

[(4)] (3) [Additional Fee for Proxy Solicitation] *Charge for Providing Beneficial Ownership Information*

Six and one-half cents per [shareholder] name of non-objecting beneficial owner provided to the issuer pursuant to the issuer's request. *Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, in addition to the rate described above. (See SEC rules 14a-13(b) and 14c-7(b) under the Securities Exchange Act of 1934 and notes thereto.)*

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEC rule 14b-1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

[(5)] (4) Charges for Interim Report, Post Meeting Report and Other Material Mailings

[30] 15 cents for each copy, plus postage, for interim reports, post meeting reports, or other material with a minimum of \$2.00 for all sets mailed.

[(6)] (5) *Incentive Fees*

An "incentive fee" (as defined below) for proxy material mailings, including the annual report, and 10 cents for interim report mailings, with respect to each account where the member has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically) shall be: (i) 25 cents with respect to issuers whose shares are held in at least 200,000 nominee accounts; and (ii) 50 cents with respect to issuers whose shares are held in fewer than 200,000 nominee accounts.

[(b)] Members may charge for envelopes, provided that they are not furnished by the issuer, the trustee, or a person soliciting proxies.]

[(c)] (b) Members are reminded that rule 2430 requires that any such charges must be reasonable. *Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior*

notification to and consent of the person soliciting proxies or the company.

[Accordingly, this is a guide and a member may request reimbursement of expenses at other rates after taking into consideration all relevant factors.]

(c) *Rule 2260 requires members to forward promptly issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Members are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC rule 14b-1 under the Act).*

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

In its filing with the Commission, NASD 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. NASD 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

NASD proposes to amend IM-2260 to adopt the same fee structure recently adopted by the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex") governing the reimbursement of members for costs incurred in forwarding proxy material, annual reports, information statements and other materials. The proposed amendments to IM-2260 would also advise members that they may request reimbursement of expenses at less than the approved rates, but that no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed without the prior notification to and consent of the person soliciting proxies or the company.

The SEC's proxy rules, rules 14a-13, 14b-1, and 14b-2 under the Act, do not specify the fees that nominees can charge issuers for distributing proxy materials; rather, they state that issuers must reimburse nominees for "reasonable expenses" incurred. The Commission approved the NYSE's current fee structure on March 25, 2002,⁴ following numerous meetings of the Proxy Voting Review Committee (the "Committee"), a private initiative that was established to review the NYSE's pilot fee program and the proxy process in general.⁵ The Commission found that "the Committee's recommended fee reductions [for 'large issuers'] were reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers."⁶ The Commission concluded that the NYSE's proposed fee changes were reasonable and fairly allocated, did not discriminate among issuers, and did not impose any unnecessary burdens on competition. On June 3, 2002, the Amex amended its proxy reimbursement fees to conform to those of the NYSE.⁷

The proposed amendments to IM-2260 will provide members with the

⁴ Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440 (April 1, 2002) ("NYSE Proposal"). The Commission emphasized that permanent approval of the NYSE's pilot program did not end the discussion of proxy fee reform. The Commission urged the NYSE and the Committee to continue discussing proxy fee reform with the eventual goal that the marketplace, rather than self-regulatory organizations, will establish reasonable and competitive proxy reimbursement fees. The Commission also stated that it expected the NYSE to continue to monitor its fees "to ensure they are related to 'reasonable expenses' of the NYSE's member brokers in accordance with the Act, and propose changes where appropriate."

⁵ The Committee concluded that the NYSE's Proxy Reimbursement Guidelines, which had been established in a pilot program and approved by the Commission on March 14, 1997, had been instrumental in setting the costs that issuers incurred in having broker-dealers and intermediaries transmit proxy and other materials to security holders at fair and reasonable levels. On that basis, the Committee voted, with NASD abstaining, to seek permanent approval of the pilot program guidelines, with some modifications to reflect the economies of scale of large issuers, defined by the Committee as companies that have in excess of 200,000 street name shareholders (approximately 200 companies). The Committee voted to reduce the basic mailing fee from 50 cents to 40 cents; increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees to \$20.10 per set of material required for "small issuers" and \$20.05 per set of material required for "large issuers"; and reduce from 50 cents to 25 cents the incentive fee for initial mailings of the materials of large issuers.

⁶ *Id.*

⁷ Securities Exchange Act Release No. 46146 (June 28, 2002), 67 FR 44902 (July 5, 2002) ("Amex Proposal").