authority to waive forum fees and grants the arbitrators the discretion to apportion all fees and charges assessed on the parties other than hearing session deposits.

The Lipner Letter objects to Section 46(b)(8)(C), which provides that one purpose of the administrative conference is to develop a statement of the legal authorities related to the matters in dispute to be brought to the attention of the arbitrators. The Lipner Letter views this provision as transforming the arbitration process into one that is more akin to litigation. The Commission believes that this provision recognizes that legal issues are argued routinely in arbitration and that this provision may assist parties in formulating and assessing the strength of their claims. It is a reasonable approach for the NASD to adopt.

Both the NELA Letter and the Lipner Letter object to Section 46(f)(3), which permits arbitrators to rule on dispositive motions, such as motions to dismiss on any grounds, including the applicability of a statute of limitations, or motions for summary judgment. Both commenters argue that permitting such motions and the attendant legal briefing is inconsistent with the nature of the arbitration process. The Commission believes that parties should be cognizant of this feature of the large and complex case rules before they agree to arbitrate pursuant to the large and complex case rules. The Commission believes that the pamphlet will alert parties to this provision. As noted above, parties will be able to modify this provision under an agreement under Section 46 (a)(2) and (a)(3), and, if no agreement is reached, then the large and complex arbitration rules will not govern the arbitration of the matter.

The NELA Letter objects to Section 46(f)(2), which limits depositions and interrogatories to determining and preserving testimony and facts relevant to the determination of the matter, rather than for conducting discovery. NELA believes that not permitting depositions for discovery is a significant disadvantage to employees and causes the arbitration process to be skewed in favor of employers. The Commission is not unmindful of the concerns expressed by NELA. However, the Commission believes that parties may either modify these procedures through the agreement reached under Section 46 (a)(2) and (a)(3) to permit depositions for purposes of discovery, or failing agreement, may arbitrate in accordance with the rules governing arbitration elsewhere in the Code. Moreover, experience with this provision of the pilot rules can be evaluated in the event

that the NASD determines to propose these rules for permanent inclusion in the Code. The Commission also intends to monitor cases arbitrated under the large and complex case rules to determine whether parties are being disadvantaged by the limited scope of discovery.

IV. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act ¹⁷ because it may encourage the arbitration of large and complex cases in a manner consistent with the objective of a just, efficient and cost-effective resolution of those cases, and will provide parties with the flexibility to formulate their own procedures. The flexibility will serve the public interest by permitting parties to tailor arbitration proceedings in a manner which enhances their ability to pursue their claims.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, the File No. SR-NASD-94-10 be, and hereby is approved for a one year period beginning May 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.
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[Release No. 34–35301; File No. SR-NYSE-95-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Domestic Listing Standards

January 31, 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 January 18, 1995, 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 NYSE is proposing amendments to its domestic listing standards. These listing standards are contained in Paragraph 102.01 of the Exchange's *Listed Company Manual*. The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

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 purpose of the proposed rule change is to create alternatives for two existing Exchange listing standards and to amend two additional standards. According to the Exchange, the NYSE already has, and intends to maintain, the highest listing requirements among U.S. markets. Current listing requirements measure, among other things, demonstrated earning power and shareholder distribution, as well as tangible net worth and market capitalization of publicly-held shares. The rule change would provide alternatives to the existing demonstrated earning power and shareholder distribution tests. In addition, the proposal would increase the existing requirements for tangible net worth and public market capitalization.

Demonstrated Earning Power

Under the Exchange's demonstrated earning power standard, the existing requirement calls for:

Demonstrated earning
power—income before federal income taxes and under
competitive conditions:
Latest fiscal year
Each of the preceding two
fiscal years

\$2,500,000

\$2,000,000

¹⁷ U.S.C. 78*o*-3.