

amend the current Pilot Fee Structure.¹² By extending the current Pilot Fee Structure, the Commission will be able to fully consider, and solicit comment from interested persons regarding, the proposed amended Pilot Fee Structure.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative on immediately through October 10, 2000. 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 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 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 NYSE. All submissions should refer to file No. SR-NSYE-00-35 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43159; File No. SR-NYSE-00-36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by 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 and Amending the Components of Coordination Activities

August 16, 2000.

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 August 11, 2000, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "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 NYSE proposes to extend the effectiveness of the pilot fee structure ("Pilot Fee Structure") currently set forth in Exchange Rules 451, "Transmission of Proxy Material," and 465, "Transmission of Interim Reports and other Material" ("Rules").³ Among other things, the Rules establish guidelines for the reimbursement of expenses by NTSE issuers to NYSE member organizations for the processing of proxy materials and other issuer communications (collectively, "Materials") with respect to security holders whose securities are held in street name. The current pilot period regarding the rules is scheduled to expire on October 10, 2000.⁴ NYSE proposes to extend the Pilot Fee Structure through September 1, 2001.

In addition, NYSE proposes to amend the functions that an intermediary is expected to perform, at a minimum, to recover the suggested intermediary-coordination fee set forth in the Rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The text of rule 451 also is included at Para. 402.10(A) of the Exchange's *Listed Company Manual* and the Exchange proposes to make conforming changes to that paragraph.

⁴ See Securities Exchange Act Release No. 43151 (August 14, 2000).

The text of the proposed rule change follows; additions are *italicized*; deletions are [bracketed].

Transmission of Proxy Material

Rule 451.—No change.

* * * Supplementary Material:

.10 through .80—No change.

.90 Schedule of approved charges by member organizations in connection with proxy solicitations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to rule 451 and in mailing interim reports or other material pursuant to Rule 465. In addition to the charges specified in this schedule, member organizations also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

Charges for Initial Proxy and/or Annual Report Mailings

Effective February 12, 1998, 50¢ for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

Effective March 14, 1997, \$1.00 for each set of proxy materials, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

Effective March 14, 1997, 15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum of \$3.00 for all sets mailed;

Effective March 14, 1997, the Exchange has approved as fair and reasonable, a supplemental proxy fee per nominee of \$20.00 for any intermediary that coordinates multiple nominees, provided that such intermediary, *at a minimum:*

(1) *coordinates the search for nominees and beneficial owners, including:*

(a) *searching for all nominees that are clients of the intermediary;*

¹² See File No. SR-NYSE-00-36.

¹³ 17 CFT 200.30-3(a)(12).

(b) obtaining beneficial ownership lists from nominees;

(c) consolidating nominee responses to the issuer's beneficial owner requests; and

(d) [(1)] providing [provides] to an issuer the names and addresses of the nominee[s] in response to the issuer's request pursuant to rule 14a-13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the "Exchange Act");

(2) prepares issuer materials across multiple nominees for distribution, including:

(a) ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and

(b) packaging and labeling issuer materials;

(3) transmits the issuer's proxy materials to the beneficial owners of the shares by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;

(4) provides vote reports, including:

(a) receiving and tabulating vote responses;

(b) providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;

(c) thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;

(d) providing two vote reports on the day before the meeting; and

(e) providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and

(5) consolidates invoices payable by the issuer for the processing of multiple nominees.

For the purposes of this Supplementary Material .90, the term "nominee" means an entity that:

(1) is either:

(a) "record holder" as defined in Rule 14a-1(i) under the Exchange Act;

(b) a "respondent bank" as defined in Rule 14a-1(k) under the Exchange Act; or

(c) a "respondent broker or dealer" as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or as respondent bank or respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A "respondent broker or dealer" means a broker or dealer that holds securities on behalf of beneficial owners

and that deposits such securities for safekeeping with another broker or dealer.

Charges for Proxy Follow-Up Mailings—No change.

Charges for Interim Report Mailings—No change.

Incentive Fees—No change.

.91 through .95—No change.

Transmission of Interim Reports and Other Material

Rule 465.—No change.

* * * Supplementary Material:

.10 Application of Rule—No change.

.20 Mailing charges by member organizations.—The Exchange has approved the following as fair and reasonable rates of reimbursement of member organizations for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 451 and in mailing interim reports or other material pursuant to Rule 465. In addition to the charges specified in this schedule, member organizations are also entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

Charges for Initial Proxy and/or Annual Report Mailings

Effective February 12, 1998, 50¢ for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

Effective March 14, 1997, \$1.00 for each set of proxy materials, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

Effective March 14, 1997, 15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum of \$3.00 for all sets so mailed;

Effective March 14, 1997, the Exchange has approved as fair and reasonable, a supplemental proxy fee per nominee of \$20.00 for any intermediary that coordinates multiple

nominees, provided that such intermediary, at a minimum;

(1) coordinates the search for nominees and beneficial owners, including:

(a) searching for all nominees that are clients of the intermediary;

(b) obtaining beneficial ownerships lists from nominees;

(c) consolidating nominee responses to the issuer's beneficial owner requests; and

(d) [(1)] providing [provides] to an issuer the names and addresses of the nominee[s] in response to the issuer's request pursuant to Rules 14a-13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the "Exchange Act");

(2) prepares issuer materials across multiple nominees for distribution, including:

(a) ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and

(b) packaging and labeling issuer materials;

(3) transmits the issuer's proxy materials to the beneficial owners of the shares by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;

(4) provides vote reports, including:

(a) receiving and tabulating vote responses;

(b) providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;

(c) thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;

(d) providing two vote reports on the day before the meeting; and

(e) providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and

(5) consolidates invoices payable by the issuer for the processing of multiple nominees.

For the purposes of this Supplementary Material .90, the term "nominee" means an entity that:

(1) is either:

(a) a "record holder" as defined in Rule 14a-1(i) under the Exchange Act;

(b) a "respondent bank" as defined in Rule 14a-1(k) under the Exchange Act; or

(c) a "respondent broker or dealer" as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or respondent bank or

respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A "respondent broker or dealer" means a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer.

Charges for Proxy Follow-Up Mailings—No change.

Charges for Interim Report Mailings—No change.

Incentive Fees—No change.

.21 through .25—No change.

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Text of Changes to the Listed Company Manual

402.10 Charges by Member Organizations for Distributing Material:

* * * * *

(A) Charges for Initial Proxy and/or Annual Report Mailings

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A supplemental proxy fee per nominee of \$20.00 for any intermediary that coordinates multiple nominees, provided that such intermediary, at a minimum:

(1) *coordinates that search for nominees and beneficial owners, including:*

(a) *searching for all nominees that are clients of the intermediary;*

(b) *obtaining beneficial ownership lists from nominees;*

(c) *consolidating nominee responses to the issuer's beneficial owner requests; and*

(d) **[(1)] providing [provides]** to an issuer the names and addresses of the nominee[s] in response to the issuer's request pursuant to Rule 14a-13(a)(1)(D) under Securities Exchange Act of 1934, as amended (the "Exchange Act");

(2) *prepared issuer materials across multiple nominees for distribution, including:*

(a) *ordering appropriate quantities of the materials from the issuer on behalf of multiple nominees within no more than seven business days of the issuer's request; and*

(b) *packing and labeling issuer materials;*

(3) *transmits the issuer's proxy materials to the beneficial owners of the shares by making effective use of bulk mailing opportunities by combining nominees for bulk mailings as the issuer may request;*

(4) *provides vote reports, including:*

(a) *receiving and tabulating vote responses;*

(b) *providing a vote report that is consolidated across multiple nominees no less than 10 days before a shareholder meeting;*

(c) *thereafter providing daily vote updates that are consolidated across multiple nominees until the day before the meeting;*

(d) *providing two vote reports on the day before the meeting; and*

(e) *providing a final vote report, consolidated across multiple nominees, on the day of the meeting; and*

(5) *consolidates invoices payable by the issuer for the processing of multiple nominees.*

For the purposes of this Supplementary Material .90, the term "nominee" means an entity that:

(1) is either:

(a) a "record holder" as defined in Rule 14a-1(i) under the Exchange Act;

(b) a "record bank" as defined in Rule 14a-1(k) under the Exchange Act; or

(c) a "respondent broker or dealer" as defined below; and

(2) has the legal right to vote the shares it holds as record holder under state law or through contractual arrangement, or as respondent bank or respondent broker or dealer, on behalf of one or more beneficial owners, which right to vote is capable of verification and reconciliation to the issuer's records.

A "respondent broker or dealer" means a broker or dealer that holds securities on behalf of beneficial owners and that deposits such securities for safekeeping with another broker or dealer.

INCENTIVE FEES—No change.

(B) through (D)—No change.

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 section 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

Among other things, the Pilot Free Structure lowers certain guidelines

concerning the reimbursement of fees for the distribution of Materials, creates incentive fees to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees. The proposed rule change would extend the Pilot Fee Structure's termination date from October 10, 2000, to September 1, 2001.

The Exchange believes that an extension of the Pilot Fee Structure's termination date will give the Commission additional time to consider the pilot program, without a lapse in the current rules. Absent an extension of the Pilot Fee Structure's termination date, the fees in effect prior to the Pilot Fee Structure would return to effectiveness after October 10, 2000, creating confusion in the market.

In addition, NYSE proposes to amend the functions that an intermediary is expected to perform, at a minimum, in order to recover the suggested intermediary-coordination fee set forth in the Rules. Currently, the only such functions that the Rules explicitly enumerate are (1) providing the issuer with the names and addresses of nominees pursuant to an issuer request, and (2) transmitting the issuer's proxy materials to the beneficial owners of the shares.

The Exchange proposes to include the first of those two functions within a broader category of functions: Intermediary coordination of the search for nominees and beneficial owners. This broader function includes (in addition to providing nominee names and addresses) searching for all nominees that are clients of the intermediary, obtaining beneficial ownership lists from nominees, and consolidating nominee responses to the issuer's beneficial owner requests.

The Exchange proposes to clarify the latter of those two currently specified functions by specifying that those transmissions should make efficient use of bulk mailing opportunities by combining nominees for bulk mailing as the issuer may request.

In addition, the Exchange proposes to cause the Rules to explicitly list three additional functions that an intermediary would be expected to perform in order to earn its coordination fee in respect of a nominee. First, the intermediary would be expected to prepare issuer materials for distribution, including ordering adequate supplies of materials, packaging and labeling. Second, the intermediary would be expected to provide reports of proxy votes. That function would include receiving and tabulating votes, consolidating vote tallies cast by

multiple nominees at least 10 days prior to a shareholder meeting, thereafter providing daily updates on a consolidated basis up through the day prior to the meeting, providing two vote reports on the day prior to the meeting, and providing a final, consolidated vote report on the date of the meeting. Finally, the intermediary would be expected to consolidate the invoices that it presents to an issuer for the processing of multiple nominees.

These additions of proposed specificity to the functions that are expected of the intermediary in return for the coordination fee are not meant to be exclusive. However, NYSE believes that adding this level of specificity in connection with the minimum performance to be expected of an intermediary will help to clarify the relationship between intermediary and issuer. Both issuers and intermediaries will be put on notice as to the minimum performance that is to be expected of an intermediary in its performance of coordination functions.

2. Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)⁵ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In addition, the Exchange believes that an additional basis for the proposed rule change is the requirement under Section 6(b)(5)⁶ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and 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 on Burden on Competition

The Exchange believes that 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

According to the Exchange, it has engaged in on-going dialogue regarding the proposed rule change as well as other aspects of its proxy reimbursement guidelines with Commission staff as well as the Proxy Fee Working Committee, a group that NYSE selected as representative of the parties interested in the proxy process, including representatives of the American Society of Corporate Secretaries (on behalf of issuers). NYSE believes that a majority of the committee's representatives approve of the proposed rule change. NYSE has not otherwise solicited, and does not intend to solicit, comments on the proposed rule change. NYSE has not received any unsolicited 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 self-regulatory organization consents, the Commission will:

- (a) By order approve such 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 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 NYSE. All submissions should refer to File No. SR-NYSE-00-36 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43164; File No. SR-NYSE-00-15]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., To Amend Paragraph 902.02 of the Exchange's Listed Company Manual Regarding the Initial Listing Fee for Tracking Stocks

August 16, 2000.

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 April 12, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission "SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 17, 2000, the Exchange submitted 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 and to approve the proposal and Amendment No. 1 on an accelerated basis.

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

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual by eliminating

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19B-4.

³ Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 13, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to clarify the purpose and application of the proposed rule change.

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).