

result in any burden on competition not necessary or appropriate in furtherance of the Exchange Act. Therefore, the Commission finds that the proposal is consistent with section 15A(b)(9) of the Exchange Act.⁶²

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act⁶³ that the proposed rule change (SR-NASD-00-02), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45258; File No. SR-NYSE-2002-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Fees for Mandatory Participation in the Floor Member Continuing Education Program

January 9, 2002.

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 January 4, 2002, the New York Stock Exchange, Inc. ("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 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 establish fees as of January 14, 2002 to be charged to members that are active on the floor of the Exchange who are required under NYSE Rule 103A (Specialist Stock Reallocation and Member Education and Performance) to participate in the Exchange's Floor Member Continuing Education Program on a semi-annual basis. The text of the proposed rule

change is available at the NYSE 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 NYSE included statements concerning the purpose of and basis for its proposal 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 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

NYSE Rule 103A requires members active on the floor of the Exchange to participate in the Exchange's Floor Member Continuing Education Program on a semi-annual basis and at such other times as may be necessary in connection with any particular matter or matters. Any floor member who fails to complete an educational program as scheduled must attend a make-up program no later than 120 days from the date of the originally scheduled program. Failure to do so will result in the member being precluded from entering on the floor until such time as the member satisfies the requirement to participate in the program.

A new interactive computer-based education program has been developed that will be implemented during January 2002. Participants will be required to be trained on market activities such as Opening, Intra-Day and the Closing. Specific categories include, but are not limited to: foreign stocks and parity, the opening of a volatile stock, NYSE Rule 127 (Block Positioning) and NYSE Rule 726 (Delivery of Options Disclosure Document and Prospectus) trades, CAP orders, error accounts, crossing sessions, MOC/LOC orders and informational imbalances. An industry committee has also been formed to guide the development of the content. Participation will continue to be required on a semi-annual basis, and a \$100 registration fee will be charged for each session.

If a registrant fails to keep the scheduled appointment or does not complete the session, the registrant will be charged an additional \$100 to re-register for another session.

The proposed fees are intended to help offset the costs of developing the

program and infrastructure, administration, and ongoing development and maintenance.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the provisions of section 6(b)(4) of the Act,³ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using its services.

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

The Exchange does not believe that the proposed rule change will 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 Act⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁵ 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 furtherance of the purposes of the Act.

VI. 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

⁶² 15 U.S.C. 78o-3(b)(9).

⁶³ 15 U.S.C. 78s(b)(2).

⁶⁴ 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. 78f(b)(4).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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 NYSE. All submissions should refer to file number SR-NYSE-2002-02 and should be submitted by February 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45263; File No. SR-NYSE-2001-53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth in Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines

January 9, 2002.

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 December 21, 2001, the New York Stock Exchange, Inc. ("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. On January 9, 2002, the NYSE filed 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

Subject to the guideline amendments noted below, the Exchange seeks

permanent approval of the pilot program setting forth guidelines for the amounts that NYSE issuers should reimburse member organizations for the distribution of proxy materials and other issuer communications to security holders whose securities are held in street name. In addition, the Exchange proposes to amend the guidelines under the current pilot program by decreasing the basic mailing fee paid by "Large Issuers" (as defined below) by 5¢ (from 50¢ to 45¢) and by cutting in half the incentive fee payable by Large Issuers (from 50¢ to 25¢).

The text of the proposed rule change, as amended, is available upon request from the Office of the Secretary, the NYSE or 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

Exchange Rule 451 ("Transmission of Proxy Material") and Exchange Rule 465 ("Transmission of Interim Reports and Other Material") (collectively, the "Rules") currently provide for a pilot program pursuant to which the NYSE has established fee reimbursement guidelines (the "Pilot Program"). Under the Pilot Program, the NYSE has established guidelines for the amounts that NYSE issuers should reimburse member organizations for the distribution of proxy materials and other issuer communications to security holders whose securities are held in street name (the "Guidelines"). In this proposed rule change, as amended, the Exchange seeks permanent approval of the Pilot Program Guidelines. In addition, the Exchange proposes to amend certain reimbursement fees that the Guidelines establish. Those amendments seek to decrease the basic mailing fees paid by large issuers by 5¢ (from 50¢ to 45¢) and to cut in half (from 50¢ to 25¢) the incentive

"suppression" fee that large issuers pay to member organizations that succeed in reducing the number of sets of materials that need to be distributed (such as by sending one set of materials to a household holding multiple positions in the issuer's securities).

A. Permanent Approval

Supplementary Material .90 ("Schedule of approved charges by member organizations in connection with proxy solicitations") to Exchange Rule 451 applies the Guidelines to the transmission of proxy materials to shareholders. Supplementary material .20 ("Mailing charges by member organizations") to Exchange Rule 465 applies them to the transmission of other materials to shareholders. In addition, Paragraph 402.10(A) of the NYSE's *Listed Company Manual* ("Charges for Initial Proxy and/or Annual Report Mailings") includes the text of Supplementary Material .90 to Exchange Rule 451 and the Exchange proposes to conform Paragraph 402.10(A) to conform to the changes described below to Exchange Rule 451. The Commission initially approved the Pilot Program on March 14, 1997.⁴ Pursuant to Commission extensions of its initial approval, the Pilot Program has remained in effect since then. Pursuant to the Commission's most recent extension, the Pilot Program is currently scheduled to expire on April 1, 2002.⁵

During this period, the NYSE has participated on the Proxy Voting Review Committee (the "Committee"). The Committee is a private initiative that is designed to review the proxy process. It includes self-regulatory organizations and representatives of the securities industry, corporate issuers and institutional investors, as well as the largest provider of proxy intermediary services. The Committee has monitored the effects of the Guidelines on the market and has maintained an on-going dialogue among Committee representatives. In addition, the Exchange has had an independent accounting firm audit the Pilot Program.⁶

The Committee's experience with the Pilot Program has convinced it that the Guidelines have been instrumental in setting at fair and reasonable levels the costs that issuers incur in having member organizations and

⁴ See Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 24, 1997) (File No. SR-NYSE-96-36).

⁵ See Securities Exchange Act Release No. 44750 (August 29, 2001), 66 FR 46488 (September 5, 2001) (File No. SR-NYSE-2001-22).

⁶ See Amendment No. 1, *supra* note 3.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate, NYSE, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated January 7, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange made some technical and clarifying corrections to the proposed rule change.