

### 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<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>7</sup> because it establishes or changes a due, fee, or other charge imposed by the Association. 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 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 NASD. All submissions should refer to file number SR-NASD-00-49 and should be submitted by September 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43155; File No. SR-NYSE-00-32]

#### Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot Relating to Shareholder Approval of Stock Option Plans

August 15, 2000.

On July 13, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change, pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> to extend the effectiveness of amendments to Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual with respect to the definition of what constitutes a "broadly-based" stock options plan. The Commission approved the amendments on a pilot basis on June 4, 1999 ("Pilot").<sup>3</sup> The Pilot is scheduled to expire on September 30, 2000. The Exchange has proposed to extend the effectiveness of the Pilot until September 30, 2003. A complete description of the proposed rule change is found in the notice of filing, which was published in the **Federal Register** on August 10, 2000.<sup>4</sup>

In response to the solicitation of comments, the Commission received a request to extend the comment period. Given the public's interest in the proposed rule change and the Commission's desire to give the public sufficient time to consider the proposal, the Commission has decided to extend the comment period pursuant to section 19(b)(2) of the Act.<sup>5</sup> Further, the Commission notes that the Exchange has consented to the extension of the comment period.<sup>6</sup> Accordingly, the comment period shall be extended until September 20, 2000.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

<sup>4</sup> See Securities Exchange Act Release No. 43111, (August 2, 2000), 65 FR 49046.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See letter from Elena L. Daly, Assistant General Counsel, NYSE to Kelly Riley, Division of Market Regulation, SEC, dated August 11, 2000.

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-00-32 and should be submitted by September 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43151; File No. SR-NYSE-00-35]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness 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

August 14, 2000.

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 200.30-(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

The NYSE is proposing to extend the effectiveness of the pilot fee structure ("Pilot Fee Structure") currently set forth in the Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material" ("Rules").<sup>3</sup> Among other things, the Rules establish guidelines for the reimbursement of expenses by NYSE 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 September 1, 2000. NYSE proposes extending the Pilot Fee Structure through October 10, 2000.

## 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 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 aspect 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 Fee Structure lowers certain guidelines concerning the reimbursement of fees for the distribution of Materials, creates incentive fee to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees.<sup>4</sup> The Pilot Fee Structure has been modified and extended several times,<sup>5</sup> most

<sup>3</sup> The text of NYSE Rule 451 also is included at Para 402.10(A) of the Exchange's *Listed Company Manual* and the Exchange will make conforming changes to that paragraph.

<sup>4</sup> See Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 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.

<sup>5</sup> See Securities Exchange Act Release Nos. 39672 (February 17, 1998) 63 FR 9034 (February 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

recently by Commission order dated February 16, 2000.<sup>6</sup> The present proposed rule change would extend the Pilot Fee Structure to October 10, 2000.

The Exchange believes that an extension of the Pilot Fee Structure 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, the fees in effect prior to the pilot program would return to effectiveness after September 1, 2000, creating confusion in the market.

#### 2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4)<sup>7</sup> of the Act, which requires an exchange's rules to 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 the proposed rule change is consistent with section 6(b)(5)<sup>8</sup> of the Act, which requires an exchange's rules to be 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.

reports from \$.55 to \$.50); 40289 (July 31, 1998), 63 FR 42652 (August 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (October 30, 1998), 63 FR 60036 (November 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (February 11, 1999), 64 FR 8422 (February 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); 41669 (July 29, 1999), 64 FR 43007 (August 6, 1999) (order extending Pilot Fee Structure through November 1, 1999); 42086 (November 1, 1999), 64 FR 60870 (November 8, 1999) (order extending Pilot Fee Structure through January 3, 2000); and 42304 (December 30, 1999), 65 FR 1212 (January 7, 2000) (order extending Pilot Fee Structure through February 15, 2000).

<sup>6</sup> See Securities Exchange Act Release No. 42433, 65 FR 10133, 65 FR 10137 (February 25, 2000).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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

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

Because the foregoing proposed 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) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-10<sup>10</sup> thereunder.<sup>11</sup>

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 a shorter time if such action is consistent with the protection of investors and the public interest. NYSE seeks to have the proposed rule change become operative on or before September 1, 2000 to allow the Pilot Fee Structure to continue in effect on an uninterrupted basis.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through October 10, 2000. This extension of the Pilot Fee Structure will provide the Commission with additional time to review and evaluate the Pilot Fee Structure.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rate for proxy material distributed after September 1, 2000, will revert to those in effect prior to March 14, 1997. The Commission believes that such a result could be confusing and counterproductive.

In addition, the Commission notes that the NYSE has filed a proposal to

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> As required under Rule 19b-4(f)(6)(iii), 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.

amend the current Pilot Fee Structure.<sup>12</sup> 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 pay 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.<sup>13</sup>

**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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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").<sup>3</sup> 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.<sup>4</sup> 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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.

<sup>4</sup> 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;*

<sup>12</sup> See File No. SR-NYSE-00-36.

<sup>13</sup> 17 CFT 200.30-3(a)(12).