

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act²⁰, that Amendment No. 1 is approved on an accelerated basis, and that the portions of the proposed rule change and Amendment No. 2 (File No. SR-CSE-2003-06) relating to Sections 1 and 3 of Article IV of the Exchange's By-Laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-30058 Filed 12-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48833; File No. SR-NYSE-2003-33]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Exchange Fees for Closed-End Funds

November 25, 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 October 20, 2003, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE. On November 24, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.³ 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 New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") proposes to amend Section 902.02 of the Listed Company Manual (the "Manual") to amend the continued listing fees applicable to closed-end funds. The text

of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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Listed Company Manual

902.00 Listing Fees

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902.02 Schedule of Current Listing Fees

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C. Continuing Annual Fee

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The continuing annual fees for closed end funds are as follows:

| | |
|----------------------------------|----------|
| [Per Share Rates— | |
| 1st and 2nd million shares | \$1,650 |
| Additional shares | 830 |
| Minimum Fees— | |
| Million Shares | |
| 1+—10 | \$25,000 |
| 10+—50 | 35,000 |
| 50+—100 | 48,410 |
| 100+—200 | 64,580 |
| 200+ | 80,440] |

[All issued shares are included in the continuing annual fee calculation for closed end funds, except those which have been subject to a continuing annual fee for a consecutive period of 15 years. After 15 years, such shares are excluded in the calculation of fees on the per share basis.] *Closed end funds will pay at a rate of \$930 per million shares, subject to a minimum annual fee of \$25,000.* Fund families with between [5] 3 and [15] 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with [16 or] more *than* 14 listed closed-end funds will receive a discount of [10] 15%. No fund family shall pay aggregate continuing annual fees in excess of \$1 million in any one year.

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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, the NYSE 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 Exchange 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 has recently reduced the original listing fees applicable to closed-end funds,⁴ and has capped at \$75,000 the original listing fees applicable to two or more funds from the same fund family listing on the same date.⁵

The Exchange is now proposing to amend the continuing annual listing fees applicable to closed-end funds by establishing a new continuing fee structure with increased fund family discounts, and a new per million share base rate applicable to all closed-end funds.

In establishing a new base rate applicable to all closed-end funds, the Exchange will no longer apply the existing five-tiered continued listing fee structure and, instead, closed-end funds will pay at a rate of \$930 per million shares, subject to a minimum annual fee of \$25,000. To clarify the applicability of the \$25,000 minimum, that amount would actually cover funds with up to 26,881,720 shares outstanding. It is only beyond that size that the multiplication of the per share rate (\$930/million) by the shares outstanding would produce a fee in excess of the \$25,000 minimum.

The Exchange also proposes to increase and expand the availability of the discounts applicable to fund families with multiple funds listed. As proposed, fund families with between 3 and 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with more than 14 listed closed-end funds will receive a discount of 15%. Currently, fund families with between 5 and 15 closed-end funds listed receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with 16 or more listed closed-end funds receive a discount of 10%.

In a previous filing revising listing fees generally,⁶ the Exchange eliminated the fee policy under which shares subject to continuing annual fees for a period of 15 consecutive years became exempt from further fees. At the time, the Exchange noted that it was

⁴ See Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR-NYSE-2003-22).

⁵ See Securities Exchange Act Release No. 48685 (October 23, 2003), 68 FR 61710 (October 29, 2003) (SR-NYSE-2003-32).

⁶ See Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (SR-NYSE-2002-62).

²⁰ 15 U.S.C. 78s(b)(2).
²¹ 17 CFR 200.30-3(a)(12).
¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.

³ See letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 24, 2003 ("Amendment No. 1").

continuing the 15-year exemption policy for closed-end funds pending further study and revision of the fees charged to closed-end funds generally. Given the new fee structure implemented for closed-end funds under this proposal and the other filings referred to herein, the Exchange has concluded that it is now appropriate to eliminate the 15-year exemption policy for closed-end funds consistent with the amendments made with respect to listed operating companies in December 2002.

The impact of the proposed continuing annual fee changes in their entirety on an individual fund will vary depending on a fund's shares outstanding and other circumstances. First of all, the Exchange states that its rule has, and will continue to have, an overall fund family fee cap of \$1 million per year. Of the 407 listed closed end funds, the Exchange states that 118 are in fund families covered by the \$1 million fee cap. Of the remaining 289 funds, factoring in the net effect of the change to the new per share rate from the existing five-tiered formula, the elimination of the 15-year exemption policy, and the increases in the fund family discounts, the Exchange's analysis (based on the information it currently has on fund shares outstanding) is that 55 funds would experience an increase in continuing annual fees, 150 would experience a decrease, and 84 would experience no net change. Of those that can be expected to experience an increase, the Exchange expects that the average increase would be 15.6% and the median increase 8.2%. The Exchange expects that the maximum increase for any one fund would be 73% (in that case, \$44,700). Of the 150 funds the Exchange expects to experience a decrease, the average decrease would be 25.4% and the median decrease would be 28.6%. The maximum decrease for any one fund would be 36% (in that case, \$12,000). While some funds would experience an increase in continuing annual fees and others a decrease, the overall impact on the Exchange would be a net decrease in continuing annual fees of approximately \$900,000.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)⁷ that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

⁷ 15 U.S.C. 78f(b)(4).

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change 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 NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal 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. SR-NYSE-2003-33 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-30063 Filed 12-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48820; File No. SR-OCC-2002-23]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Relating to Physically-Settled Futures on Narrow-Based Stock Indexes

November 21, 2003.

On September 30, 2002, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ that would allow OCC to provide clearance and settlement services for physically-settled futures on narrow-based stock indexes. The proposed rule change was published in the **Federal Register** on October 9, 2002.² No comment letters were received. On June 26, 2003, OCC withdrew the proposed rule change.³

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-30060 Filed 12-2-03; 8:45 am]

BILLING CODE 8010-01-P

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46593 (October 2, 2002), 68 FR 63006.

³ Letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 26, 2003).

⁴ 17 CFR 200.30-3(a)(12).