5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the Separate Accounts after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's Contract value did not include any Contract Enhancement. Jackson National nonetheless represents that the Contracts' fees and charges, in the aggregate, are reasonable in relation to service rendered, the expenses expected to be incurred, and the risks assumed by Jackson National.

6. Applicants submit that the provisions for recapture of any Contract Enhancement under the Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants assert that the application of a Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by Jackson National with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Contract Enhancement under the circumstances described in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. It is possible that someone might view Jackson National's recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it; and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, Jackson National will redeem interests in a Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that Jackson National paid out of its general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c–1, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Applicants assert that investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the Application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5269 Filed 3–5–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45489/March 1, 2002]

Order Making Fiscal 2002 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

I. Background

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.[2] Section 31(c) requires each national securities association to pay the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association otherwise than on an exchange.[3]

The Investor and Capital Markets Fee Relief Act (''Fee Relief Act'') recently amended Section 31 to change the fee rates applicable under Sections 31(b) and (c).[4] The Fee Relief Act established an initial rate of $15 per $1,000,000 of the aggregate dollar amount of sales of

[1] 15 U.S.C. 78ee.

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

[3] 15 U.S.C. 78ee(c).

[4] Pub. L. 107–123, 115 Stat. 2390 (2002).

securities, which rate became effective December 28, 2001.[5]

Further, the Fee Relief Act requires the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal 2012 and beyond.[6] The Fee Relief Act also requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal 2002 through fiscal 2011. The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the ''target offsetting collection amount'' specified in the Fee Relief Act for that fiscal year.[7] For fiscal 2002, the target offsetting collection amount is $732,000,000.[8]

Congress determined the Fee Relief Act's target offsetting collection amounts by applying reduced fee rates to the Congressional Budget Office's (''CBO'') January 2001 projections of dollar volume for fiscal years 2002 through 2011.[9] In any fiscal year through fiscal 2011, the annual and, in certain circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2002

Under paragraph 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under Sections 31(b) and (c) in fiscal 2002 if, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, it determines that the amount $48,800,000,000,000 is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal 2002.[10] To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal 2002.

Based on data provided by the national securities exchanges and the national securities association that are subject to Section 31,[11] the actual aggregate dollar volume of sales during the first four months of fiscal 2002 was $8,118,639,282,307.[12] Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal 2002 (developed after consultation with the CBO and the Office of Management and Budget),[13] the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal 2002 to be $18,817,006,987,123. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal 2002 will be $26,935,646,269,430.

Because $48,800,000,000,000 is more than 10% greater than the $26,935,646,269,430 estimated actual aggregate dollar volume of sales for fiscal 2002, paragraph 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under Sections 31(b) and (c).

III. Calculation of the Uniform Adjusted Rate

Paragraph 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2002. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of [fiscal 2002], is reasonably likely to produce aggregate fee collections under Section 31 (including fees collected [14] during such 5-month period and assessments collected under [Section 31(d)]) that are equal to [$732,000,000].'' In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under Section 31(d) during all of fiscal 2002 from $732,000,000, which is the target offsetting collection amount for fiscal 2002. That sum is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect $290,970,371 in fees for the period prior to the effective date of the mid-year adjustment [15] and $337,500 in assessments on round turn transactions in security futures products during all of fiscal 2002.[16] Using the methodology referenced in Part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal 2002 following the effective date of the new rate will be $14,626,040,810,789. Based on these estimates, the uniform adjusted rate is $30.10 per million.[17]

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[5] 15 U.S.C. 78ee; Fee Relief Act, Pub. L. 107–123, section 11, 115 Stat. 2390 (2002).

[6] 15 U.S.C. 78ee(j)(1) and (j)(3).

[7] *See* 15 U.S.C. 78ee(l)(1).

[8] *Id.*

[9] The target offsetting collection amounts for fiscal 2002 through 2006 were determined by applying a rate of $15 per million to the CBO's projections of dollar volume for those fiscal years. The target offsetting collection amounts for fiscal 2007 through 2011 were determined by applying a rate of $7 per million to the CBO's projections of dollar volume for those fiscal years. For example, CBO's projection of dollar volume for fiscal 2002 was $48,800,000,000,000. *See infra*, note 10. Applying the initial rate under the Fee Relief Act of $15 per million to that projection produces the target offsetting collection amount under the Fee Relief Act for fiscal 2002 of $732,000,000.

[10] The amount $48,800,000,000,000 is CBO's January 2001 projection of dollar volume for fiscal 2002.

[11] Each exchange is required to file a monthly report on Form R–31 containing dollar volume data on sales of securities subject to Section 31 on the exchange. The report is due by the end of the month following the month for which the exchange provides dollar volume data. The National Association of Securities Dealers, Inc. (''NASD'') provides data separately.

[12] Although paragraph 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2002 ''based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year,'' data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, *i.e.*, March 1, 2002. Dollar volume data on sales of securities subject to Section 31 for February 2002 will not be available from the exchanges and the NASD for several weeks.

[13] The methodology for forecasting dollar volume is as follows. First, the Commission constructs a ten-year monthly time series of average daily dollar volume (''ADDV'') for all securities transactions subject to Section 31 fees. The Commission then calculates the average monthly rate of change in ADDV. To obtain ADDV forecasts, the Commission assumes that this rate of change will hold through the end of fiscal 2002. Finally, the Commission multiplies each month's ADDV forecast by the number of trading days in that month to obtain a forecast of total monthly dollar volume. Future forecasts will be based on rolling ten-year periods of data.

[14] The term ''fees collected'' is not defined in Section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of Section 31 fees for fiscal 2002 until March 15, the Commission will not ''collect'' any fees in the first five months of fiscal 2002. *See* 15 U.S.C. 78ee(e). However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress, by stating in paragraph 31(j)(2) that the ''uniform adjusted rate . . . is reasonably likely to produce aggregate fee collections under Section 31 * * * that are equal to [$732,000,000],'' intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

[15] This calculation is based on applying a fee rate of $33.33 per million to the actual aggregate dollar volume of sales of securities subject to Section 31 prior to December 28, 2001, and a fee rate of $15 per million to the projected aggregate dollar volume of sales of securities subject to Section 31 from December 28, 2001 through March 31, 2002.

[16] The estimate of $337,500 in assessments on round turn transactions in security futures products is based on CBO's August 2001 estimate for fiscal 2002, revised to reflect the reduced assessment amount on round turn transactions under the Fee Relief Act, 15 U.S.C. 78ee(d), and the delayed start date for trading in security futures products.

[17] ($732,000,000 − $290,970,371 − $337,500)/$14,626,040,810,789 = $0.00003013. Consistent with the system requirements of the exchanges and the NASD, the Commission rounds this result to the seventh decimal point, yielding a rate of $30.10 per million.

The Commission recognizes that this fee rate is substantially higher than $15 per million initial fee rate set forth in the Fee Relief Act. However, this higher fee rate is a direct consequence of the dramatic decline in dollar volume in fiscal 2002 compared to the CBO's January 2001 projection of dollar volume for fiscal 2002. The recent decline in dollar volume for securities transactions subject to Section 31 fees is illustrated in Appendix A.

IV. Effective Date of the Uniform Adjusted Rate

Subparagraph 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year to which such rate applies. Therefore, the exchanges and the national securities association that are subject to Section 31 fees must pay fees under Sections 31(b) and (c) at the uniform adjusted rate of $30.10 per million for sales of securities transacted on April 1, 2002, and thereafter until the annual adjustment for fiscal 2003 is effective.[18]

[18] Paragraph 31(j)(1) and Section 31(g) of the Exchange Act require the Commission to issue an order no later than April 30, 2002, adjusting the fee rates applicable under Sections 31(b) and (c) for fiscal 2003. These fee rates for fiscal 2003 will be effective on the later of October 1, 2002 or thirty days after the enactment of the Commission's regular appropriation for fiscal 2003.

V. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,[19]

It is hereby ordered that the fee rates under Sections 31(b) and (c) of the Exchange Act shall be $30.10 per $1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2002, and thereafter until the annual adjustment for fiscal 2003 is effective.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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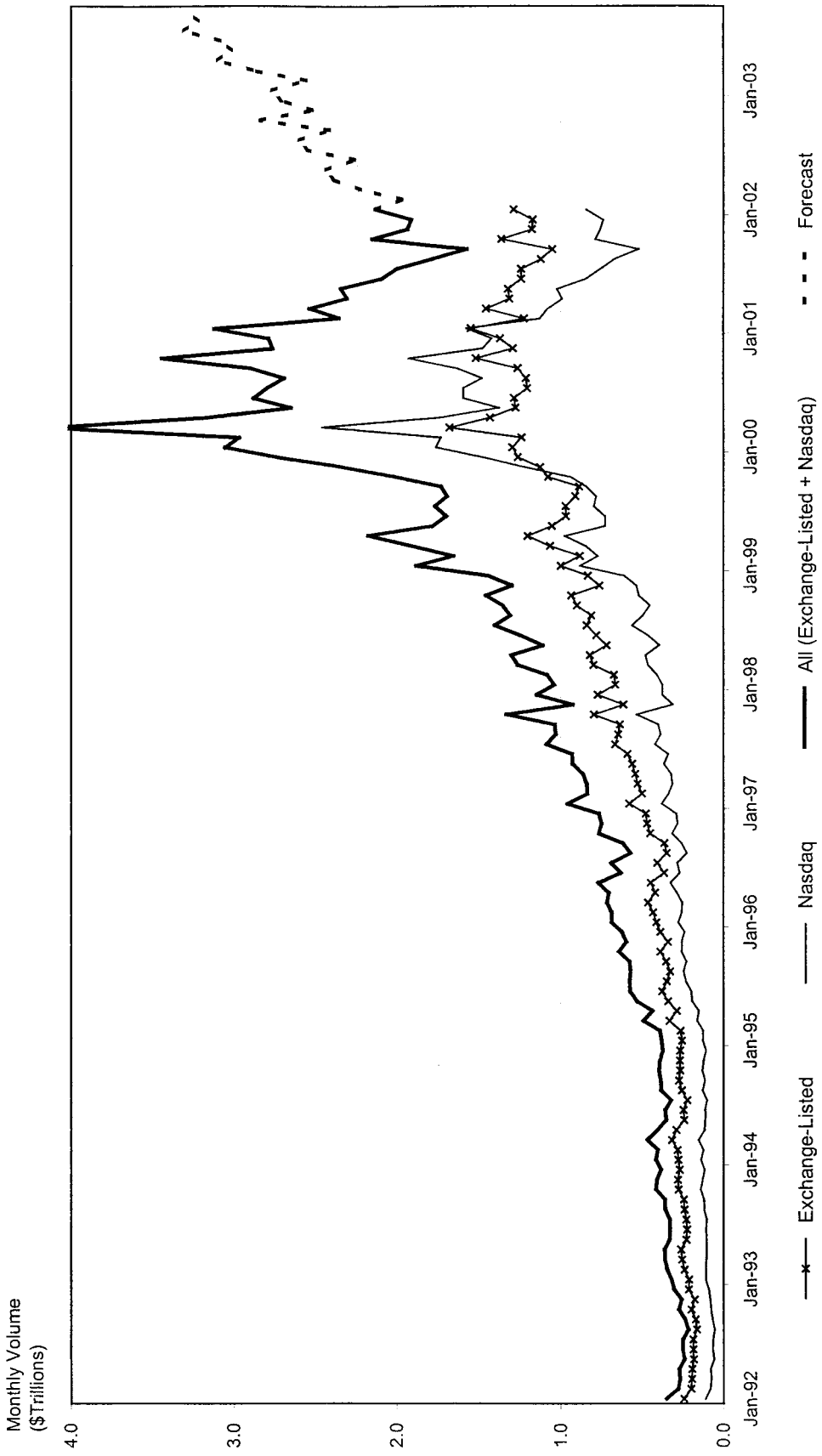
[19] 15 U.S.C. § 78ee.

APPENDIX A: Dollar Volume of U.S. Securities Transactions Subject to Exchange Act Section 31



[FR Doc. 02–5324 Filed 3–5–02; 8:45 am]
BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45482; File No. SR–CHX–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Extend Pilot Rule Change Relating to Participation in Crossing Transactions Effected on the Exchange Floor

February 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 proposes to extend through April 15, 2002, a pilot rule change relating to participation in crossing transactions effected on the Exchange. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002. The text of the proposed rule change is available at the Commission and at the CHX.

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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, a pilot rule change to CHX Article XX, Rule 23[5] that permits a CHX floor broker to consummate cross transactions involving 5,000 shares or more, without interference by any specialist or market maker if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject security. On February 23, 2001, the pilot was extended to an expiration date of July 9, 2001 and rendered applicable to both Dual Trading System issues and Nasdaq/NM securities.[6] Following a brief lapse of the pilot, it was extended through January 14, 2002.[7] The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[8] The CHX believes the proposal is consistent with section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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.

The Exchange has requested that the Commission waive the 5-day pre-filing requirement and accelerate the operative date. The Commission finds good cause to waive the 5-day pre-filing requirement and to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date and waiver of the 5-day pre-fling requirement will allow the pilot to continue uninterrupted through April 15, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (SR–CHX–00–13). The pilot originally applied only to Dual Trading System issues, because the Nasdaq market had not yet converted to decimal pricing.

[6] *See* Securities Exchange Act Release No. 44000 (February 23, 2001), 66 FR 13361 (March 5, 2001) (SR–CHX–00–27).

[7] *See* Securities Exchange Act Release No. 45066 (November 15, 2001), 66 FR 58769 (November 23, 2001) (SR–CHX–2001–23).

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

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 5-day pre-filing requirement and accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).