

proposed Rule 7101(a)(1) and (2), to include all public companies and investment companies, regardless of their market capitalizations, and also include issuers with only registered debt securities. Some commenters also suggested establishing a minimum fee for small issuers as an alternative to the formula provided in the Act. The Board's proposal to restrict the Equity Issuers class to issuers whose average monthly market capitalization exceeds \$25 million and to restrict the Investment Company class to issuers whose average monthly market capitalization (or net asset value) exceeds \$250 million was to ensure that the rules can be administered in a reliable and cost-effective manner. As discussed above, reliable market data is difficult to obtain with respect to issuers that are not traded on an exchange or on Nasdaq, and based on the Board's inquiry, data may not consistently be available with respect to issuers below the proposed rule's thresholds. Based in part on these comments, however, the Board has clarified Rule 7101(a) to more explicitly exclude from those classes issuers whose market capitalization (or net asset value) on a monthly, or more frequent, basis is not publicly available. Also, with respect to issuers of debt securities, section 109(g) of the Act only provides for the assessment of a share of the accounting support fee based on "equity" market capitalization.

The Board also received a comment suggesting that preferred stock should be included in the definition of issuer market capitalization. The Board proposed that the definition of issuer market capitalization include capitalization of all classes of common stock. After consideration, the Board believes that determining whether each issuer's preferred stock resembles equity or debt would unduly burden the Board's administration of its funding system. Therefore, the Board did not adopt this suggestion.

While one commenter supported the proposed rules with respect to investment companies as proposed, another commenter suggested that the 90 percent reduction in investment company market capitalizations (or net asset values), for purposes of calculating the accounting support fee in proposed Rule 7101(b)(1), was too great a reduction. This commenter did not provide any data to support its position, although it recommended further study of this issue. Based on a comparison of audit fees paid by investment companies to audit fees paid by publicly-traded companies, which was provided by the commenter who supported the Board's proposal, the

Board has determined that assessing investment companies at ten percent of that assessed public companies was appropriate.

In addition, the Board received several comments from accounting firms, suggesting that the Board rely on its referral of delinquent issuers to the Commission instead of require, pursuant to proposed Rule 7103(b), that registered public accounting firms ascertain, before signing an unqualified audit opinion, that issuer audit clients have no outstanding past-due shares of the accounting support fee. While the Board has proposed to refer delinquent issuers to the Commission, the uncertainty, given the Commission's limited resources and other priorities, that the Commission would bring civil actions against such issuers makes a referral alone an unreliable collections mechanism. These commenters also suggested that the Board clarify how this rule would work in practice. In response, the Board has clarified that Rule 7103(b) may be satisfied by obtaining a representation from the issuer that no past due share of the fee is outstanding. The Board has also made clear that an issuer that has filed a written petition for a correction of its share will not be deemed to have a past due share outstanding.

Finally, the Board held two informational meetings during the comment period, one in Washington, DC, and one in San Francisco, CA, with representatives of issuers to explain the proposed rules on funding. No substantive comments were received as a result of either meeting.

III. Date of Effectiveness of the Proposed Rule 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 Board consents the Commission will:

- (a) By order approve the Board's proposed rules on funding; or
- (b) Institute proceedings to determine whether the Board's proposed rules on funding 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 is consistent with the requirements of Title I of the Sarbanes-Oxley Act and the Exchange 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 that are filed with the Commission, and all written communications relating to the proposed rule 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB-2003-02 and should be submitted by July 18, 2003.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.
 [FR Doc. 03-16269 Filed 6-26-03; 8:45 am]
 BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48066; File No. SR-Amex-2003-49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Revise Its Fee Schedule in Connection With the Administration of Forms U-4 and U-5 Through NASD's Web-Based Central Registration Depository System

June 19, 2003.

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 May 28, 2003, the American Stock Exchange LLC ("Amex" 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 revise its fee schedule in connection with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.