the proposal to require simple majority voting on all matters submitted for a stockholder vote is approved by the stockholders, the Board will take action consistent with Maryland law to remove the requirement of the two super-majority votes discussed above and instead provide that these business combinations may be approved by a majority of the votes entitled to be cast on the matter. If this proposal is approved and the Board takes the action described above, the Board will also take all action necessary under Maryland law to require stockholder approval to opt back into the super-majority voting provisions of the Maryland Business Combination Act.

C. *Declassification of the Board.* An Allegheny stockholder proposes to present for stockholder consideration a proposal to elect each Allegheny director annually, which would have the effect of declassifying the Board effective as of the 2005 annual meeting of stockholders. In July 1999, the Board made an election under Maryland law to subject Allegheny to provisions of the Maryland General Corporation Law that provide for a classified board. Under these provisions, the Board is currently divided into three classes of directors, with each class serving a three-year term and one class being elected each year. A majority of stockholders voted in favor of eliminating the classified board system at the 2001, 2002 and 2003 annual meetings of stockholders. In light of the level of stockholder support for this change, the Nominating and Governance Committee of the Board reviewed this matter in January 2004 and recommended to the Board that the classified board system be eliminated. If stockholders approve the proposal, the Board intends to take all action required under Maryland law to declassify the Board and to take all further action necessary to implement the change so that the election of directors will be annualized beginning at the 2005 annual meeting of stockholders. If this proposal is approved and the Board takes the action described, the Board will also take all action necessary under Maryland law to require stockholder approval to opt back into the provisions of Maryland law to classify the Board.

D. *Proxy Solicitation in Connection with Stockholder Rights Agreement.* Allegheny's proxy statement will contain a stockholder proposal regarding stockholder input on stockholder rights agreements. Specifically, this proposal seeks to require that adoption or extension of any future stockholder rights agreement be submitted to a stockholder vote. Allegheny seeks authorization to solicit proxies in connection with the stockholder proposal.[1]

II. Order for Solicitation of Proxies

Allegheny has requested that an order be issued authorizing commencement of the solicitation of proxies from the holders of outstanding shares of common stock for approval of the various Charter and bylaw changes discussed in detail above and for the approval of changes in stockholder input with regard to stockholder rights agreements. It appears to the Commission that Allegheny's Declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

III. Rule 54 Analysis

Rule 54 promulgated under the Act states that in determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator (''EWG'') or a foreign utility company (''FUCO''), or other transactions by such registered holding company or its subsidiaries, other than with respect to EWGs or FUCOs, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an EWG or a FUCO upon the registered holding company system if rules 53(a), (b) or (c) are satisfied.

Allegheny does not satisfy the requirements of rule 53(a)(1). The Commission has authorized Allegheny to invest up to $2 billion in EWGs and FUCOs and found that this investment would not have either of the adverse effects set forth in rule 53(c). As of September 30, 2003, Allegheny's ''aggregate investment,'' as defined in rule 53(a)(l), was approximately $185 million. Allegheny is, however, no longer in compliance with the financing conditions of its financing orders. As of September 30, 2003, Allegheny's common equity ratio was below 28 percent. As a result, Allegheny is no longer able to make any investments in EWGs and FUCOs, without further authorization from the Commission.[2]

Allegheny currently complies with, and will comply with, rules 53(a)(2), 53(a)(3), and 53(a)(4). None of the circumstances described in 53(b)(1) have occurred. The circumstances described in rule 53(b)(2) and (b)(3) have occurred. And, the requirements of rule 53(c) are met.

Allegheny believes that the requested authorization will not have a substantial adverse impact upon the financial integrity of Allegheny nor its public utility company subsidiaries (''Operating Companies''). Allegheny maintains that the requested relief will not adversely affect the Operating Companies and their customers. The ratio of common equity to total capitalization of each of the Operating Companies will continue to be maintained at not less than 30 percent.[3] Furthermore, the common equity ratios of the Operating Companies will not be affected by the proposed transactions.

The fees, commissions and expenses incurred or to be incurred in connection with this Declaration will not exceed $10,000. Allegheny maintains that no state or federal regulatory agency, other than the Commission, has jurisdiction over the requested authority.

It is ordered, under rule 62 of the Act, that the Declaration regarding the proposed solicitation of proxies from the holders of outstanding shares of Allegheny common stock become effective immediately, subject to the terms and conditions of rule 24 under the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–6169 Filed 3–18–04; 8:45 am]

BILLING CODE 8010–01–P

[1] On October 14, 2003, Allegheny filed an application in file no. 70–10178 to redeem the rights under its existing stockholder rights agreement.

[2] As of September 30, 2003, Allegheny had a consolidated common equity ratio of 20.9 percent and Allegheny Energy Supply Company LLC had a consolidated common equity ratio of 15.71 percent.

[3] The common equity ratios of the Operating Companies as of September 30, 2003 are as follows: West Penn Power Company: 48 percent; Potomac Edison Company: 48 percent; and Monongahela Power Company: 37 percent.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49414; File No. SR–NYSE–2003–33]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the New York Stock Exchange, Inc., Relating to Exchange Fees for Closed-End Funds

March 12, 2004.

On October 20, 2003, 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 NYSE. On November 24, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[1] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 3, 2003.[2] The Commission received one comment letter on the proposed rule change.[3] On February 20, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.[4] This order approves the proposed rule change, as amended.

I. Description of the Proposed Rule Change

In August 2003, the Exchange reduced the original listing fees applicable to closed-end funds,[5] and in October 2003, the Exchange capped at $75,000 the original listing fees applicable to two or more funds from the same fund family listing at the same time.[6]

The Exchange is now proposing to amend the continuing annual listing fees applicable to closed-end funds by establishing a new continuing fee structure with increased fund family discounts and a new per million share base rate applicable to all closed-end funds.

In establishing a new base rate applicable to all closed-end funds, the Exchange will no longer apply the existing five-tiered continued listing fee structure and, instead, closed-end funds will pay at a rate of $930 per million shares, subject to a minimum annual fee of $25,000. To clarify the applicability of the $25,000 minimum, that amount would actually cover funds with up to 26,881,720 shares outstanding. It is only beyond that size that the multiplication of the per share rate ($930/million) by the shares outstanding would produce a fee in excess of the $25,000 minimum.

The Exchange also proposes to increase and expand the availability of the discounts applicable to fund families with multiple funds listed. As proposed, fund families with between 3 and 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with more than 14 listed closed-end funds will receive a discount of 15%. Currently, fund families with between 5 and 15 closed-end funds listed receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with 16 or more listed closed-end funds receive a discount of 10%.

In a previous filing revising listing fees generally,[7] the Exchange eliminated the fee policy under which shares subject to continuing annual fees for a period of 15 consecutive years became exempt from further fees. At the time, the Exchange noted that it was continuing the 15-year exemption policy for closed-end funds pending further study and revision of the fees charged to closed-end funds generally. Given the new fee structure implemented for closed-end funds under this proposal and the other filings referred to herein, the Exchange has concluded that it is now appropriate to eliminate the 15-year exemption policy for closed-end funds consistent with the amendments made with respect to listed operating companies in December 2002. The Exchange is phasing-in increases in fees for closed-end funds that were previously eligible for the 15-year exemption so that closed-end funds that are affected by the elimination will pay only 50% of increased fees in fiscal year 2004 and 100% in fiscal year 2005 and afterwards.

The impact of the proposed continuing annual fee changes in their entirety on an individual fund will vary depending on a fund's shares outstanding and other circumstances. First of all, the Exchange states that its rule has, and will continue to have, an overall fund family fee cap of $1 million per year. Of the 407 listed closed end funds, the Exchange states that 118 are in fund families covered by the $1 million fee cap. Of the remaining 289 funds, factoring in the net effect of the change to the new per share rate from the existing five-tiered formula, the elimination of the 15-year exemption policy, and the increases in the fund family discounts, the Exchange's analysis (based on the information it currently has on fund shares outstanding) is that 55 funds would experience an increase in continuing annual fees, 150 would experience a decrease, and 84 would experience no net change. Of those that can be expected to experience an increase, the Exchange expects that the average increase would be 15.6% and the median increase 8.2%. The Exchange expects that the maximum increase for any one fund would be 73% (in that case, $44,700). Of the 150 funds the Exchange expects to experience a decrease, the average decrease would be 25.4% and the median decrease would be 28.6%. The maximum decrease for any one fund would be 36% (in that case, $12,000). While some funds would experience an increase in continuing annual fees and others a decrease, the overall impact on the Exchange would be a net decrease in continuing annual fees of approximately $900,000.

II. Summary of Comments

The Commission received one comment letter on the proposal.[8] There were several issues raised by the commenter. First, the commenter[9] observed that as a long-standing fund not part of a large fund complex, the NYSE's proposed rule change would significantly increase the continuing annual fees that the commenter would be required to pay. Although the commenter did not object to the NYSE's increase in the per-million share rate, the commenter observed that eliminating the 15-year exemption policy would increase the continuing annual fee for the commenter by 57%, and further observed that while this was within the range described by the NYSE, it was significantly above the average and median increases projected by the Exchange. The commenter requested a three-year phase in period for the elimination of the 15-year exemption policy in order to cushion the effect of the fee increase.

In response to the commenter's concerns, the Exchange responded that the increase in the commenter's fees were consistent with the Exchange's estimates of the range of fee increases. The Exchange also noted that the elimination of the 15-year exemption policy was consistent with recent changes to the Exchange's fee structure. Although the Exchange considered a three-year phase in period for the elimination of the 15-year exemption policy unnecessary, the Exchange

[1] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 24, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified the effect of the proposed rule change on the fees payable by closed-end funds, particularly closed-end funds not part of a fund family.

[2] *See* Securities Exchange Act Release No. 48833 (December 3, 2003), 68 FR 67717 (SR–NYSE–2003–33).

[3] *See* Letter to Jonathan G. Katz, Secretary, Commission, from Lawrence J. Hooper, Jr., Vice President, Secretary and General Counsel, The Adams Express Company, dated December 23, 2003 (''Adams Letter'').

[4] Amendment No. 2 replaces the originally filed Form 19b–4 in its entirety. (''Amendment No. 2''). In Amendment No. 2, the Exchange amended its original proposal to include a two-year phase in for the fees resulting from the elimination of the 15-year exclusion.

[5] *See* Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR–NYSE–2003–22).

[6] *See* Securities Exchange Act Release No. 48685 (October 23, 2003), 68 FR 61710 (October 29, 2003) (SR–NYSE–2003–32).

[7] *See* Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (SR–NYSE–2002–62).

[8] *See* note 3, *supra.*

[9] *See* Adams Letter.

proposed a two-year phase in period instead. The Exchange's proposal would therefore result in a company's paying 50% of the fee increase during the first year and 100% of the increase in the second year.

III. Discussion

After careful review, 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.[10] In particular, the Commission finds the proposal is consistent with Section 6(b)(4) of the Act[11] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[12] The Commission believes that the NYSE's proposal to increase the listing fees applicable to closed-end funds is consistent with the Act because it is consistent with the Exchange's recent revisions to their fees generally and further provides for a net decrease in fees applicable to funds generally.

After careful consideration of the commenter's concerns about the increases in the fees applicable to the commenter, the Commission finds that the NYSE's determination to phase in the increase in fees over a two-year period is responsive to the commenter's observations that its fees would increase significantly as a result of the elimination of the 15-year exemption policy for closed-end funds. The Commission has also carefully considered the commenters' concerns about the fee increase applicable to closed-end funds that are not part of a larger fund family. The Commission finds that although the commenter's fees will increase by 57%, the increase is within the range identified by the Exchange, and that the fee increases for closed-end funds are commensurate with the Exchange's recent amendments to the fees applicable to listed operating companies, consistent with Section 6(b)(4) of the Act.[13]

IV. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after notice of the publication in the **Federal Register**. The Exchange wishes to begin applying the proposed fee changes effective no later than January 1, 2004. The Commission finds that good cause exists to justify accelerated effectiveness to enable the fee change to be imposed no later than at the beginning of the new calendar year. The Commission believes that it is not necessary to separately solicit comment on Amendment 2 prior to approving this proposal because it finds that these changes to the proposed rule language respond to and incorporate suggestions made by the Commission and the commenter to the original proposal. The Commission therefore finds that acceleration of Amendment No. 2 is appropriate.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendments are 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.

Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NYSE–2003–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the amendments 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 also will be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NYSE–2003–33 and should be submitted by April 9, 2004.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change and Amendment No. 1 (SR–NYSE–2003–33), is approved, and Amendment No. 2 is approved on an accelerated basis.

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

Jill M. Peterson,

Assistant Secretary.

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

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms, to be used only in the event that inductions into the Armed Services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS—254

Title: Application for Voluntary Induction.

Purpose: Is used to apply for voluntary induction into the Armed Services.

Respondents: Registrants or nonregistrants who have attained the age of 17 years, who have not attained the age of 26 years and who have not completed his active duty obligation under the Military Selective Service Act.

Frequency: One-time.

Burden: The reporting burden is twelve minutes or less per individual.

SSS—350

Title: Registrant Travel Reimbursement Request.

Purpose: Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.

Respondents: All registrants required to travel to or from a Military Entrance Processing Station at their own expense.

Frequency: One-time.

Burden: The reporting burden is ten minutes or less per request.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Office, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed