

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40289; File No. SR-NYSE-98-23]

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

July 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 29, 1998, 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.

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 July 31, 1998. The Exchange proposes to extend the pilot period through October 31, 1998.

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 Filings"² 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,"³ the Exchange extended the pilot period through July 31, 1998, and lowered one rate of reimbursement.⁴ This proposed rule change would extend the pilot period through the end of the current proxy season, October 31, 1998.

The extension of the pilot period would give the Commission additional time to consider the "March Filing,"⁵ without a lapse in the current rules. In the March Filing, the Exchange proposed a change to the Rules regarding "householding" and proposed extending the pilot period through June 30, 2001. Thus, absent an extension of the pilot period, the fees in effect prior to the February Filing would return to effectiveness, creating confusion among NYSE member organizations and issuers. Furthermore, the extension will provide the Exchange's independent auditor with additional time to finish its review of the impact of the pilot fee structure and will provide the Commission with an opportunity to review that Audit Report.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁷ 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)⁸ 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; the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act⁹ and Rule 19b-4(e)(6)¹⁰ 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)¹¹ 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

² 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.

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

⁴ The February Filing lowered the rate of reimbursement for mailing each set of initial proxies and annual reports from \$.55 to \$.50.

⁵ See Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 1998).

⁶ As noted in the March Filing, the Exchange committed to undertake an independent audit of the pilot fee structure during the 1998 proxy season.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(e)(6).

¹¹ 17 CFR 240.19b-4(e)(6)(iii).

¹ 15 U.S.C. 78s(b)(1).

period so that the proposed rule change may take effect immediately upon its filing. The immediate effectiveness would: (i) make the fee reduction regarding the distribution of each set of initial proxies and annual reports available for the remainder of the 1998 proxy season; (ii) provide the Commission with sufficient time to complete its review of the March Filing, and analyze the Audit Report concerning the pilot fee structure that will be prepared by the Exchange's independent auditor; 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 make the fee reduction regarding the distribution of each set of initial proxies and annual reports available for the remainder of the 1998 proxy season. 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 July 31, 1998, through October 31, 1998. The extension of the pilot will provide the Commission with additional time to complete its review of the March Filing¹² and the opportunity to further evaluate the proposal. Furthermore, the current pilot period is due to expire before the estimated date on which the Exchange hopes to deliver to the Commission the Audit Report examining the proxy distribution process with respect to securities held in street name.

The Commission also notes that the current pilot period's expiration date falls within the time period when proxy materials traditionally are distributed to shareholders. As a result, NYSE member organizations would potentially be reimbursed at two different rates—the rates established by the Initial Filing, and the rates in effect prior to the implementation of the Initial Filing (the default rates)—if the expiration date were not extended. The Commission

believes it is reasonable that the proposed rule change become immediately effective upon the date of filing, July 29, 1998.

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.

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 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-98-23 and should be submitted by August 31, 1998.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40295; File No. SR-OCC-98-05]

Self-Regulatory Organizations; The Options Clearing Corporations; Notice of Filing of a Proposed Rule Change Authorizing the Designation of Sunday as a Business Day and Clarifying the Rules for Margining Exercised and Assigned Positions in Currency Options

July 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 5, 1998. The Options Clearing Corporation ("OCC") 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 primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The proposed rule change (1) will provide OCC with the flexibility to designate Sunday as a business day for the purposes of calculating the exercise settlement date for foreign currency options and for cross-rate foreign currency options (collectively "currency options") and (2) will clarify the rules governing the calculation of margin of exercised and assigned currency options.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comment it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

¹² The Commission received approximately 42 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.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by OCC.