

mechanism to review the unrestricted admissions, if warranted.

The Association has never been able to implement the NAC's call for review authority. The NASD states that several attempts have been made to do so, none of the procedures tried have been particularly effective.¹⁰ Therefore, the NAC and the NASD Board agreed to request temporary suspension of the NAC's review responsibilities. At the same time, the Association asserts that it will review the NASD Rule 1010 Series admissions procedures in their entirety, including the role of the NAC in that process. The Association expects to conclude its review by December 31, 1999.¹¹

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹² and particularly Section 15A(b)(8) thereof.¹³ Section 15A(b)(8) requires that the rules of a national securities association provide a fair procedure for the denial of membership to any person seeking membership therein.¹⁴ This must be balanced against the more general requirement that the rules of a national securities association promote the public interest and the protection of investors. Thus, while the Commission finds that it is reasonable to temporarily suspend the NAC's call for review responsibilities until December 31, 1999,¹⁵ during that time the Association must actively seek to develop an effective mechanism for reviewing unrestricted memberships approved by its district office staff, which the NASD has represented may be heightened oversight NASD headquarters staff of the NASD district membership decisions.¹⁶

The Commission notes, notwithstanding its approval of the Association's proposal to temporarily suspend NASD Rule 1015, the NASD is

still responsible for all oversight of membership admissions decisions, both restricted and unrestricted. In addition, during the temporary suspension of NASD Rule 1015, the approved procedures for the denial of membership to any person seeking NASD membership will not be affected. In approving the Association's proposal, the Commission relies upon the NASD's representation that the proposed rule change will neither alter a membership applicant's ability to independently seek NAC review of a membership decision, nor prejudice a membership applicant's rights under the NASD Rules.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 2 changes the proposed end date of the temporary suspension of NASD Rule 1015 from October 31, 1999, to December 31, 1999. The Commission believes that the extension of the temporary suspension of NASD Rule 1015 is reasonable in light of the efforts taken by the NASD to find an appropriate resolution for the review of membership decisions. The Commission notes that in NASD Notice to Members 99-67 the NASD published its recommendations for new procedures for the review of membership decisions for membership comment. The Commission believes an extension of the temporary suspension of NASD Rule 1015 should provide the Association with adequate time to consider and integrate any comments into the review procedures that will ultimately be implemented. Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(8) and 19(b) of the Act,¹⁷ to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-15 and should be submitted by [insert date 21 days from the date of publication].

V. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change, as amended, (SR-NASD-99-15) is temporarily approved, until December 31, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42086; File No. SR-NYSE-99-43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

November 1, 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 October 28, 1999, the New York Stock Exchange, Inc. (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 1, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.³ The

¹⁰ For example, the Association contemplated limiting the number of staff decisions to be considered for a call for review by focusing the process on certain categories of decisions, such as only new member application decisions or certain types of business expansions. The NASD determined, however, that such a procedure might be perceived as biased against those firms that fell within a selected category.

¹¹ See note 5, *above*.

¹² 15 U.S.C. 78o-3.

¹³ 15 U.S.C. 78o-3(b)(8).

¹⁴ *Id.*

¹⁵ See note 5, *above*.

¹⁶ The Commission notes that even prior to the noticing of this proposed rule change the NASD represented that it was working to achieve a workable solution to the implementation problems, and that significant progress was being made. This representation is critical to the Commission's approval of this proposal.

¹⁷ 15 U.S.C. 78o-3(b)(8) and 78s(b).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 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 to the proposed rule change requests that the Commission exercise its discretionary authority under rule 19b-4(f)(6)(iii) of

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 the effectiveness of the pilot fees ("Pilot Fee Structure") currently set forth in Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material." (collectively the "Rules"). The Rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on November 1, 1999. The Exchange proposes to extend the Pilot Fee Structure through January 3, 2000.

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

As first adopted, the Pilot Fee Structure revised the Rules to lower certain reimbursement guidelines, incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate

multiple nominees.⁴ The Pilot Fee Structure has been modified and extended several times,⁵ most recently by Commission order dated July 29, 1999.⁶

In June of this year, the Exchange submitted a proposed rule change to the Commission ("June Filing") to further revise the Pilot Fee Structure and extend its effectiveness through August 31, 2001.⁷ The June Filing proposes to reduce the basic processing fee and nominee coordination fee that NYSE member organizations and proxy distribution intermediaries may recover in connection with the distribution of proxy and shareholder communication materials to shareholders. The June Pilots also proposes to define the term "nominee" as it relates to the calculation of the nominee coordination fee.

The Exchange believes that an extension of the Pilot Fee Structure through January 3, 2000, will give the Commission additional time to fully consider the June Filing and the public comment letters regarding the June Filing,⁸ without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the Pilot Fee Structure (*i.e.*, the fees in effect prior to March 14, 1997) would return to effectiveness after November 1, 1999. The Exchange believes that such a result could be counterproductive and cause confusion among NYSE member organizations and issuers, especially given that the June Filing, proposing to extend the revised Pilot Fee Structure

through August 31, 2001, is still pending with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁹ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirement under Section 6(b)(5)¹⁰ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.¹¹

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

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date (or such shorter time period as designated by the Commission); the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the Act by designating such shorter time period, which waives the requirement that written notice of a "non-controversial" proposed rule change be provided to the Commission at least five business days before filing. See Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Sharon Lawson, Senior Special Counsel, Division of Market Regulations, Commission, dated November 1, 1999 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot, and designated May 13, 1998, as the date of expiration.

⁵ See Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from \$.55 to \$.50); 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); and 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) (order extending Pilot Fee Structure through August 31, 1999).

⁶ See Securities Exchange Act Release No. 41669 (July 29, 1999), 64 FR 43007 (Aug. 6, 1999) (order extending Pilot Fee Structure through November 1, 1999).

⁷ See Securities Exchange Act Release No. 41549 (June 23, 1999), 64 FR 35229 (June 30, 1999).

⁸ The Commission received comment letters from the Council of Institutional Investors, Association of Publicly Traded Companies, and Automatic Data Processing ("ADP"). The ADP comment letter included an economic analysis of the June Filing, which analysis was prepared by a consulting firm retained and paid by ADP. See Public File SR-NYSE-99-21.

of the Exchange Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

Under Rule 19b-4(f)(6)(iii),¹⁴ an exchange is ordinarily required to provide the Commission with written notice of its intent to file a "non-controversial" proposed rule change at least five business days prior to the filing date. In Amendment No. 1, however, the Exchange requested that the Commission exercise its discretionary authority under Rule 19b-4(f)(6)(iii) by designating such shorter time period so that the five day pre-filing requirement would be waived. Given the nature of the filing and absence of material issues, the Commission believes that it is appropriate to waive the five day pre-filing requirement for the proposed rule change.

In addition, a proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may take effect no later than November 1, 1999. The immediate effectiveness would allow the current Pilot Fee Structure to continue uninterrupted, and would provide the Commission with additional time to complete its review of the June Filing and related comment letters.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective immediately upon filing for the following reasons. The proposed rule change extends the expiration date of the Pilot Fee Structure from November 1, 1999, through January 3, 2000. The extension of the Pilot Fee Structure will provide the Commission with further time to complete its review and evaluation of the June Filing. In particular, the Commission is still reviewing the economic analysis of the June Filing that was submitted by ADP. Thus, the extension will afford the Commission the additional time necessary to thoroughly consider the substance of ADP's economic analysis and the issues raised in the comment letters.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the

reimbursement rates for proxy materials distributed after November 1, 1999, will revert to those in effect prior to March 14, 1997. The Commission believes such a result could be confusing and counterproductive, especially given that the June Filing proposing to extend the Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule change, and Amendment No. 1, become immediately effective upon the date of filing, October 28, 1999. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-9943 and should be submitted by November 29, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42087; File No. SR-NYSE-99-29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to a Proposed Rule Change by the New York Stock Exchange, Inc. Extending a Pilot Program Relating to Continued Listing Standards Through December 1, 1999

November 1, 1999.

1. Introduction

On June 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "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 amend Section 8 of its *Listed Company Manual* ("Manual"), make corresponding changes to NYSE Rule 499, and implement the proposed changes pursuant to a pilot program ("pilot"). On July 26, 1999, the Commission issued notice of the filing and approved, on an accelerated basis, the portion of the filing establishing a pilot through November 1, 1999.³

On October 26, 1999, the NYSE submitted Amendment No. 1, proposing to revise the continued listing criteria applicable to closed-end investment companies ("Funds").⁴ On November 1, 1999, the NYSE submitted Amendment No. 2, proposing to extend the pilot until December 1, 1999, or such earlier time as the Commission approves the Exchange's request for permanent approval of the program.⁵ The Commission is publishing this notice to solicit comments on and grant accelerated approval to Amendment No. 2.

II. Proposed Rule Change

In Amendment No. 2, the NYSE is proposing to extend the pilot which amends Section 8 of the NYSE Manual and makes corresponding changes to NYSE Rule 499 regarding criteria governing the continued listing of securities. The proposed rule change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41648 (July 26, 1999), 64 FR 41986 (August 2, 1999).

⁴ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation, SEC, dated October 25, 1999.

⁵ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, SEC, dated November 1, 1999.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ 17 CFR 200.30-3(a)(12).