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 also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–94–4 and should be submitted by July 21, 1999.

For the Commission by the Division of market Regulation, pursuant to delegated authority.[6]

Margaret H. McMcFarland,

Deputy Secretary.

[FR Doc. 99–16577 Filed 6–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41549; File No. SR–NYSE–99–21]

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

June 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 under the Act,[2] notice is hereby given that on May 17, 1999, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 23, 1999, the Exchange filed with the commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to revise Exchange Rule 451, ''Transmission of Proxy Material'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material'' (collectively, the ''Rules''), and section 402.10 of the Exchange's Listed Company Manual. In particular, the Exchange seeks to amend the guidelines in the Rules that govern the reimbursement of NYSE member organizations for out-of-pocket expenses incurred in processing and delivering proxy materials (Exchange Rule 451) and other issuer materials (Exchange Rule 465) to security holders whose securities are held in street name.[4] These reimbursement guidelines, which are currently effective through August 31, 1999, comprise the ''Pilot Fee Structure.''[5] The Exchange also proposes to define the term ''nominee'' for purposes of determining the nominee coordination fee.

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

In its recent order extending the effectiveness of the Pilot Fee Structure, the Commission requested that the Exchange ''carefully review the Pilot Fee Structure and make changes where necessary to develop an improved fee structure.''[6] Pursuant to the Commission's request, the Exchange now proposes to revise the rates of reimbursement in the Pilot Fee Structure. The Exchange also proposes to extend the effectiveness of the Pilot Fee Structure from August 31, 1999, through August 31, 2001.

Substantively, the proposed rule change would amend the Exchange's Rules regarding reimbursement of NYSE member organizations for the expenses incurred in connection with proxy solicitations and other mailings by:

- Reducing the suggested rate of reimbursement from $0.50 to $0.45 for each set of proxy materials (*i.e.*, proxy statement, form of proxy, and annual report when mailed as a unit).
- Reducing from $20 to $18 the suggested per-nominee compensation of intermediaries that coordinate the proxy and mailing activities of multiple nominees (''nominee coordination fee'').
- Limiting the universe of ''nominees'' in respect of whom the $18 nominee coordination fee is payable to ''any entity whose name and participant account number both appear on a listing that accompanies and is referred to in an omnibus proxy that a registered clearing agency supplies to the issuer.'' This change would exclude from reimbursement ''secondary'' nominees, that is, nominees in respect of whom issuers have no direct interface.

Each of these proposals is designed to reduce the fees that NYSE member organizations are permitted to recover in connection with the transmission of proxy and other materials to security holders whose securities are held in street name. The Exchange believes that the proposed changes will create substantial savings for NYSE issuers.

The Exchange further believes that a reduction in the level of reimbursed fees is appropriate given the findings of the Exchange-sponsored audit that examined NYSE member firm reimbursements for the 1998 proxy season (1998 Audit''). The results of the 1998 Audit convinced the Exchange that the level of reimbursement has been too

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[6] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 removed from the proposed rule change the provision that would have permitted the householding of proxy and other materials through implied consent. At the request of the Commission, the Exchange will include the householding through implied consent proposal in a separate rule filing. Amendment No. 1 also clarified certain text discussing the proposed definition of nominee. *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated June 22, 1999 (''Amendment No. 1'').

[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 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.

[5] 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). The Exchange has extended the effectiveness of the Pilot Fee Structure on several occasions, most recently through August 31, 1999. *See* Securities Exchange Act Release No. 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) (''Order Extending Pilot Fee Structure'').

[6] *See* Order Extending Pilot Fee Structure, *supra* note 5.

high in recent years. The Exchange shared the results of the 1998 Audit with Commission staff, who expressed similar concerns. The Exchange has represented that the proposed changes are intended to reduce NYSE member firm reimbursements to a more appropriate level.

As for the proposed definition of ''nominee,'' the Exchange believes that it is only nominees that are participants in The Depository Trust Company (''DTC'') and that directly interface with issuers that should be counted for purposes of calculating the nominee coordination fee. The Exchange contends that coordination of distributions to second-tier nominees is performed by those participants, rather than by the coordinating intermediary that is known to the issuer. The Exchange reports that issuers have been billed $20 for activities relating to second-tier nominees, without knowing their identity or having the ability to verify their performance of ''nominee'' functions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act[7] 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 proposed changes were developed by the Exchange's Proxy Fee Working Committee, a group that the Exchange selected as representative of the parties interested in the proxy process. The proposal represents a consensus of a majority of that group. The Exchange has not otherwise solicited, and does not intend to solicit, comments on this 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. The Commission staff solicits specific comment on whether the Exchange rules should define the term ''nominee,'' and if so, whether the Exchange's proposed definition is appropriate. In this regard, it should be noted that the Commission's shareholder communications rules refer to banks,[8] brokers,[9] and dealers,[10] but do not define the term ''nominee.'' Although the rates of reimbursement included in the Pilot Fee Structure apply only to fees charged by NYSE member organizations, banks customarily charge the same rates.[11] The Exchange's proposed definition of ''nominee'' likely would have a more significant impact on bank nominees than broker-dealer nominees because it is common for banks that are ''top-tier'' direct participants in a clearing agency to hold and clear securities for multiple lower-tier ''respondent banks'' [12] that are not direct participants in a clearing agency. Although the Exchange has represented that it believes that most top-tier banks (*i.e.*, DTC participants) coordinates materials for lower-tier banks, the Commission staff is concerned that some top-tier clearing banks may not coordinate distributions of shareholder materials for lower-tier respondent banks; rather, the respondent banks may communicate directly with issuers about distribution of materials or hire an agent who coordinates material distribution on behalf of many respondent banks.

The Commission's rules clearly state that companies must reimburse not only the top-tier banks but the respondent banks as well for reasonable expenses incurred in mailing materials to beneficial owners.[13] In view of this requirement, should companies be required to pay the nominee coordination fee included in the Pilot Fee Structure for coordination activities relating to lower-tier respondent banks? Additional comment is solicited on whether the Exchange should define the term ''coordinate'' in its rules providing for a nominee coordination fee. If so, how should the term be defined? If the coordinating activities to be performed by banks and brokers-dealers to qualify for the nominee coordination fee were adequately defined by the NYSE rules, could the terms ''bank,'' ''broker,'' and ''dealer,'' as used in the Commission's rules, replace the term ''nominees'' in the NYSE rules?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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, 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–99–21 and should be submitted by August 30, 1999.

[7] 15 U.S.C. 78f(b)(5).

[8] Rule 14b–2(a)(1) under the Act defines the term ''bank'' as a bank, association, or other entity that exercises fiduciary powers. *See* 17 CFR 240.14b–2(a)(1).

[9] *See* 17 CFR 240.14b–1.

[10] *Id.*

[11] Rule 14b–2(c)(3) under the Act states that reimbursement rates charged by banks that are no greater than those permitted to be charged by brokers or dealers shall be deemed to be reasonable. *See* 17 CFR 240.14b–2(c)(3).

[12] Rule 14a–1(k) under the Act defines ''respondent bank'' for purposes of the shareholder communications rules as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers. *See* 17 CFR 240.14a–1(k).

[13] 17 CFR 240.14a–13(a)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16644 Filed 6–29–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41548; File No. SR–NYSE–99–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., to Increase the Examination Development Fee for the General Securities Representative Examination (Series 7)

June 22, 1999.

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 June 17, 1999, the New York Stock Exchange, Incorporated (''NYSE'' 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 has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NYSE under Section 19(b)(3)(A)(ii) of the Act,[3] 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 increase from $40 to $90 the examination development fee for the General Securities Representative Examination (''Series 7 Exam''). The fee will be charged to members and member organizations for each person who applies to take the Series 7 Exam.

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

In its filing with 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 exam development fee of $10 was adopted in 1986 and was intended to offset in part the costs of providing qualification examination programs by the Exchange. Prior to 1986 the Exchange received no fees to cover such expenses. In 1990, the fee was increased from $10 to $40.

The Exchange proposes to increase the fee to $90 to offset, in part, the costs of qualification examination and other sales practice related services provided by the Exchange. These costs include industry meetings, manpower, supplies, overhead, and other expenses associated with developing and maintaining the examination as well as costs to maintain the Exchange's Sales Practice Review Program including, but not limited to, field examinations. The development fee increase would also be used for the implementation of enhancements to the Series 7 Exam program which will ensure that the examination continues to reflect sound psychometric principles as well as employs up-to-date technology.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(4) of the Act,[4] which requires the rules of an exchange to provide for the equitable allocation of reasonable dues fees, and other charges among the members, issuers and other persons using its services.

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

The Exchange believe that the proposed rule change will 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

Comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder,[6] because it involves a due, fee, or other charge. 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 furthermore of the purposes of the Act.[7]

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 copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–NYSE–99–28, and should be submitted by July 21, 1999.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–16646 Filed 6–29–99; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

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

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).