

the New York Stock Exchange ("NYSE") is applying and interpreting NYSE Information Memorandum 91-41, which was promulgated pursuant to NYSE Rule 440C and is much like the NASD's Interpretation, but has never been filed with the Commission for approval. Prior to submitting the amendments to the Interpretation, it was the NASD's understanding, based on conversations with NYSE officials, that NYSE Information Memorandum 91-41 requires NYSE members to make affirmative determinations by contacting stock loaners (and, thus, not relying on daily fax sheets) prior to effecting short sales and to annotate such determinations. During the time that the effectiveness of this provision of the Interpretation is held in abeyance, the NASD will review the provision with its appropriate committees to determine whether to proceed with implementation of the provision or to modify the provision.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires that the rules of the NASD, among other things, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest, in that delaying the effective date of the changes to the Interpretation until January 9, 1995 will assist members in complying with the new rule. Similarly, the NASD believes that delaying the effective date of the provision of the amended Interpretation dealing with the use of daily fax sheets until August 1, 1995, will give the NASD and its members ample time to consider whether to retain this provision or modify it to better reflect industry practice, thereby avoiding member firm confusion and ensuring that NASD rules are crafted to achieve their regulatory goals in a manner that is the least burdensome for the membership.

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

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

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

Comments were neither solicited nor received.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and Section (e) of Rule 19b-4 promulgated thereunder in that it changes the effective dates of new provisions of the NASD's rules and is therefore a policy relating to the administration or enforcement (i.e., the effective date) of a new rule of the Association.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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. 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. 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-95-2 and should be submitted by February 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Adoption of a Fee to be Charged for Audit Trail Data**

[Release No. 34-35206; File No. SR-NYSE-94-50]

January 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 proposed rule change consists of the adoption of a fee to be charged for audit trail data that the Exchange will be making available for purchase to its member clearing firms.

#### **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 self-regulatory organization 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. The self-regulatory organization 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's audit trail system provides it with audit trail data that is both consistent and high quality. By utilizing the daily data submissions from each clearing firm, the Exchange is able to reconstruct trading in all listed securities. This capability facilitates a comprehensive range of surveillance procedures at the Exchange.

Recognizing that each Exchange member organization conducts its own

<sup>2</sup> 17 CFR 200.30-3(a)(12).