proposed rule change for comment on February 3, 1999.[3] The Commission received no comments on the proposal. This order approves the proposal.

Description of the Proposal

NASD Regulation is proposing to amend NASD Rule 11890 (''Rule'') to conform the time frame for requesting a clearly erroneous adjudication for pre-opening transactions to the 30 minute frame that applies trades that occur after 10:00 a.m. The rule permits The Nasdaq Stock Market, Inc. (''Nasdaq'') to review erroneous transactions and declare them void or otherwise modify their terms. In 1998, the Commission approved changes to the rule to make this process more efficient and fair (''Amendments'').[4] NASD Regulation amended the rule to require members to submit erroneous transaction complaints within 30 minutes of the transaction. Prior to the amendments, the rule allowed members to submit these complaints any time during the trading day. The Association hoped the amendments would preclude firms from waiting until the end of the day to submit erroneous transaction complaints after deciding whether the erroneous trade became unprofitable. The amendments also required that firms give the counterparty to the erroneous transaction adequate notice of the error within a short period of time.

Because of the high trading volume, however, the NASD intended to provide additional time to submit adjudication requests for trades occurring during the first half of each trading day. Specifically, the NASD intended that members have until 10:30 a.m. to request an adjudication for trades occurring between the 9:30 a.m. open and 10:00 a.m. The rule, however, currently only applies to trades that occur before 10:00 a.m., and does not mention trades that occur before the 9:30 a.m. opening. Consequently, a literal reading of the rule accords additional time to pre-9:30 a.m. transactions as well as those that occur between 9:30 and 10:00 a.m.

The NASD staff identified this issue when the Commission approved the amendments, but agreed, in consultation with Commission staff, to wait and observe the operation of the amended rule. After administering the amended rule for eight months, the NASD has confirmed its original belief that this additional time is not necessary for pre-opening transactions and is inconsistent with the original intent of the amendments.

In particular, the NASD notes that of the 27 requests for adjudication involving pre-opening trades received since the amendments, more than half were submitted by members within 30 minutes (in several instances within ten minutes) even though some members had as long as 90 minutes to do so. More importantly, members made virtually all of these requests (23 of 27) after the market opened and they had an opportunity to observe the direction of the market. While the NASD still believes that it is appropriate to provide additional time to request an adjudication for erroneous trades that occur following the opening, the NASD believes providing members additional time for pre-opening transactions is inconsistent with the intent of the amendments and allows members to abuse the rule.

Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[5] which requires that an Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[6] Specifically, the Commission believes the proposed rule change promotes fair and efficient resolution of disputes involving clearly erroneous transactions. The Commission believes that uncorrected erroneous transactions hinder an investor's ability to rely on reported transactions as accurately reflecting the current state of the market. The Commission believes the proposed rule change will lessen the impact of erroneous transactions on the public by allowing Nasdaq to more quickly correct erroneous transactions that have been publicly reported.

Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–98–94) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7155 Filed 3–23–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41177; File No. SR–NYSE–98–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc.: Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

March 16, 1999.

I. Introduction

On February 6, 1998, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend through June 30, 2001, the effectiveness of the pilot fees (''Pilot Fee Structure'') set forth in Exchange Rule 451, ''Transmission of Proxy Material,'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material'' (collectively the ''Rules'').[3] 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.[4] The proposed rule change also

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[3] *See* Exchange Act Release No. 40992 (Jan. 28, 1999), 64 FR 5846 (Feb. 5, 1999).

[4] Exchange Act Release No. 39550 (Jan. 14, 1998), 63 FR 4333 (Jan. 28, 1998) (approving SR–NASD–96–51).

[5] 15 U.S.C. 78*o*–3.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The ''Pilot Fee Structure'' originally was approved by the Commission on March 14, 1997. *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997) (''Original Pilot Approval Order''). The Pilot Fee Structure subsequently was extended several times and modified once. *See infra* notes 14 and 15. The Exchange amended its proposed rule change to extend the Pilot Fee Structure through August 31, 1999, rather than June 30, 2001, as originally proposed. *See infra* note 8.

[4] The ownership of shares in street name means that a shareholder, or ''beneficial owner,'' has purchased shares through a broker-dealer or bank, also known as a ''nominee.'' In contrast to direct ownership, where the shares are directly registered

sought to revise the Rules to allow NYSE member firms to reduce mailings to beneficial owners through the ''householding'' of materials, provided that implied consent (*i.e.*, beneficial owner does not object after receiving 60 days written notice of the proposed householding) is obtained from the beneficial owners.[5] This portion of the proposal has been withdrawn by the Exchange.[6]

The proposed rule change was published for comment in the **Federal Register** on March 26, 1998.[7] The Commission received 47 comment letters on the proposal. On March 9, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[8] This order approves, through August 31, 1999, the proposed rule change, as amended, and Amendment No. 1 on an accelerated basis.

II. Background

NYSE member organizations that hold securities for beneficial owners in street name solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of owners of NYSE-listed company shares. For this service, NYSE issuers reimburse NYSE member organizations for reasonable out-of-pocket, clerical, postage, and other expenses incurred in performing such activities. The Rules provide specific fee guidelines for the reimbursement of these expenses.

Over the last thirty years, NYSE member firms increasingly have outsourced their proxy delivery obligations to proxy distribution intermediaries. The primary reason underlying this shift is that member firms believe proxy distribution is not a core broker-dealer business and that capital is better used elsewhere. By the early 1990's, two proxy distribution firms distributed most of the proxies to street name accounts on behalf of NYSE member firms: Automatic Data Processing (''ADP'')[9] and the Independent Election Corporation of America (''IECA''). In February 1992, ADP acquired IECA and became the dominant proxy distribution intermediary. By 1993, ADP reportedly distributed seventy percent of all proxies sent to beneficial owners holding shares in street name. Because three of the four remaining major self-distributing broker-dealers recently contracted with ADP to discharge their proxy delivery and voting obligations,[10] that figure now stands close to one hundred percent.[11]

III. Description of the Proposal

A. The Pilot Fee Structure

On March 14, 1997, the Commission approved an Exchange proposal that significantly revised the reimbursement guidelines set forth in the Rules and established the Pilot Fee Structure.[12] The Pilot Fee Structure was designed to address many of the functional and technological changes that had occurred in the proxy distribution process since the Rules were last revised in 1986. Although the Pilot Fee Structure reduced certain fees, it also raised one fee, and in some instances created new fees. The Pilot Fee Structure initially was set to expire on May 13, 1998.

Under the fee structure in effect prior to March 14, 1997, NYSE member firms were permitted to charge NYSE issuers a basic processing fee of $0.60–$0.70 for each proxy package (*i.e.*, proxy statement, form of proxy, and annual report) delivered to a beneficial owner.[13] The Pilot Fee Structure reduced this fee to $0.55 per proxy package. In the subsequent companion filing to this proposed rule change, the Exchange amended the Pilot Fee Structure to further reduce the basic proxy processing fee to $0.50.[14] The companion filing also extended the effectiveness of the Pilot Fee Structure from May 13, 1998, through July 31, 1998. Three additional Exchange rule filings extended the effectiveness of the Pilot Fee Structure, as amended by the companion filing, to March 15, 1999.[15]

The Pilot Fee Structure also reduced from $0.20 to $0.15 the fee for annual reports that are mailed separately from the proxy materials pursuant to the instruction of the person soliciting proxies. The Pilot Fee Structure likewise reduced from $0.20 to $0.15 the fee for interim reports, annual reports if mailed separately, post meeting reports, or other material. The historic fee structure's $0.60 fee for mailing follow-up proxy materials only to beneficial owners who had not voted was eliminated; however, the fee for mailing follow-up proxy materials to all beneficial owners remained $0.40. The fee for proxy fights (*i.e.*, an opposition proxy statement has been furnished to security holders) was raised under the

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in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository such as the Depository Trust Company. Research provided by the Exchange indicates that approximately 70 to 80 percent of all outstanding shares are held in street name and that the shares held in street name are dispersed among approximately 800 nominees.

[5] ''Householding'' is used to eliminate multiple mailings of proxy and other materials to beneficial owners residing at the same address. For example, if a husband and wife living together both separately own shares in the same NYSE issuer, householding could be used to reduce from two to one the number of proxy packages sent to the married couple.

[6] *See infra* note 8.

[7] Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 1998).

[8] *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated March 8, 1999 (''Amendment No. 1''). Amendment No. 1 to the proposed rule change proposes two revisions: (1) modifying the proposed term of the Pilot Fee Stucture from June 30, 2001, to August 31, 1999; and (2) withdrawing the householding through implied consent provision. Amendment No. 1 also clarifies that the proposed rule change, as revised by Amendment No. 1, proposes to extend through August 31, 1999, the Pilot Fee Structure, as amended by the companion filing (*see infra* note 14 and related text for a description of the companion filing).

[9] The name of the actual business unit that serves as a proxy distribution intermediary is ADP Beneficial Shareowner Communication (''ADP BCS''). ADP BCS is a service line of ADP Investor Communication Services, a division of ADP Financial Information Services, Inc., which in turn is an indirect wholly owned subsidiary of Automatic Data Processing, Inc. For clarity and ease of reference, the acronym ''ADP'' will be used in place of ''ADP BCS.''

[10] As recently as the 1997 proxy season, four major broker-dealers directly distributed proxy materials to their customers holding shares in street name: Merrill Lynch, Paine Webber, Prudential Securities, and the Dean Witter arm of Morgan Stanley Dean Witter. Currently, only Dean Witter directly distributes proxy materials to street name accounts.

[11] For a more detailed description of the background and history of the proxy distribution industry, proxy fees, as well as the events leading to the Exchange's proposal to revise the Rules, *see* Original Pilot Approval Order *supra* note 3.

[12] *See* Original Pilot Approval Order *supra* note 3. Under the Pilot Fee Structure, NYSE member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically. Prior to the Pilot Fee Structure, NYSE member firms were entitled to reimbursement for ''all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 451 and in mailing interim reports or other material pursuant to Rule 465.'' *See* Exchange Rule 451, Supplementary Material .90, ''Schedule of Approved Charges by Member Organizations in Connection with Proxy Solicitations'' and Exchange Rule 465, Supplementary Material .20, ''Mailing Charges by Member Organizations.''

[13] The $0.60 fee applied to proxy packages for meetings that did not include a proposal that required beneficial owner instructions; the $0.70 fee applied to proxy packages for meetings that included a proposal that required beneficial owner instructions (*e.g.*, proxy fights).

[14] *See* Securities Exchange Act Release No. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998).

[15] *See* Securities Exchange Act Release Nos. 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (extended the Pilot Fee Structure from July 31, 1998, through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (extended the Pilot Fee Structure from October 31, 1998, through February 12, 1999); and 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (extended the Pilot Fee Structure from February 12, 1999, through March 15, 1999).

Pilot Fee Structure from $0.70 to $1.00 for each set of proxy materials mailed.

The Pilot Fee Structure implemented two new fees. First, a paper elimination incentive fee of $0.50 was instituted for each proxy package ($0.10 for each interim report) not mailed because of either householding or electronic delivery. The paper elimination fee was intended to serve as an incentive to use technologies, such as electronic mail, to reduce the number of paper mailings sent to beneficial owners. The paper elimination incentive fee could be assessed in addition to the basic processing fee. Second, the Pilot Fee Structure implemented a nominee coordination fee of $20 per nominee (*i.e.*, each NYSE issuer must pay $20 for each nominee holding its shares in street name). The nominee coordination fee was designed to compensate a proxy distribution intermediary for coordinating a series of functions across multiple nominees. The functions included are: consolidation of search responses, delivery of materials to nominees, use of bulk mail, and tabulation and dissemination of preliminary voting information.[16]

Finally, the Pilot Fee Structure permitted the householding of proxy and other materials to beneficial owners provided that actual written consent was obtained from the beneficial owner to whom the materials are not sent.[17] This provision allows member firms to household annual reports, interim reports, proxy statements, and other material.[18]

B. The Proposal and Amendment No. 1

In its original form, the Exchange's proposed rule change sought to extend the effectiveness of the Pilot Fee Structure through June 30, 2001. In Amendment No. 1, the Exchange requested that the Pilot Fee Structure end on August 31, 1999. The original version of the proposal also sought to permit the householding of proxy materials and other issuer communications through implied consent. Specifically, the Exchange had sought to permit householding if a beneficial owner did not object after receiving 60 days written notice of the proposed householding. Amendment No. 1 withdrew the householding through implied consent provision from the Exchange's proposal.

IV. Summary of Comments

The Commission received 47 comment letters regarding the Exchange's proposed rule change.[19] A substantial majority of the commenters, 41 of the 47, supported the proposal. Four commenters did not support the proposal,[20] and one commenter

[16] *See* Original Pilot Approval Order *supra* note 3 for a more detailed discussion of the nominee coordination fee, the coordination services encompassed in that fee, and the supporting rationale provided by the Exchange.

[17] *See* Exchange Rule 451, Supplementary Material .95, "'Householding' of Reports" and Exchange Rule 465, Supplementary Material .25, "'Householding' of Reports." For a description of householding, *see supra* note 5.

[18] *But see* 17 CFR 240.14a–3(e) and 17 CFR 240.14c–7(a).

[19] All of the comment letters are part of File No. SR–NYSE–98–05, which is available for public review and inspection in the Commission's Public Reference Section. The comment letters were submitted by twenty-six issuers, nine broker-dealers, six trade associations, two institutional investors, one bank, one potential proxy service provider, one economic analysis company retained by ADP (Analysis Group/Economics), and the ADP Steering Committee. The comment letters are listed below in the order they were received by the Commission's Office of the Secretary. *See* Letters from: Timothy E. Hall, Corporate Controller, Flexsteel Industries, Inc., dated February 24, 1998 ("Flexsteel Letter"); Judy Foshay, Director, Shareholder Services, Cirrus Logic, dated April 9, 1998 ("Cirrus Letter"); Sari L. Macrie, Vice President, Investor Relations, Ameritech, dated April 8, 1998 ("Ameritech Letter"); Janet M. Turner, Vice President, Investor Relations, PLM International, Inc., dated April 14, 1998 ("PLM Letter"); Sophia G. Vergas, Assistant Secretary, The Liberty Corporation, dated April 14, 1998 ("Liberty Letter"); Anne C. Cumberledge, Manager, Investor Relations, Meridian Industrial Trust, dated April 10, 1998 ("Meridian Letter"); Rhoda Anderson, Director, Corporate Secretary's Department, Lucent Technologies, and Chairperson, ADP Steering Committee (on behalf of: Linda Selbach, Barclays Global Investors; Janice Hester Amey, CALSTRS; Ray DiSanza, Charles Schwab & Co.; Paula Gurley, Colorado Public Employees' Retirement Association; Steven Berk, J.P. Morgan Services; Nancy Obringer, Mellon Bank; Gordon Garney, Mobil Corporation; and Rafael Dieppa, Oppenheimer & Co.), dated April 14, 1998 ("ADP Steering Committee Letter"); Jerome J. Clair, Senior Vice President, Smith Barney Inc., dated April 15, 1998 ("Smith Barney Letter"); Virgil L. Clubbs, Associate Vice President, A.G. Edwards & Sons, Inc., dated April 15, 1998 ("A.G. Edwards Letter"); John E. Nolan, Senior Vice President, Raymond James & Associates, Inc., dated April 15, 1998 ("Raymond James Letter"); Peter Quick, President, Quick & Reilly, dated April 13, 1998 ("Quick & Reilly Letter"); John B. Meagher, Consultant to Corn Products International, Inc., dated April 15, 1998 ("Corn Products Letter"); George Kim Johnson, General Counsel, and Paula A. Gurley, Manager, Shareholder Responsibility Division, Public Employees' Retirement Association of Colorado, dated April 13, 1998 ("PERA Letter"); D. Stuart Bowers, Senior Vice President, Legg Mason Wood Walker, Incorporated, dated April 15, 1998 ("Legg Mason Letter"); Roger P. Smith, Secretary, 3M, dated April 16, 1998 ("3M Letter"); Janice Hester Amey, Corporate Affairs Advisor, State of California State Teachers' Retirement System, dated April 15, 1998 ("CALSTRS Letter"); Andrew D. Hendy, Senior Vice President, General Counsel, and Secretary, Colgate-Palmolive Company, dated April 15, 1998 ("Colgate-Palmolive Letter"); John W. Hetherington, Vice President, Secretary, and Assistant General Counsel, Westvaco, dated April 13, 1998 ("Westvaco Letter"); Robert M. Williams, Assistant Secretary, Carolina Power and Light Company, dated April 15, 1998 ("CP&L Letter"); Gordon G. Garney, Senior Assistant Secretary, Mobil Corporation, dated April 16, 1998 ("Mobil Letter"); Stacy A. Matseas, Manager, Stock Administration, QUALCOMM, Incorporated, dated April 15, 1998 ("QUALCOMM Letter"); Gary Ball, Manager, Investor Relations, Fluke Corporation, dated April 15, 1998 ("Fluke Letter"); Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, dated April 20, 1998, with attached letter to Brian Lane dated February 9, 1998 ("CII Letter"); Glynn E. Williams, Jr., Vice President, Finance, Goodrich Petroleum Corporation, dated April 15, 1998 ("Goodrich Letter"); Walter Flicker, Secretary, ResMed Corp., dated April 16, 1998 ("ResMed Letter"); Mike Tate, Controller, Galileo Technology, dated April 14, 1998 ("Galileo Letter"); David Kerner, Treasurer, Standard Motor Products, Inc., dated April 13, 1998 ("Standard Motor Letter"); Laurin L. Laderoute, Jr., Vice President, Assistant General Counsel, and Secretary, Olsten Corporation, dated April 23, 1998 ("Olsten Letter"); Ron Miele, Vice President, Global Operations, Goldman, Sachs & Co., dated April 20, 1998 ("Goldman Letter"); Brian T. Borders, President, Association of Publicly Traded Companies, dated April 24, 1998 ("APTC Letter"); Robert S. Harkey, Senior Vice President, General Counsel, and Secretary, Delta Air Lines, Inc., dated April 16, 1998 ("Delta Letter"); George M. Holston, Assistant General Manager and Assistant Secretary, Texaco Inc., dated April 14, 1998 ("Texaco Letter"); William A. Bowen, Vice President, Finance, AAON, Inc., dated April 16, 1998 ("AAON Letter"); Jennifer LaGrow, Director, Shareholder Services, The Walt Disney Company, dated April 28, 1998 ("Disney Letter"); Donna Murphy, Investor Relations Coordinator, UniSource Energy Corporation, dated April 16, 1998, ("UniSource Letter"); Joan DiBlasi, President, Corporate Transfer Agents Association, Inc., dated May 7, 1998 ("CTA Letter"); David W. Smith, President, American Society of Corporate Secretaries, dated May 11, 1998 ("ASCS Letter"); Susan E. Shaw, Secretary, The Coca-Cola Company, dated May 1, 1998 ("Coca-Cola Letter"); Thomas L. Montrone, President, The Securities Transfer Association, Inc., dated May 18, 1998 ("STA Letter"); Lindsay Klombies, Reorganization Manager, Norwest Bank, dated May 12, 1998 ("Norwest Letter"); Susan C. Hafleigh, Assistant Treasurer, Oracle Corporation, dated May 14, 1998 ("Oracle Letter"); Anne O. Faulk, received June 15, 1998 ("Faulk Letter"); Robert Kaplan, Senior Vice President, Administrative Group Office, Prudential Securities Incorporated, dated June 22, 1998 ("Prudential Letter"); The Corporate Actions Division, Inc., Securities Industry Association, dated July 7, 1998 ("SIA Letter"); Doug Harris, Incumbent Secretary, and Polk Laffoon, Incoming Secretary, Knight Ridder, dated July 23, 1998 ("Knight Letter"); Stephen P. Norman, Secretary, American Express Company, dated August 31, 1998 ("American Express Letter"); and Robert Comment, Analysis Group/Economics, dated October 27, 1998 ("Analysis Group Letter").

Commission staff also interviewed representatives from fourteen proxy industry participants. *See.* Memorandums to File No. SR–NYSE–98–05 regarding Commission staff meetings or conversations with: First Chicago Trust Co., dated August 13, 1998; The Depository Trust Company, dated August 11, 1998; Dean Witter Reynolds, Inc., dated August 11, 1998; Georgeson & Company, Inc., dated August 11, 1998; JP Morgan, Inc., dated August 11, 1998; Carl T. Hagberg & Associates, dated August 11, 1998; Salomon Brothers, Inc./Smith Barney, Inc., dated August 11, 1998; Bank of New York, dated August 11, 1998; Prudential Securities, dated August 11, 1998; Merrill Lynch, Pierce, Fenner & Smith, Inc., dated August 11, 1998; CT Corporation System, dated August 13, 1998; Investor Responsibility Research Center, dated August 11, 1998; Corporate Investor Communications, dated August 13, 1998; and Paine Webber, Inc., dated August 11, 1998.

[20] *See* CII Letter, CTA Letter, STA Letter, and Faulk Letter, *supra* note 19. Several of these

specifically objected to the nominee coordination fee.[21] One additional commenter, who was retained by ADP to provide an economic analysis of proxy processing, submitted a comment letter that examined price trends, market share, natural monopoly status, predatory pricing, regulatory best practices, and peak-load pricing.[22]

Thirty-six of the 41 commenters supporting the proposal believed an extension of the Pilot Fee Structure through June 30, 2001, was appropriate,[23] while five of those commenters believed that another review of the Pilot Fee Structure was necessary at the conclusion of the extended pilot period.[24] Several other commenters believed that a shorter pilot period would be more appropriate.[25] The commenter retained by ADP asserted that ''the 'ongoing pilot' approach to regulating fees is an invitation to micro-management, and as such is flatly inconsistent with regulatory best practices.''[26]

In the published notice of the proposed rule change, the Commission solicited comment on the itemized fees prescribed under the Pilot Fee Structure. In particular, the Commission sought comment on the nominee coordination fee and its impact on issuers, the paper elimination incentive fee, certain fees relating to electronic (*e.g.*, Internet) voting and delivery of proxy materials, as well as the length of the proposed extension.[27]

commenters believed that a lack of competition in the proxy distribution industry has resulted in higher than necessary proxy fees and that the regulatory structure governing the delivery of proxy materials to street name shareholders should be revised to promote more competition.

[21] *See* Flexteel Letter *supra* note 19.

[22] *See* Analysis Group Letter *supra* note 19.

[23] *See* Cirrus Letter, Ameritech Letter, PLM Letter, Liberty Letter, Meridian Letter, ADP Steering Committee Letter, Smith Barney Letter, A.G. Edwards Letter, Raymond James Letter, Quick & Reilly Letter, Corn Products Letter, PERA Letter, Legg Mason Letter, 3M Letter, CALSTRS Letter, Colgate-Palmolive Letter, Westvaco Letter, CP&L Letter, QUALCOMM Letter, Fluke Letter, Goodrich Letter, ResMed Letter, Galileo Letter, Standard Motor Letter, Olsten Letter, Goldman Letter, APTC Letter, Delta Letter, Texaco Letter, AAON Letter, UniSource Letter, ASCS Letter, Norwest Letter, Oracle Letter, SIA Letter, and American Express Letter, *supra* note 19.

[24] *See* Cirrus Letter, PLM Letter, CP&L Letter, Fluke Letter, and Standard Motor Letter, *supra* note 19.

[25] The commenter who did not support extension of the Pilot Fee Structure through June 30, 2001, generally did, however, support extending the pilot for a shorter period of either one or two years. *See* Mobil Letter (one or two years), CII Letter (until July 31, 1999). CTA Letter (no more than two years), *supra* Note 19.

[26] *See* Analysis Group Letter, *supra* note 19.

[27] The Commission sought comment on these questions in connection with its independent determination whether the Pilot Fee Structure: (1) provides for the equitable allocation of reasonable fees among NYSE-listed companies and NYSE member firms; (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 (Rules 14a–13, 14b–1, and 14b–2 Act collectively provide that nominees are entitled to reimbursement for the ''reasonable expenses'' incurred in the delivery of proxy materials to beneficial owners.).

Most commenters did not discuss the itemized fees that ADP charges issuers for electronic proxy delivery and voting services, although 20 commenters stated that they expect that technological developments in electronic delivery and voting will eventually result in cost savings to issuers and therefore should warrant a reevaluation of the appropriate level of the fees in the future.[28] Several commenters specifically stated that the reimbursement fee assessed in connection with electronic voting was appropriate.[29] In contrast, one commenter believed that the basic proxy processing fee for electronic delivery was not appropriate and stated that, according to ADP, ''votes returned by mail cost companies $0.34 per return while Internet votes cost $0.03 per return,'' thus suggesting that ''proxy materials delivered by Internet should cost intermediaries substantially less than materials delivered by mail.''[30]

Although the majority of commenters were silent regarding the appropriateness of the paper elimination incentive fee, 14 commenters believed the incentive fee was appropriate.[31] One commenter noted that although it ''seems reasonable to continue some incentive appropriate to encourage ongoing efforts to make the substantial improvements yet possible,'' a reduction in the paper elimination incentive fee should be possible now that ADP is offering a system approach to electronic processing.[32] One commenter believed that the incentive fee was inappropriate and stated that the fee was too high in relation to the basic processing fee and the cost savings realized by issuers that household or electronically distribute proxy materials.[33]

Most commenters did not specifically mention the nominee coordination fee. One commenter, however, complained that although its costs for proxy distribution increased significantly over the previous year (104%) because of the nominee coordination fee, the services provided by the proxy distribution intermediary did not change from the previous year.[34] This commenter concluded that the nominee coordination fee ''appears to be unreasonable.'' Four commenters, none of whom are small issuers, believed that small issuers with a diffuse shareholder base should realize the same benefits from the nominee coordination fee as large issuers whose securities are widely owned but more concentrated in the accounts of nominees.[35] Four other commenters, who considered themselves small issuers, did not specifically address the nominee coordination fee issue but stated that they benefit from the application of

[28] *See* Cirrus Letter, PLM Letter, Liberty Letter, ADP Steering Committee Letter, Corn Products Letter, 3M Letter, CP&L Letter, QUALCOMM Letter, Fluke Letter, Goodrich Letter, ResMed Letter, Galileo Letter, Standard Motor Letter, Olsten Letter, Goldman Letter, Texaco Letter, AAON Letter, Disney Letter, UniSource Letter, ASCS Letter, and Oracle Letter, *supra* note 19. One commenter questioned the need for the nominee coordination fee and the paper elimination incentive fee at a time when technology is increasingly being used by issuers and shareholders. *See* Faulk Letter *supra* note 19.

[29] *See* Ameritech Letter, ADP Steering Committee Letter, Smith Barney Letter (stating that the basic proxy processing fee ''represents the multiple steps required in the preparation of the forthcoming proxy record date, the identification of the clients on record date and the vote tabulation. These processes are required regardless whether the distribution is by mail or the Internet.''), A.G. Edwards Letter, Legg Mason Letter, and SIA Letter, *supra* note 19.

[30] *See* CII letter, *supra* note 19. Separately, several commenters believed that the processing fee relating to the mailing of materials in paper form was appropriate. *See* A.G. Edwards Letter, Raymond James Letter, CP&L Letter, QUALCOMM Letter, ResMed Letter, Goldman Letter, Delta Letter, Texaco Letter, and Oracle Letter, *supra* note 19.

[31] One commenter noted that ''[o]nce an automated system is put in place, it must be maintained, at the same time ADP must continue to operate and maintain its normal mailing/vote recording process and integrate both for the process to work.'' *See* Prudential Letter, *supra* note 19. *See also*, Cirrus Letter, ADP Steering Committee Letter, Smith Barney Letter, A.G. Edwards Letter, Raymond James Letter, 3M Letter, CP&L Letter, QUALCOMM Letter, Galileo Letter, Standard Motor Letter, Oracle Letter, SIA Letter, and American Express Letter, *supra* note 19.

[32] *See* 3M Letter, *supra* note 19.

[33] *See* CII Letter, *supra* note 19.

[34] Flexsteel industries (''Flexsteel''), a small issuer listed on the Nasdaq Stock Market, believed that its 1997 proxy costs greatly increased because of the nominee coordination fee but that the higher fee did not reflect any change in service. Flexsteel noted that it had ''1,920 and 1,646 shareholders of common stock at June 30, 1997 and 1996 respectively.'' Flexsteel's proxy distribution costs, however, ''increased from $2,168.94 in 1996 to $4,433.16 in 1997.'' This difference was primarily attributable to the nominee coordination fee of $2,200 charged to Flexsteel. *See* Flexsteel Letter, *supra* note 19.

[35] One commenter noted that ''[a]s a relatively large issuer,'' it could not ''address this question. However, savings in the initiatives for electronic processing should exist for everyone, the relativity of benefits amongst issuers seeming a secondary matter.'' *See* 3M Letter, *supra* note 19. *See also*, QUALCOMM Letter, Goldman Letter, and Oracle Letter, *supra* note 19.

technology by ADP.[36] Finally, one commenter expressed concern that there was no provision for phasing out the nominee coordination fee once the technology was in place for which it was established.[37]

Without commenting on the impact that the nominee coordination fee has on small issuers, four commenters specifically supported the nominee coordination fee.[38] Two other commenters believed that the nominee coordination fee currently appears reasonable, but that the Commission should monitor the appropriateness of the fee in the future.[39] In addition, three commenters suggested that because fees are ''shared'' between ADP and some broker-dealers, the fees could be reduced.[40] Specifically, one commenter questioned whether revenue sharing or a rebate system creates the need for extra revenue through additional fees, such as the nominee coordination fee. The commenter stated that ''[c]learly[,] if rebates are being given, then there is still room in the system to reduce the fees to issuers. Reasonable expense for reimbursement by issuers should not include money to subsidize any revenue sharing or a rebate system since that only serves to cement the intermediary's relationship with their clients which reduces competition.'' [41]

Finally, several commenters indicated their support for the Exchange's implied consent householding proposal.[42] Three commenters suggested that the regulatory framework currently governing the delivery of proxy materials to beneficial owners should be revised to permit greater competition.[43] In addition, one commenter suggested that the Pilot Fee Structure should be revised to increase the economic rationality of the fee structure and to better reflect marginal costs.[44]

V. Discussion

For the reasons discussed below, the Commission finds that the proposal to extend the effectiveness of the Pilot Fee Structure is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[45] Section 6(b)(4) requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange.[46] Section 6(b)(5) requires, among other things, that the rules of an exchange promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers, or dealers.[47] Section 6(b)(8) prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[48] For the reasons discussed in more detail below, the Commission believes the proposal to extend the Pilot Fee Structure through August 31, 1999, meets the requirements of the Act.[49]

The Commission, along with the Exchange, has carefully monitored the Pilot Fee Structure since its adoption on March 14, 1997. The Commission's Original Pilot Approval Order specifically stated that the Commission's preliminary determination to approve the Pilot Fee Structure would be reevaluated in light of the results of the pilot period and the Exchange's independent audit report. Following publication of the notice of the Exchange's proposed rule change in March 1998, the Commission conducted a thorough review of the Pilot Fee Structure and its impact on NYSE issuers and member firms. In particular, the Commission staff interviewed numerous proxy industry participants to gather information and views on the current proxy system and the Pilot Fee Structure.[50] These interviews provided the staff with information concerning the mechanics of the proxy distribution business and the role of nominees and proxy distribution intermediaries. Based on this information, the Commission staff also analyzed the economic impact of the Pilot Fee Structure on smaller, non-NYSE issuers—a sample that was outside the scope of the Exchange's audit reports.

In addition, the Commission staff undertook an in-depth review of the 1997 and 1998 Audit Reports that were prepared by an independent accounting firm retained by the Exchange.[51] The Audit Reports examined the proxy distribution process for NYSE issuers and member firms during the 1997 and 1998 proxy seasons. The 1997 Audit Report analyzed the proxy operations of ADP and the four major broker-dealers that distributed proxy materials directly during the 1997 proxy season: Dean Witter, Merrill Lynch, Paine Webber, and Prudential Securities. Because three of these broker-dealers contracted with ADP before the 1998 proxy season. Dean Witter was the sole major broker-dealer during the 1998 proxy season that continued to distribute proxy materials directly.[52]

Finally, ADP provided the Commission with a comprehensive report examining the proxy distribution business and ADP's role as an intermediary. In addition to providing an overview of the proxy distribution business and an evaluation of specific

[36] *See* PLM Letter, Quick & Reilly Letter, Goodrich Letter, and Galileo Letter, *supra* note 19.

[37] *See* CTA Letter *supra* note 19. In addition, this commenter stated that concrete guidelines need to be developed to justify the continuation of the nominee coordination fee.

[38] *See* A. G. Edwards Letter, Raymond James Letter, ResMed Letter, and Delta Letter, *supra* note 19.

[39] *See* CP&L Letter and Knight Letter, *supra* note 19.

[40] *See* CII Letter, Mobil Letter, and STA Letter, *supra* note 19. The commenter retained by ADP noted, however, that ADP's single billing service, in which ADP bills issuers on a consolidated basis on behalf of all nominees, necessitated an ancillary system of sharing revenue with nominees in order to reimburse them for the in-house costs they still incur after subcontracting to ADP. ''Single billing [, however,] has the unintended consequence of placing squarely on ADP the locus of concern over whether nominees are compensated fairly for their in-house costs.'' *See* Analysis Group Letter, *supra* note 19.

[41] *See* Mobil Letter, *supra* note 19.

[42] *See* Smith Barney Letter, Raymond James Letter, Corn Products Letter, Legg Mason Letter, 3M Letter, Mobil Letter, Olsten Letter, APTC Letter, Texaco Letter, CTA Letter, ASCS Letter, Coca-Cola Letter, and SIA Letter, *supra* note 19.

[43] *See* CTA Letter, STA Letter, and Faulk Letter, *supra* note 19. One of these commenters observed that under the current regulatory framework, ''issuers are precluded from selecting other agents for the distribution of annual meeting materials and tabulation of proxies for NOBOs [non-objecting beneficial owners].'' *See* STA Letter, *Supra* note 19. A potential competitor to ADP believed that competition in the delivery of corporate communication materials to beneficial owners should be encouraged. Specifically, ''ownership data for NOBOs should be made available to any participant in the shareholder distribution business. Additionally, ownership information on OBOs [objecting beneficial owners] should also be available to any entity who can assure the objecting owner of a firewall between it and the corporate issuer.'' *See* Faulk Letter, *supra* note 19.

[44] Specifically, the commenter retained by ADP believed that the current system of uniform pricing ignores the fact that costs are higher due to the seasonality in annual meetings. This commenter believed that a non-uniform, peak-load pricing schedule should be introduced to charge peak users for the full cost of the extra capacity needed to accommodate the peak load. *See* Analysis Group Letter, *supra* note 19.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(4).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78f(b)(8).

[49] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[50] *See supra* Note 19 for a listing of the proxy industry participants interviewed by the Commission staff.

[51] *See New York Stock Exchange: Shareholder Communication and Proxy Study,* January 1998 (''1997 Audit Report''), and *New York Exchange: Shareholder Communication and Proxy Study,* December 1998 (''1998 Audit Report''). Copies of both Audit Reports are 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 VI of this order.

[52] Dean Witter elected not to participate in the survey underlying the 1998 Audit Report.

aspects of the Pilot Fee Structure, the ADP report made recommendations to improve the current system.

The Commission believes the reimbursement guidelines established under the Pilot Fee Structure should be allowed to continue through August 31, 1999.[53] The Commission notes that the Pilot Fee Structure provides an incentive to reduce paper mailings through householding and electronic delivery. The Commission also recognizes that the nominee coordination fee rewards intermediaries, such as ADP, for the consolidation and simplification of numerous functions. Indeed, in general, NYSE issuers and member firms appear to be satisfied with the quality of service provided by ADP. This was further evidenced by the support expressed in a majority of the comment letters regarding the Exchange's proposal to extend the Pilot Fee Structure through June 30, 2001.

However, based on the facts gathered and reviewed during the past two years, including the 1997 and 1998 Audit Reports and the Commission staff's independent analyses, the Commission believes the Pilot Fee Structure could be further modified in the future to provide for a fairer and more reasonable allocation of fees among NYSE issuers and member firms. The experience with the Pilot Fee Structure during the 1997 and 1998 proxy seasons shows that it would be possible to devise a fee structure that benefits more NYSE issuers and that results in lower fees. The Commission has therefore requested that the Exchange promptly and carefully review the Pilot Fee Structure and make changes where necessary to develop an improved fee structure.[54] The Commission has communicated to the Exchange the Commission's desire to see a new fee structure in place for the year 2000 proxy season. Accordingly, the Exchange has agreed to file with the Commission a new fee structure proposal in May 1999.

For several reasons, the Commission believes it is reasonable to extend the Pilot Fee Structure through August 31, 1999, even though the reimbursement guidelines will be further modified in the near future. First, the 1999 proxy season is already underway. The Commission believes that if Pilot Fee Structure were permitted to lapse in the midst of the current proxy season, the resulting change in fee structure (*i.e.*, reversion to the fee structure in place before March 14, 1997) could be inequitable or confusing to NYSE issuers and member firms.[55] The extension through August 31, 1999, will ensure that one pricing scheme will apply to all proxy distributions made to beneficial owners of shares of NYSE issuers during the 1999 proxy season. Second, the additional five month extension will provide the Exchange and the Commission staff with the time necessary to review the Pilot Fee Structure to determine the most equitable way to modify fees. Finally, members of the public will have the opportunity to comment on any proposed fee changes before they are implemented. This is particularly important given that the Pilot Fee Structure generated a significant number of comment letters from a variety of constituencies interested in, and affected by, the fees.

Although the Commission believes it is currently appropriate for the Exchange to specify rates of reimbursement for NYSE member firms that distribute proxy materials to beneficial owners of NYSE issuers during the 1999 proxy season, it remains concerned that competitive market forces do not determine these rates. In the Original Pilot Approval Order, the Commission encouraged the Exchange, issuers, and broker-dealers to develop an approach that would foster competition in the proxy distribution industry so that market forces would determine ''reasonable expenses'' within the meaning of the proxy and Exchange rules. The Commission is concerned that the current lack of competition in the proxy distribution industry may ultimately result in higher costs for NYSE issuers and their shareholders.

In addition to encouraging market participants to explore ways to increase competition, the Commission also suggested that the Exchange and other self-regulatory organizations (''SROs'') investigate whether reimbursement rates could be set by market forces, and whether market forces would provide a more efficient, competitive, and fair process than SRO standards. Because of further consolidation in the proxy distribution industry (*i.e.*, recent contractual arrangements between ADP and Merrill Lynch, Paine Webber, and Prudential), the Exchange has expressed doubts that ''competition will develop to the extent necessary to relieve the Exchange of its role in establishing reimbursement guidelines.''[56] Although the Exchange indicated support for increased competition, it also concluded that the proxy communication process benefits from the economies of scale and uniformity that is created when most mailings are coordinated through a single entity. Furthermore, while other SROs are considering alternatives, no SRO has yet formally proposed an alternative to the present system.

In general, the Commission believes that free market forces, rather than governmental or quasi-governmental authorities, should determine what fees are reasonable for the services provided, especially during this age of rapid technological developments that facilitate the electronic delivery of proxy materials. The Commission is concerned that there are risks attendant to a single proxy distribution intermediary controlling such a high percentage of shareholder material distribution. Moreover, because of the operation of the Commission's proxy rules, issuers cannot themselves distribute proxy materials to street name shareholders or hire their own agents to do so, but instead must reimburse broker-dealers for the reasonable expenses incurred in distributing shareholder materials. Under these rules and industry practice, issuers have no role in determining whether the broker-dealers outsource their proxy distribution function, and if so, which agents they choose. Thus, issuers are unable to bargain for rates commensurate with their size or shareholder profile. Therefore, the Commission in the future will consider ways to increase competition in this area, including whether it would be appropriate to remove itself and the SROs from the rate-setting process.

The Commission requests comment on ways to encourage competition in the

[53] The Commission notes that its determination applies only to the reimbursement guidelines explicitly set forth in the Pilot Fee Structure. The Commission is not making any findings on any terms or practices that are part of privately negotiated contracts between NYSE member firms and proxy distribution intermediaries such as ADP, including multi-year exclusive-dealing and fee-sharing arrangements.

[54] The Commission staff also continues to gather information regarding the current proxy season. Although the Exchange is not required to prepare an Audit Report for the 1998 proxy season, the Commission nonetheless expects to obtain certain basic information from the Exchange and others regarding the results of the 1999 proxy season.

[55] For example, consider two hypothetical NYSE issuers (A and B) that are identical in all respects, including their shareholder profiles. Issuer A distributed its proxy materials before the March 15, 1999, expiration, while Issuer B will do the same in April 1999. If the Pilot Fee Structure were to lapse, these two issuers would pay different proxy fees despite receiving identical proxy services. In addition, some NYSE issuers may distribute proxy materials both before and after the March 15, 1999, expiration date (*e.g.*, proxy statements mailed March 1, 1999, and remember proxies mailed March 29, 1999). In such a case, the issuers would be billed for services during the same proxy season according to two different fee schedules.

[56] *See* Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 1998).

distribution of proxy materials to beneficial owners.[57] For example, the Commission previously requested comment on whether a system for voluntary direct delivery of proxy materials to non-objecting beneficial owners by issuers or their agents is preferable to the existing proxy distribution process by allowing issuers to independently determine whether to rely on in-house operations or to contract with outsiders to distribute their proxy materials to non-objecting beneficial owners.[58] Several transfer agents, proxy solicitors, and others have expressed an interest in competing for this type of business. Also, the Commission may consider whether it is appropriate for a uniform fee schedule to take into account the fact that small, non-NYSE issuers have experienced increases in proxy distribution fees.

In summary, although there are some benefits derived from the existing regulatory scheme, the Commission believes that it may be appropriate to consider changes to the Commission's proxy rules in the near future. While the exact form and scope of any possible rulemaking have not been determined, the primary goal is clear: the Commission seeks to ensure protection of shareholder voting rights by introducing competition in the proxy distribution industry. When market forces operate freely to set competitive and reasonable rate of reimbursement, the Commission will consider whether to discontinue its rate-setting role.

The changes outlined above require a two step process. As previously mentioned, the Commission believes the data on the Pilot Fee Structure, including The Commission staff's own economic analyses, indicates that further revisions to the Exchange's reimbursement guidelines are necessary. The Commission expects the Exchange to propose and implement such changes before the year 2000 proxy season. At the same time, the Commission will consider whether to alter the regulatory structure governing the distribution of proxy materials to beneficial owners to remove barriers to the entry of new competitors in this area.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 changes the period of effectiveness for the Pilot Fee Structure from June 30, 2001, to August 31, 1999. As stated above, the Commission has asked the Exchange to undertake a thorough and prompt review of the Pilot Fee Structure. After the Exchange has completed its review, the Commission expects the Exchange to submit a proposed rule change in May 1999, which presents a new fee structure. The Commission believes it is appropriate for the Exchange to prepare for the implementation of a new fee structure by shortening the duration of the Pilot Fee Structure. Accordingly, the extension through August 31, 1999, will allow the Pilot Fee Structure to continue uninterrupted during the 1999 proxy season, while providing the Exchange additional time to consider and propose revisions to the Pilot Fee Structure.

Amendment No. 1 also removes from the proposal the provision permitting householding through implied consent. The Commission notes that the Exchange's implied consent householding proposal differs from the Commission's householding initiative now under consideration as part of Commission rulemaking.[59] The Commission is concerned that if the Exchange's householding proposal was approved by the Commission, NYSE member firms would be permitted to engage in householding practices that might be inconsistent with any rule amendments that the Commission might ultimately adopt. Therefore, the Commission believes it is appropriate for the Exchange to withdraw its implied consent householding proposal and wait for the Commission to complete its independent rulemaking.

Based on the above, the Commission believes good cause exists, consistent with Sections 6(b) and 19(b) of the Act,[60] to accelerate approval of Amendment No. 1 to the Exchange's proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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. 20549–0609. 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 14, 1999.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6(b)(4), 6(b)(5), and 6(b)(8),[61] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[62] that the proposed rule change (SR–NYSE–98–05), as amended, is approved through August 31, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[63]

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 3015]

Bureau of Consular Affairs; Certain Foreign Passports Validity

In accordance with section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)), a nonimmigrant alien who makes an application for a visa or for admission into the United States is required to possess a passport that: (1) is valid for a minimum of six months beyond the date of the expiration of the initial period of the alien's admission into the United States or contemplated initial period of stay and, (2) authorizes the alien to return to the country from which he or she came, or to proceed to and enter some other country during such period. Because of the foregoing

[57] *See* Item VI of this approval order for specific instructions regarding the submission of comments on these issues.

[58] *See* Securities Exchange Act Release No. 40633 (Nov. 3, 1998), 63 FR 67331 (Dec. 4, 1998).

[59] *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).

[60] 15 U.S.C. 78f(b) and 78s(b).

[61] 15 U.S.C. 78f(b)(4), 78f(b)(5), and 78f(b)(8).

[62] 15 U.S.C. 78s(b)(2).

[63] 17 CFR 200.30–39a)(12).