, the Commission approved a NYSE proposal that significantly amended the Rules and the reimbursement guidelines set forth therein (the "Previous Filing").² In a separate filing related to this proposed rule change (the "Companion Filing"), the Commission approved the Exchange's proposal to reduce the rate of reimbursement for mailing each set of Materials from \$.55 to \$.50, and to extend the current pilot period through July 31, 1998.³ This filing proposes one change to the Rules, regarding the use of householding through implied consent, and also proposes to extend the effectiveness of the Rules, as amended by this filing, the Previous Filing and the Companion Filing, through June 30, 2001.

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

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 Previous Filing and the Companion Filing lowered certain reimbursement guidelines, created incentive fees to eliminate duplicative mailings, established a supplemental fee

for intermediaries that coordinate multiple nominees, and established rules allowing householding.

The Commission approved the Previous Filing on a pilot basis and established an initial expiration date of May 13, 1998. The Companion Filing extended the expiration date through July 31, 1998.⁴ In the Previous Filing, the Exchange committed to undertake an independent audit that would analyze the application of the modified Rules during the 1997 proxy season (the "Audit"). The Exchange stated that it would submit the Audit to the Commission by October 31, 1997. Due to delays in the audit procedure, the Exchange did not deliver the Audit to the Commission until January, 1998.⁵

In addition to its proposal to extend the pilot period through June 30, 2001, the Exchange seeks to amend the Rules regarding householding to provide for the use of "implied consent." This amendment would allow a member organization to send only one set of Materials to a household encompassing multiple beneficial holders if the member organization provided at least 60 days' notice of the proposed householding and the beneficial holders did not object to such practice.⁶

As to the extension of the pilot period through June 30, 2001,⁷ the Exchange believes that the Audit indicates the

reimbursement fees implemented during the pilot period are reasonable. However, the Exchange believes that additional experience with the pilot period fee structure would be useful before determining whether to seek permanent approval of such fee structure or to propose additional amendments. The Exchange contends that a three-year extension would provide that experience, while also providing the market with sufficient certainty that the current rules will be available for a reasonable period of time. The Exchange believes such certainty is necessary to allow market participants to invest in the infrastructure necessary to support the proxy communication process.

In its order approving the Previous Filing, the Commission stated that it was then appropriate for the Exchange to propose specific rates of reimbursement. However, the Commission went on to recommend that the Exchange, issuers, and broker-dealers develop and approach that would foster competition in this area. The Commission also suggested that the Exchange and other self-regulatory organizations ("SOR's") "explore whether reimbursement can be set by market forces, and whether this would provide a more efficient, competitive, and fair process than SRO standards."

The Exchange appreciates the Commission's concerns. However, the Exchange believes it is unlikely that competition will develop to the extent necessary to relieve the Exchange of its role in establishing reimbursement guidelines, for example, within the last year, three large NYSE member organizations contracted with the industry leader, ADP Financial Information Services, Inc. ("ADP"), to handle the mailing of Materials, rather than continuing to process such mailings through in-house operations.⁸ While the Exchange certainly would encourage competition in this industry, the Exchange believes that experience indicates that the proxy communication process benefits from the economies of scales and uniform procedures that arise when most mailings are coordinated through a single entity.

⁸The NYSE member organizations are: Merrill Lynch, Pierce, Fenner & Smith, Inc.; Paine Webber Incorporated; and Prudential Securities Incorporated. The Audit states that of the sixty-nine NYSE member organizations that responded to the Audit-Related survey, ninety-three percent indicated they subcontract their proxy distribution responsibilities to ADP. It should be noted that this rate of subcontracting does not include the three NYSE member organizations named above.

² Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Previous Filing contains a detailed description regarding the background and history of the Rules.

³ See Securities Exchange Act Release No. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998).

⁴ In the Companion Filing, the Commission noted that the May 13, 1998, expiration date intersected the time period when proxy materials traditionally are distributed to shareholders. As a result, NYSE member organizations potentially would have been reimbursed at two different rates—the rates established by the Previous Filing, and the rates in effect prior to the implementation of the Previous Filing (the default rates)—if the expiration date were not extended.

⁵ A copy of the Audit is publicly available for review in File No. SR-NYSE-98-05 at the Commission's Public Reference Section located at the address specified in Item IV.

⁶ The Exchange represents that its proposal is substantively identical to the implied consent provision set forth in the Commission's recent proposed rulemaking release concerning householding. See Securities Act Release No. 7475; Securities Exchange Act Release No. 39321; and Investment Company Act Release No. 22884 (Nov. 13, 1997), 62 FR 61933 (Nov. 20, 1997). The rules currently permit NYSE members to household annual reports, interim reports, proxy statements, and other materials where the beneficial holders have provided actual consent. However, it should be noted that the Commission's proposed rule only would allow the householding of prospectuses, annual reports, and semiannual reports if the consent (actual or implied) of beneficial holders was obtained.

⁷ In connection with the Exchange's request for a thirty-five month extension of the pilot reimbursement guidelines, the Commission notes that the Exchange has committed to undertake an independent audit of the revised fee structure during the 1998 proxy season. Conversation between James E. Buck, Senior Vice President and Secretary, Exchange, and Sharon M. Lawson, Senior Special Counsel, Division of Market Regulation, Commission, March 18, 1998.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act⁹ that an exchange maintain 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. Nor has the Exchange 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

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 approved the 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. The Commission generally solicits comment on the questions set forth below to facilitate its independent determination as to whether the new fee structure: (1) provides for the equitable allocation of

reasonable fees among NYSE-listed companies and NYSE member firms, consistent with Section 6(b)(4) of the Act; (2) conforms with Sections 6(b)(5) and 6(b)(8) of the Act by not unfairly discriminating among issuers and imposing a burden on competition that is not necessary under the Act; and (3) imposes fees that are "reasonable" within the meaning of Rules 14a-13, 14b-1, and 14b-2 under Sections 14(a) and 14(b) of the Act. The Commission notes that Rules 14a-13, 14b-1, and 14b-2 require registered broker-dealers, banks and other covered nominees to deliver proxy materials, annual reports and other corporate communications to street-name security holders. These rules are meant to ensure, among other things, that public companies reimburse these nominees, upon request, for "reasonable expenses" incurred in delivering such communications.

At stated in the Previous Filing, the Commission has reached no final resolution of the issues noted by commenters. The Commission will continue to closely examine the impact of the revised proxy fee reimbursement guidelines on NYSE-listed companies and NYSE member firms. Because the Audit did not analyze recent developments such as the shifting of proxy distribution activities to ADP from three of four self-distributing broker-dealers, and ADP's Internet proxy delivery and voting mechanism, the Commission solicits specific comment on the following questions: (1) ADP introduced its Internet delivery and voting services after the fee structure was approved on a pilot basis on March 14, 1997. Accordingly, the Commission solicits comment regarding the itemized fees that ADP charges issuers for Internet proxy delivery and voting services. In addition, should the processing fee that relates to the mailing of materials in paper format (which the Exchange recently reduced from \$0.55 to \$0.50 per basic proxy package) be modified to reflect the actual costs of electronic delivery? (2) Is the incentive fee (\$0.50 per mailing eliminated) necessary or appropriate, in whole or part, now that ADP is offering the Internet as a vehicle for delivery of proxy materials and other corporate communications to street-name holders? (3) Is the proposed thirty-five month extension of the pilot more appropriate than a longer or shorter period? (4) Are issuers with small but diffuse shareholder bases realizing the same benefits from ADP's nominee coordination activities as larger issuers whose securities are widely owned but more concentrated in the accounts of

nominees? (5) Does the \$20 nominee coordination fee have a disproportionate impact on smaller issuers?

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 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, 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-98-05 and should be submitted by April 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39770; File No. SR-NYSE-97-36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to Exchange Policy for Entry of MOC/LOC Orders and Publication of Imbalances

March 18, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 29, 1997, 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.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1)

⁹ 15 U.S.C. 78f(b)(5).