

interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>14</sup> the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>15</sup> Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program 1 that is designed to provide investors with a mechanism to resolve disputes with broker-dealers. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

#### 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. NYSE-2003-28 and should be submitted by October 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48547; File No. SR-NYSE-2003-24]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Reduce Initial and Annual Branch Office Registration Fees, Retroactive to January 1, 2003, Charged to Member Organizations With More Than One Thousand Branch Offices

September 25, 2003.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 21, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "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. On September 8, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its 2003 Price List to reduce its branch office registration fees for member organizations with more than one thousand branch offices.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Darla C. Stuckey, Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced the original rule filing in its entirety, converted it from a 19(b)(3)(A) filing to a 19(b)(2) filing, and requested accelerated approval.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, 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 aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange increased its registration and maintenance fees applicable to member organization branch offices, effective January 1, 2003.<sup>4</sup> The Exchange charges an initial fee upon the opening of a new branch office and an annual maintenance fee for each active branch office. A three-tiered fee structure is used for assessment of such fees in which a stepped-down rate is charged based on the applicable tier level. This structure provides an incremental reduction in fees for those branch offices that exceed the level of each breakpoint.

Prior to the January 1, 2003 increases, the following fee schedule was in effect for both initial and annual maintenance fees:

- \$250 for each of the first 250 branch offices;
- \$150 for each of the next 250 branch offices;
- \$125 for each branch office over 500.

The January 1, 2003 fee structure amendments resulted in the following schedule, which is currently in effect:

- \$350 for each of the first 1,000 branch offices;
- \$250 for each of the next 2,000 branch offices;
- \$225 for each branch office over 3,000.

Some member organizations have raised concerns regarding the current branch office fee schedule, contending it is unduly burdensome for certain business models, which have more offices than the average member firm but only one or two persons staffing each office.<sup>5</sup>

<sup>4</sup> See Securities Exchange Act Release No. 47174; 68 FR 2606 (January 17, 2003) (SR-NYSE-2002-66).

<sup>5</sup> Telephone call between Leah Mesfin, Attorney, Division of Market Regulation, Commission, and Mary Ann Furlong, Director, Rule and Interpretive Standards, NYSE on September 24, 2003.

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).