written policies and procedures reasonably designed to have governance arrangements that are clear and transparent.[110] Here, BSECC and SCCP filed proposed rule changes to highlight changes being made to the Bylaws of Nasdaq, Inc.,[111] which indirectly owns BSECC and SCCP. Therefore, the proposed rule changes by BSECC and SCCP help make clear and transparent the governance arrangements of Nasdaq, Inc. and, thus, BSECC and SCCP, which helps ensure investor protection and the public interest.

Finally, the Commission finds that the proposed conforming changes to Sections 3.1(a), 3.3(a), 3.3(c), and 3.5 of the Bylaws are consistent with the Act because these changes prevent stockholder confusion by clarifying the operation of the proposed proxy access provision and other provisions by which stockholders may nominate directors to the Board.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the filings, as modified by Amendment No. 1, are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Nos. SR–NASDAQ–2016–127; SR–BX–2016–051; SR–ISE–2016–22; SR–ISEGemini–2016–10; SR–ISEMercury–2016–16; SR–PHLX–2016–93; SR–BSECC–2016–001; SR–SCCP–2016–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Nos. SR–NASDAQ–2016–127; SR–BX–2016–051; SR–ISE–2016–22; SR–ISEGemini-2016–10; SR–ISEMercury-2016–16; SR–PHLX–2016–93; SR–BSECC–2016–001; SR–SCCP–2016–01. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Nos. SR–NASDAQ–2016–127; SR–BX–2016–051; SR–ISE–2016–22; SR–ISEGemini-2016–10; SR–ISEMercury-2016–16; SR–PHLX–2016–93; SR–BSECC–2016–001; SR–SCCP–2016–01, and should be submitted on or before December 16, 2016.

V. Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule changes, as modified by Amendment No. 1, prior to the 30th day after the date of publication of Amendment No. 1 in the **Federal Register**. As discussed above, Amendment No. 1 clarifies the circumstances under which proxy access nominees may be excluded from the proxy materials and clarifies that the Board does not currently have in place the publicly disclosed independence standards described in this provision.[112] The Commission believes that these revisions provide needed clarity to the proposed rule changes.

Accordingly, the Commission finds good cause for approving the proposed rule changes, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[113]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[114] that the proposed rule changes (SR–NASDAQ–2016–127; SR–BX–2016–051; SR–ISE–2016–22; SR–ISEGemini-2016–10; SR–ISEMercury-2016–16; SR–PHLX–2016–93; SR–BSECC–2016–001; SR–SCCP–2016–01), as modified by Amendment No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[115]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28319 Filed 11–23–16; 8:45 am]

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[110] 17 CFR 240.17Ad–22(d)(8).

[111] Certain provisions of the Bylaws are considered rules of BSECC and SCCP if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of BSECC and SCCP, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78q–1(b); 17 CFR 40.19b–4.

[112] *See supra,* note 4.

[113] 15 U.S.C. 78s(b)(2).

[114] 15 U.S.C. 78s(b)(2).

[115] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79355; File No. SR–NYSE–2016–55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection With the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission

November 18, 2016.

I. Introduction

On August 15, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt maximum fees NYSE member organizations may charge in connection with the distribution of investment company shareholder reports pursuant to any ''notice and access'' electronic delivery rules adopted by the Commission. The proposed rule change was published for comment in the **Federal Register** on August 22, 2016.[3] The Commission received fourteen comment letters on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78589 (August 16, 2016), 81 FR 56717 (''Notice'').

the proposal.[4] On October 5, 2016, the Commission extended the time period for Commission action on the proposal to November 20, 2016.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

Pursuant to NYSE Rule 451, NYSE member organizations that hold securities in street name [6] are required to deliver, on behalf of an issuer, proxy and other materials to beneficial owners if they are assured they will receive reasonable reimbursement of expenses for such distributions from the issuer.[7] For this service, issuers reimburse NYSE member organizations for all out-of-pocket expenses, including reasonable clerical expenses, as well as actual postage costs and other actual costs incurred for a particular distribution.[8]

NYSE Rule 451 establishes the maximum approved rates [9] that a member organization can charge an issuer for distribution of proxies and other materials absent prior notification to and consent of the issuer.[10] Although member organizations may seek reimbursement from an issuer for less than the established rates,[11] the Commission understands that in practice most issuers are billed at the established rates.[12]

The vast majority of broker-dealers that distribute issuer proxy and other materials to beneficial owners are entitled to reimbursement at the NYSE fee schedule rates because most are NYSE members, and those that are not are members of the Financial Industry Regulatory Authority (''FINRA''), which has similar rules.[13] Over time, NYSE member organizations increasingly have outsourced their proxy delivery and other distribution obligations to third-party service providers, which are generally called ''intermediaries,'' rather than handling this processing internally.[14]

In addition to the distribution of proxy materials, the reimbursement rates set forth in NYSE Rule 451 apply to the distribution of annual and semi-annual shareholder reports.[15] In this regard, the reimbursement rates set forth in Rule 451 apply to the distribution of investment company (''fund'') shareholder reports and other materials to the beneficial owners of fund shares.[16] For example, as the Exchange noted, a fund pays an interim report fee of 15 cents per account when a broker distributes an annual or semi-annual report to the accounts of shareholders holding its shares as beneficial owners. Funds also pay a preference management fee of 10 cents for every account with respect to which a member organization has eliminated the need to send paper materials.[17]

While NYSE Rule 451 also establishes the fees that member firms can charge issuers for proxy materials distributed through the notice and access method,[18] those fees would not apply to the

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[4] *See* letters to Brent J. Fields, Secretary, Commission from: James R. Rooney, Chief Financial Officer and Treasurer, Ariel Investment Trust, dated September 8, 2016 (''Ariel Letter''); Mortimer J. Buckley, Chief Investment Officer, Vanguard, dated September 12, 2016 (''Vanguard Letter''); Barbara Novick, Vice Chairman, and Benjamin Archibald, Managing Director, BlackRock, Inc., dated September 12, 2016 (''BlackRock Letter''); Charles V. Callan, SVP Regulatory Affairs, Broadridge Financial Solutions, Inc., dated September 12, 2016 (''Broadridge Letter''); John Zerr, Managing Director and General Counsel, Invesco Advisers, Inc., dated September 12, 2016 (''Invesco Letter''); Amy B.R. Lancellotta, Managing Director, Independent Directors Council, dated September 12, 2016 (''IDC Letter''); David G. Booth, President and Co-Chief Executive Officer, Dimensional Fund Advisers LP, dated September 12, 2016 (''Dimensional Letter''); David W. Blass, General Counsel, Investment Company Institute, dated September 12, 2016 (''ICI Letter''); Darrell N. Braman, Vice President & Managing Counsel, T. Rowe Price Associates, Inc., dated September 12, 2016 (''T. Rowe Letter''); Mark N. Polebaum, Executive Vice President and General Counsel, MFS Investment Management, dated September 12, 2016 (''MFS Letter''); Thomas E. Faust Jr., Chairman and Chief Executive Officer, Eaton Vance Corp., dated September 12, 2016 (''Eaton Vance Letter''); Ellen Greene, Managing Director, Securities Industry and Financial Markets Association, dated September 15, 2016 (''SIFMA Letter''); Christopher O. Petersen, President, Columbia Mutual Funds, Columbia Threadneedle Investments, dated September 15, 2016 (''Columbia Letter''); and Rodney D. Johnson, Chairman, The Independent Directors of the Blackrock Equity-Liquidity Funds, dated September 27, 2016 (''Blackrock Directors Letter'').

[5] *See* Securities Exchange Act Release No. 79051 (October 5, 2016), 81 FR 70449 (October 12, 2016).

[6] The ownership of shares in street name means that a shareholder, or ''beneficial owner,'' holds the shares through a broker-dealer or bank, also known as a ''nominee.'' In contrast to registered ownership (also known as record holders), where shares are registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company. For more detail regarding share ownership, *see* Securities Exchange Act Release No. 62495 (July 14, 2010), 75 FR 42982 (July 22, 2010) (Concept Release on the U.S. Proxy System) (''Proxy Concept Release'').

[7] In this order, we refer to ''issuer'' to mean an investment company registered under the Investment Company Act of 1940 (the ''Investment Company Act'') and an issuer of a class of securities registered pursuant to Section 12 of the Exchange Act.

[8] *See* NYSE Rules 451(a)(2) and 451.90. *See also infra* note 9.

[9] In addition to the specified charges discussed in this order and as set forth in NYSE Rule 451, member organizations also are entitled to receive reimbursement for: (i) Actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically. *See* NYSE Rule 451.90.

[10] *See* NYSE Rules 451.90 (schedule of approved charges by member organizations in connection with proxy solicitations and the processing of proxy and other material) and 451.93 (stating that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates without the prior notification and consent of the person soliciting proxies or the company). In adopting the direct shareholder communications rules in the early 1980s, the Commission left the determination of reasonable costs to the self-regulatory organizations (''SROs'') (subject to submission of an SRO rule proposal to the Commission pursuant to Section 19(b) of the Exchange Act), stating that ''the Commission continues to believe that, because the [SROs] represent the interests of both issuers and brokers, they are in the best position to make a fair allocation of all the expenses associated with the amendments, including start-up and overhead costs.'' *See* Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082 (August 3, 1983); *see also* Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440, 15440, n.8 (April 1, 2002) (order approving NYSE program revising reimbursement rates) (''2002 Approval Order'').

[11] *See* NYSE Rule 451.93.

[12] *See* Securities Exchange Act Release No. 70720 (October 18, 2013), 78 FR 63530, 63531 (October 24, 2013) (order approving an amendment to the fees set forth in NYSE Rules 451 and 465).

[13] *See* FINRA Rule 2251. *See also* Proxy Concept Release, 75 FR at 42995, n.110.

[14] *See* 2002 Approval Order, 67 FR at 15540. According to the NYSE, this shift was attributable to the fact that NYSE member firms believed that these distributions were not a core broker-dealer business and that capital could be better used elsewhere. *Id.* At the present time, a single intermediary, Broadridge Financial Solutions, Inc. (''Broadridge''), handles almost all processing and distribution of proxy and other material to beneficial owners holding shares in the United States. *See* Notice, 81 FR at 56719; *see also* Proxy Concept Release, 75 FR at 42988, n. 57, and at 42996, n.129.

[15] *See* NYSE Rules 451.10 and 451.90(3); *see also* NYSE Rule 465 (Processing and Transmission of Interim Reports and Other Material).

[16] *See* Notice, 81 FR at 56718. In its filing, NYSE stated that mutual funds are not listed on NYSE but that the fees in Rule 451 are applied by NYSE members in relation to distributions in beneficial owners of mutual funds and operating company shares. *See also* 402.07 (A) under the NYSE's Listed Company Manual, which states that Exchange Rules 450–460 apply to both listed and unlisted securities unless the context otherwise limits application.

[17] *See* NYSE Rule 451.90(4); *see also* Notice, 81 FR at 56718. The preference management fee applies to each shareholder account for which the nominee has eliminated the need to send materials in paper format through the mails or by courier service. *See* NYSE Rule 451.90(4); *see also* Notice, 81 FR at 56719.

[18] *See* NYSE Rule 451.90(3); *see also* Notice, 81 FR at 56718. Pursuant to Rule 14a–16 under the Exchange Act, issuers may distribute proxy material electronically through the ''notice and access'' method. *See* 17 CFR 240.14a–16; *see also* Proxy Concept Release, 75 FR at 42986, n.32. The ''notice and access'' method for proxy distributions permits issuers to send shareholders what is called a ''Notice of Internet Availability of Proxy Materials'' in lieu of the traditional paper mailing of proxy materials. *See* Proxy Concept Release, 75 FR at 42986, n.32. The notice and access model works in tandem with electronic delivery—although an issuer electing to send a notice in lieu of a full

electronic distribution of investment company shareholder reports. With respect to notice and access distributions of proxy materials, NYSE Rule 451 sets forth an incremental, tiered fee structure based on the number of nominee broker-dealer accounts through which the issuer's securities are beneficially owned.[19]

On May 20, 2015, the Commission proposed new Rule 30e–3 under the Investment Company Act, which, among other things, would permit, but not require, funds to satisfy their annual and semi-annual shareholder report delivery obligations by making shareholder reports available electronically on a Web site.[20] Funds relying on this provision would be required, among other things, to meet conditions relating to the provision of notice to shareholders of the internet availability of shareholder reports.[21]

B. Proposed Changes to NYSE Rule 451.90(5)

Accordingly, the Exchange has proposed to amend Rule 451.90(5) to specify that the notice and access fees set forth therein for distribution of proxy materials also will be charged with respect to distributions of fund shareholder reports pursuant to any notice and access rules adopted by the Commission in relation to such distributions.[22] The Exchange noted that the notice and access process under proposed Rule 30e–3 is similar to the existing proxy notice and access process for which the Exchange has already adopted a fee schedule in Rule 451, and thus the Exchange believes that it would be appropriate to apply the existing notice and access fees, with certain modifications, to fund shareholder report distributions, if the Commission ultimately adopts proposed Rule 30e–3.[23]

The Exchange also has proposed to set forth in Rule 451 that the notice and access fee will not be charged for any account with respect to which a fund pays a ''preference management fee'' in connection with a distribution of fund reports.[24] As a result, funds would be charged notice and access fees only with respect to accounts that actually receive a notice and access mailing.[25]

In addition, because funds often issue multiple classes of shares, the Exchange believes it is necessary to be clear how the pricing tiers in Rule 451 would be applied to fund shareholder reports.[26] Specifically, the Exchange has proposed to set forth in Rule 451 that, in calculating the rates at which a fund will be charged notice and access fees for shareholder report distributions, all accounts holding shares of any class of stock of the fund eligible to receive the same report distribution will be aggregated in determining the appropriate pricing tier.[27]

III. Summary of Comments Received

As noted above, the Commission received a total of fourteen comment letters on the Exchange's proposed rule change.[28] In general, commenters broadly supported the proposed rule change.[29] Two commenters, however, expressed concern about making a determination on the fees without a final Commission rule in place that permitted notice and access for fund report distributions.[30]

Several commenters took the position that the proposed rates set forth in NYSE's proposal would help realize the cost savings meant to be achieved through notice and access delivery of fund shareholder reports.[31] Some pointed out that shareholder report delivery is an expense that fund shareholders bear, and asserted that the cost savings would directly benefit fund shareholders.[32] One commenter also noted that the three changes being proposed by the NYSE would resolve ambiguity in the NYSE's fee schedule as it would apply to notice and access delivery of fund shareholder reports, potentially paving the way for the Commission to move forward with its proposal.[33] According to this commenter, the NYSE's proposal would ensure significant cost savings for fund shareholders if the Commission were to adopt a notice and access proposal.[34] This commenter also suggested that, absent NYSE's proposed rule change, these cost savings could be erased.[35] Similarly, another commenter asserted that, absent adoption of NYSE's proposal, Rule 451 would be applied in a manner that diminished Rule 30e-3 shareholder cost savings, or even increased shareholder costs.[36] In addition, this commenter was of the view that each element of proposed Rule 451.90(5) was logical and fair.[37] Another commenter believed that the proposed rule would ensure cost savings under proposed Rule 30e-3 and provide needed explanation on how Rule 451 would apply to electronic delivery of fund shareholder reports.[38]

Two commenters, however, expressed concerns about commenting on the NYSE fee proposal before proposed Rule 30e-3 was finally adopted. One commenter indicated that it could not definitively conclude whether the proposed fee structure was appropriate without a final rule specifying the details of the broker-dealer processing requirements for notice and access delivery.[39] Another commenter, the largest provider of shareholder communication services, stated that it performed an analysis in order to estimate the costs of a notice and access distribution of fund shareholder reports, but noted that it had to make certain assumptions that could change based on the final requirements of proposed Rule 30e–3.[40]

proxy package would be required to send a paper copy of that notice, it may send that notice electronically to a shareholder who has provided to its broker an affirmative consent to electronic delivery. *Id.*

[19] Specifically, when an issuer elects to utilize notice and access for a proxy distribution, there is an incremental fee based on all nominee accounts through which the issuer's securities are beneficially owned as follows: (1) 25 cents for each account up to 10,000 accounts; (2) 20 cents for each account over 10,000 accounts, up to 100,000 accounts; (3) 15 cents for each account over 100,000 accounts, up to 200,000 accounts; (4) 10 cents for each account over 200,000 accounts, up to 500,000 accounts; (5) 5 cents for each account over 500,000 accounts. Under this schedule, every issuer will pay the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers. *See* NYSE Rule 451.90(5).

[20] *See* Notice, 81 FR at 56718; *see also* Securities Act Release No. 9776, Securities Exchange Act Release No. 75002, Investment Company Act Release No. 316180, 80 FR 33590 (June 12, 2015) (Investment Company Reporting Modernization; Proposed Rule).

[21] *See* Notice, 81 FR at 56718.

[22] *See* proposed NYSE Rule 451.90(5).

[23] *See* Notice, 81 FR at 56718–19. The Exchange stated that the proposed notice and access fees for fund distributions will be effective only if the Commission adopts Rule 30e–3. *See* Notice, 81 FR at 56718, n.8.

[24] *See* proposed Rule 451.90(5).

[25] *See* Notice, 81 FR at 56719. The Exchange stated that this is a departure from the current practice under NYSE Rule 451.90(5), where an issuer utilizing notice and access for proxy distributions pays the notice and access fee for all shareholder accounts, including those for which it also pays a preference management fee. *Id. See also supra* note 17 (describing the current application of the preference management fee).

[26] *See* Notice, 81 FR at 56719.

[27] *See* proposed Rule 451.90(5).

[28] *See supra* note 4.

[29] *Id.*

[30] *See* SIFMA Letter; Broadridge Letter.

[31] *See* ICI Letter; Eaton Vance Letter; Vanguard Letter; Blackrock Letter; Invesco Letter; IDC Letter; Dimensional Letter; MFS Letter; Blackrock Directors Letter.

[32] *See* ICI Letter; Blackrock Directors Letter; Blackrock Letter; Invesco Letter; Colombia Letter.

[33] *See* ICI Letter. *See also* MFS Letter (stating that NYSE's proposal would clarify certain ambiguities of Rule 451 and provide a reasonable means of conformance to proposed Rule 30e–3).

[34] *See* ICI Letter.

[35] *Id. See also* Eaton Vance Letter.

[36] *See* MFS Letter.

[37] *Id.*

[38] *See* Vanguard Letter.

[39] *See* SIFMA Letter.

[40] *See* Broadridge Letter. While the commenter stated that NYSE's proposal would generally

Continued

Finally, several commenters commented on issues concerning the fees and the Exchange's role in setting those fees that are outside the scope of the Exchange's proposal.[41]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Exchange Act,[43] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities; Section 6(b)(5) of the Exchange Act,[44] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and Section 6(b)(8) of the Exchange Act,[45] which prohibits any exchange rule from imposing a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

Under the Exchange's proposal, the reimbursement rates set forth in NYSE Rule 451.90(5), which currently only apply to proxy distributions where the issuer elects to use notice and access, would become applicable to distributions of fund shareholder reports, pursuant to any notice and access rules adopted by the Commission.[46] Although the Commission has not adopted a notice and access rule, the Commission believes that it is appropriate and consistent with the Exchange Act to have in place rules that set forth the maximum reimbursement rates that funds may be charged for notice and access distributions should the Commission adopt a notice and access rule for fund shareholder reports.

The Commission believes that the application of the currently approved reimbursement rates for notice and access proxy distributions to fund shareholder report distributions, with the proposed amendments described herein, should establish a reasonable and practical reimbursement structure, if notice and access distribution of fund shareholder reports is authorized. In this regard, the Commission notes that the notice and access process for proxy distributions is similar in many respects to the notice and access process for fund shareholder report distributions proposed under Rule 30e-3.[47] In addition, the approval of the NYSE's fee proposal should facilitate any future Commission consideration of notice and access distributions for fund shareholder reports, by providing clarity on the maximum reimbursement rates for such distributions.

The Commission also believes that it is reasonable and appropriate for proposed Rule 451.90(5) to specify that funds utilizing notice and access will not be charged a notice and access fee for any account with respect to which they are being charged a preference management fee in connection with a distribution of shareholder reports. Today under NYSE Rule 451.90(4), issuers, including funds, are charged a preference management fee for each account for which the need to send materials in paper format through the mails (or by courier service) has been eliminated.[48] In the context of notice and access distributions of proxy materials under Rule 451.90(5), however, issuers are charged a notice and access fee for *all* accounts through which the issuer's securities are beneficially owned, with the result that issuers could be charged both preference management fees and notice and access fees with respect to the same account. The Exchange's proposal would eliminate this potential double-charging in the context of fund distributions of shareholder reports, in that the notice and access fee will not be charged for any account for which a preference management fee is already paid due to the elimination of the need for a paper mailing.[49] The Commission understands that the preference management fee generally is intended to reimburse intermediaries for the processing work and costs involved in keeping track of each account holder's election to eliminate paper mailings.[50] Accordingly, as the Exchange noted, funds will only pay notice and access fees with respect to accounts that actually receive notice and access mailings.[51] The Commission believes that this result is consistent with Section 6(b) of the Exchange Act.

In addition, the Commission believes that it is consistent with the Exchange Act for proposed Rule 451.90(5) to clarify that, in determining the appropriate pricing tier for notice and access fees in connection with investment company shareholder report distributions, all accounts holding shares of any share class that is eligible to receive the same report distribution will be aggregated. This clarification should resolve the ambiguity as to whether pricing tiers would be calculated by share class, resulting in potentially higher fees than if the accounts are aggregated as proposed. The Commission further believes this clarification is reasonable because it

support the development of notice and access services for annual and semi-annual fund reports held by beneficial owners, the commenter noted that ultimately the work and costs involved are dependent on several factors including the final requirements of proposed Rule 30e–3, the number and size of fund distributions pursuant to a notice and access method, and the number and mode of investor requests for hard copy reports.

[41] Several commenters supported the transition of responsibility for setting shareholder distribution fees from the NYSE to FINRA. *See* ICI Letter; Ariel Letter; T. Rowe Letter; MFS Letter; Invesco Letter; Dimensional Letter; Columbia Letter. The other comments outside the scope of the proposal are as follows: Invesco Letter (the reasonableness and application of the current fee structure); Ariel Letter (reasonableness of the current fee structure); Columbia Letter (reasonableness of the current fee structure); MFS Letter (preference management fee in the context of managed accounts); Dimensional Letter (due to a virtual monopoly in the market for third-party service providers, funds have little to no control over the fees incurred for shareholder report distribution). Further, the Blackrock Directors Letter commented about providing a one year or reasonable transition period for to shift to on-line delivery of reports and providing a phone number for shareholders to call if they prefer to receive paper. We note that this comment also does not refer to the NYSE fee proposal being considered herein.

[42] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(4).

[44] 15 U.S.C. 78f(b)(5).

[45] 15 U.S.C. 78f(b)(8).

[46] *See* proposed NYSE Rule 451.90(5). The Commission notes that the proposed fees for notice and access delivery of fund shareholder reports would only become applicable if the Commission adopts rules providing for notice and access delivery of investment company shareholder reports. Such rules could be in the form of Rule 30e–3, if adopted, or another Commission rulemaking establishing notice and access as an acceptable distribution method for fund reports, should Rule 30e–3 not be adopted.

[47] *See* Notice, 81 FR at 56718–19.

[48] *See* Notice, 81 FR at 56719; *see also* NYSE Rule 451.90(4); Securities Exchange Act Release No. 68936 (February 15, 2013), 78 FR 12381, 12386 (''2013 Proxy Fee Notice'').

[49] *See supra* note 17. For example, if a beneficial account holder has affirmatively consented to receive fund shareholder material electronically, such accounts would, under the NYSE's proposal, be charged a preference management fee, but not a notice and access fee, since no paper mailings of a notice of internet availability would be sent to such account holder.

[50] *See* 2013 Proxy Fee Notice, 78 FR at 12386.

[51] *See* Notice, 81 FR at 56719.

recognizes the unique nature of the fund industry in treating distributions with respect to a common group of shareholders as a single distribution for purposes of the fee tiers.

The Commission understands that, in setting the reimbursement rates in Rule 451.90, the Exchange balances the competing interests of issuers who must pay for distributions of shareholder reports and brokers who need assurance of adequate reimbursement for making such distributions on their behalf.[52] The Commission notes that all commenters broadly supported NYSE's proposal.[53] As discussed above, two commenters expressed some concern with assessing the details of the NYSE's proposal before a final decision is made on proposed Rule 30e-3. However, given that the Exchange's rule is applicable to the ''distribution of investment company shareholder reports pursuant to any 'notice and access' rules adopted by the [Commission] in relation to such distributions'' as well as the functional similarities between notice and access processing for proxy and investment company report distributions,[54] the Commission believes, for the reasons discussed above, that it is appropriate at this time to approve substantially similar reimbursement rates, with the proposed amendments described herein, which should establish a reasonable and practical reimbursement structure, if notice and access distribution of investment company shareholder reports is authorized.

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

[52] The Commission notes that the Exchange and certain commenters suggested that FINRA may be better positioned than the Exchange to perform the regulatory role of setting the reimbursement rates for mutual fund report distributions. *See* Notice, 81 FR at 56718; *see also* ICI Letter; Ariel Letter; T. Rowe Letter; MFS Letter; Invesco Letter; Dimensional Letter; Columbia Letter. The issue of whether FINRA would be better positioned than the Exchange to perform this regulatory role is outside the scope of the Commission's consideration of whether to approve the Exchange's proposed rule change. *See* Section 19(b)(2)(C) of the Exchange Act (''The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations applicable to such organization.'').

[53] *See supra* note 4.

[54] *See* Broadridge Letter (stating that processing work for investment company shareholder report distribution using notice and access is functionally similar in many respects to proxy report distribution through notice and access, although many of the underlying systems and production operations would be different).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act [55] that the proposed rule change (SR–NYSE–2016–55) be, and *hereby is, approved.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28311 Filed 11–23–16; 8:45 am]

BILLING CODE 8011–01–P

[55] 15 U.S.C. 78f(b)(2).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79351; File No. SR–DTC–2016–008]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to Processing of Transactions in Money Market Instruments

November 18, 2016.

On September 23, 2016, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2016–008 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to establish a change in the processing of transactions in money market instruments.[3] The proposed rule change was published for comment in the **Federal Register** on October 11, 2016.[4] To date, the Commission has not received any comments on the proposed rule change.

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 25, 2016. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the proposed rule change, the Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates January 9, 2017 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–DTC–2016–008).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28307 Filed 11–23–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 23, 2016, DTC also filed this proposed rule change as an advance notice (SR–DTC–2016–802) with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). Notice of filing of and extension of the review period of the advance notice was published for comment in the **Federal Register** on November 9, 2016. Securities Exchange Act Release No. 79224 (November 3, 2016), 81 FR 78884 (November 9, 2016) (SR–DTC–2016–802). The Commission shall have until January 21, 2017 to object or not object to the advance notice.

[4] *See* Securities Exchange Act Release No. 79046 (October 5, 2016), 81 FR 70200 (October 11, 2016) (SR–DTC–2016–008).

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79354; File No. SR–ISEMercury–2016–21]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing of Proposed Rule Change To Reduce the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism

November 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2016, ISE Mercury, LLC (the ''Exchange'' or the ''ISE Mercury'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have