

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40621; File No. SR-NYSE-98-38]

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

October 30, 1998.

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 October 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 October 31, 1998. The Exchange proposes to extend the pilot period through February 12, 1999.

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 Filing"³ 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,"⁴ the Exchange extended the pilot period through July 31, 1998, and lowered the rate of reimbursement for mailing each set of initial proxies and annual reports from \$.55 to \$.50. In the "July Filing,"⁵ the Exchange extended the pilot period through October 31, 1998, and kept intact the five cent fee reduction implemented by the February Filing. This proposed rule change would extend the pilot through February 12, 1999, and likewise keep intact the five cent fee reduction.

The extension of the pilot period would give the Commission additional time to consider the "March Filing,"⁶ 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 Initial Filing⁷ 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 the auditor's Audit Report.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁹ 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)¹⁰ 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

³ 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.

⁴ See Securities Exchange Act Release No. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998).

⁵ See Securities Exchange Act Release No. 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998).

⁶ See Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 1998).

⁷ The Exchange's filing mistakenly references the February Filing rather than the Initial Filing. The Exchange confirmed that its reference to the February Filing was an oversight and that it intended to refer to the Initial Filing. Telephone conversation between Michael J. Simon, Attorney, Milbank Tweed Hadley & McCloy, and Michael Loftus, Attorney, Division of Market Regulation, Commission (October 29, 1998).

⁸ As noted in the March Filing, the Exchange committed to undertake an independent audit of the pilot fee structure during the 1998 proxy season.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

19(b)(3)(A) of the Exchange Act ¹¹ and Rule 19b-4(e)(6) ¹² 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) ¹³ 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 take effect immediately upon its filing. The immediate effectiveness would: (i) continue to make available the five cent fee reduction regarding the distribution of each set of initial proxies and annual reports; (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 continue to make available the five cent fee reduction regarding the distribution of each set of initial proxies and annual reports. 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 October 31, 1998, through February 12, 1999. The extension of the pilot period will provide the Commission with additional time to complete its review of the March Filing ¹⁴ and the opportunity to further evaluate the proposal. Furthermore, the current pilot period is due to expire about the same time as 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 extension will

therefore provide the Commission with the necessary time to review the Audit Report in connection with its review of the pending March Filing.

The Commission notes that unless the current pilot period's expiration date is extended, the reimbursement rates for proxy materials distributed after October 31, 1998, will revert to those in effect prior to the pilot period. The Commission believes such a result would be confusing and counterproductive, especially given that the March Filing proposing to extend the pilot period through June 30, 2001, is still pending with the Commission.

For all of the reasons set forth above, the Commission believes it is reasonable that the proposed rule change become immediately effective upon the date of filing, October 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, NW, Washington, DC 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 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, 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-98-38 and should be submitted by November 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. ¹⁵

Jonathan G. Katz,
Secretary.

[FR Doc. 98-29718 Filed 11-5-98; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3142; Amendment #1]

State of Missouri

In accordance with a notice from the Federal Emergency Management Agency dated October 29, 1998, the above-numbered Declaration is hereby amended to include Platte and Ray Counties, Missouri as a disaster area due to damages caused by severe storms and flooding which occurred October 4 through October 11, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Buchanan in the State of Missouri may be filed until the specified date at the previously designated location. Any other counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 13, 1998 and for economic injury the termination date is July 14, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 2, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98-29805 Filed 11-5-98; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending on October 30, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-98-4649.

Date Filed: October 26, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0050 dated October 20, 1998 r1-002kk. PTC123 0051 dated October 20, 1998 r2-002pp. Mid/South Atlantic Expedited Resos. Intended effective date: November 15, 1998.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(e)(6).

¹³ 17 CFR 240.19b-4(e)(6)(iii).

¹⁴ The Commission received approximately 46 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.

¹⁵ 17 CFR 200.30-3(a)(12).