

Proposed ABS fees (annual)	
Subscription (first access entitlement)	\$15,000
Additional screen entitlements (each)	\$5,000
Computer-to-computer interface:	
Report Fee	\$5,000
Usage Fee*—per order entered:	
1 to 25,000	0.30
25,001 to 50,000	0.20
50,001 to 100,000	0.10
100,001 and above	0.05

*Fee ranges are cumulative on a yearly basis and do not include orders entered through ABS terminals. Maximum annual computer-to-computer fees are \$20,000.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4)⁶ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

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

The NYSE does not believe that the proposed rule change will result in 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 only written comment received by the Exchange related to the proposed increase to the fees for opening and maintaining a branch office. The commenting member organization stated that it recognized the need to generally increase the fee revenue of the Exchange, and its responsibility to bear its fair share of such increase. The organization was concerned, however, that the fee increase affects it disparately, given its business model. The organization has a large branch network, but generally only one registered representative per branch. It states that it has three times the number of branches than the second place firm in this category, but without a high rank in terms of revenues, net capital or total numbers of registered representatives.

The Exchange has carefully considered the affect of all its fees across its membership, and is sensitive to how its members are affected by the various fees charged by the Exchange. The Exchange notes that the branch office fees have been and continue to be tiered to ameliorate the impact on those organizations with large numbers of

branches. The Exchange is also mindful of the overall benefit afforded each member and member organization by the Exchange's maintenance of a strong and well-regarded program of regulation, and its regulatory charges, including the branch office fees, are a part of the Exchange's efforts to align revenue with the value provided by the Exchange to its members and to their customers. After careful evaluation, the Exchange concluded that branch office fees did not create an inappropriate burden on a member organization such as the one which presented the above comment.⁷

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 Act⁸ and subparagraph (f)(2) of rule 19b-4 thereunder,⁹ because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on January 10, 2003, when Amendment No. 1 was filed.

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, including the comment letter filed by Edward Jones, dated December 27, 2002, 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 number SR-NYSE-2002-66 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson,

Assistant Secretary.

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⁷ The Commission notes that it also received a comment letter regarding this filing from Edward Jones, dated December 27, 2002. The Commission will carefully consider the points raised by Edward Jones regarding the fee increases relating to branch offices.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

⁶ 15 U.S.C. 78f(b)(4).