cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for inpatient care services based on the cost per DRG or CPT. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (**Note:** The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

ATTACHMENT 1.—FY 2003 ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY

DMIS ID	MTF name	Serv	Full rate	IAR rate	IMET rate	TPC rate
0003	Lyster AH—Ft. Rucker	A	$7,032	$6,676	$4,007	$7,032
0005	Bassett ACH—Ft. Wainwright	A	7,794	7,399	4,441	7,794
0006	3 Med Grp—Elmendorf AFB	F	7,624	7,237	4,344	7,624
0009	56th Med Grp—Luke AFB	F	6,734	6,421	3,514	6,734
0014	60th Med Grp—Travis AFB	F	10,529	9,995	6,000	10,529
0024	NH Camp Pendleton	N	8,189	7,808	4,274	8,189
0028	NH Lemoore	N	7,554	7,171	4,304	7,554
0029	NMC San Diego	N	10,268	9,790	5,359	10,268
0030	NH Twentynine Palms	N	6,820	6,502	3,559	6,820
0032	Evans ACH—Ft. Carson	A	7,564	7,181	4,310	7,564
0033	10th Med Grp—USAF Academy	F	7,574	7,190	4,316	7,574
0035	NH Groton	N	7,575	7,191	4,316	7,575
0037	Walter Reed AMC—Washington DC	A	10,415	9,930	5,435	10,415
0038	NH Pensacola	N	9,119	8,656	5,196	9,119
0039	NH Jacksonville	N	8,580	8,180	4,477	8,580
0042	96th Med Grp—Eglin AFB	F	9,580	9,095	5,459	9,580
0045	6th Med Grp—MacDill AFB	F	6,748	6,434	3,521	6,748
0047	Eisenhower AMC—Ft. Gordon	A	9,312	8,839	5,306	9,312
0048	Martin ACH—Ft. Benning	A	8,315	7,893	4,738	8,315
0049	Winn ACH—Ft. Stewart	A	7,564	7,180	4,310	7,564
0052	Tripler AMC—Ft. Shafter	A	10,248	9,728	5,839	10,248
0053	366th Med Grp—Mtn Home AFB	F	7,560	7,176	4,308	7,560
0055	375th Med Grp—Scott AFB	F	8,671	8,268	4,525	8,671
0056	NH Great Lakes	N	6,802	6,486	3,550	6,802
0060	Blanchfield ACH—Ft. Campbell	A	7,025	6,669	4,003	7,025
0061	Ireland ACH—Ft. Knox	A	6,620	6,311	3,454	6,620
0064	Bayne-Jones ACH—Ft. Polk	A	6,987	6,633	3,981	6,987
0066	89th Med Grp—Andrews AFB	F	8,944	8,527	4,667	8,944
0067	NNMC Bethesda	N	10,397	9,913	5,426	10,397
0073	81st Med Grp—Keesler AFB	F	10,103	9,591	5,757	10,103
0075	Wood ACH—Ft. Leonard Wood	A	7,179	6,815	4,091	7,179
0078	55th Med Grp—Offutt AFB	F	9,972	9,466	5,682	9,972
0079	99th Med Grp—Nellis AFB	F	6,763	6,448	3,529	6,763
0086	Keller ACH—West Point	A	8,234	7,816	4,692	8,234
0089	Womack AMC—Ft. Bragg	A	8,079	7,669	4,604	8,079
0091	NH Camp LeJeune	N	7,352	6,980	4,190	7,352

Beginning May 1, 2003, the rates prescribed herein superceded those established by the Director of the Office of Management and Budget, December 9, 2002 (FR Doc. 02–31024). 6

Joshua B. Bolten,

Director, Office of Management and Budget.

[FR Doc. 03–27360 Filed 10–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48706; File No. SR–Amex–2003–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Enhanced Corporate Governance Requirements Applicable to Listed Companies

October 27, 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 June 23, 2003, the American Stock Exchange LLC (''Amex'' 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 Exchange. On September 9, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulations, Commission, dated September 5, 2002 (''Amendment No. 1''). In Amendment No. 1, Amex added p;roposed rule language to paragraph (c) of Section 801 to clarify that although the corporate governance requirements contained in Part 8 are not applicable to passive business organizations (such as royalty trusts) or to derivatives and special purpose securities listed pursuant to Amex Rules 1000, 10000A and 1200 and Sections 106, 107 and 118B, issuers of such securities are required to comply with Sections 121 and 803 to the extent required by Rule 10A–3 under the Act.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Sections 101, 110, 120, 121, 401, 402, 610 and 1009 of the Amex *Company Guide,* and adopt new Sections 801 through 808 of the Amex *Company Guide* to enhance the corporate governance requirements applicable to listed companies. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

American Stock Exchange Company Guide

Sec. 101, General

No change.

Commentary

.01 Corporate Governance Standards

In addition to the numerical listing standards, the Exchange has adopted certain corporate governance listing standards, which are set forth in Part 8.

.0[1]*2* Future Priced Securities—No change.

Sec. 110, Securities of Foreign Companies

The Exchange recognizes that every corporate entity must operate in accordance with the laws and customary practices of its country of origin or incorporation. Therefore, in evaluating the eligibility for listing of a foreign based entity, the Exchange will consider the laws, customs and practices of the applicant's country of domicile*, to the extent not contrary to the federal securities laws (including but not limited to Rule 10A–3 under the Securities Exchange Act of 1934),* regarding such matters as: (i) The election and composition of the Board of Directors; (ii) the issuance of quarterly earnings statements; (iii) shareholder approval requirements; and (iv) quorum requirements for shareholder meetings. A company seeking relief under these provisions should provide written certification from independent local counsel that the non-complying practice is not prohibited by home country law. *In addition, the company must provide English language disclosure of any significant ways in which its corporate governance practices differ from those followed by domestic companies pursuant to the Exchange's standards. This disclosure may be provided either on the company's Web site and/or in its annual report as distributed to shareholders in the U.S. If the disclosure is only available on the Web site, the annual report must so state and provide the web address at which the information may be obtained.*

Since business practices may vary among foreign companies, the following information is presented solely as a guide rather than as a set of inflexible rules:

(a) through (e)—No change.

Policies—[Conflicts of Interest] Related Party Transactions, Independent Directors and Audit Committees, [and] Voting Rights, Quorum Requirements and Limited Partnerships

Sec. 120, [Conflicts of Interest] Certain Relationships and Transactions

Related party transactions must be subject to appropriate review and oversight by the company's Audit Committee or a comparable body of the Board of Directors. [Each company shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the company's Audit Committee or a comparable body of the Board of Directors for the review of potential conflict of interest situations where appropriate.]

Sec. 121, Independent Directors and Audit Committee

A. Independent Directors:

[The Exchange requires that] *Each* [domestic] listed company[ies] must have a sufficient number of independent directors on *its* [the company's] Board of Directors *(a) such that at least a majority of such directors are independent directors (subject to the exceptions set forth in Section 801 and, with respect to small business filers, Section 121B(2)(c)), and (b)* to satisfy the audit committee requirement set forth below. [Independent directors are not officers of the company and are, in the view of the company's board of directors, free of any relationship that would interfere with the exercise of independent judgment.] *''Independent director'' means a person other than an officer or employee of the company or its subsidiaries. No director qualifies as independent unless the Board of Directors affirmatively determines that the director does not have a material relationship with the listed company that would interfere with the exercise of independent judgment. In addition, audit committee members must also comply with the requirements set forth in paragraph B(2) below.* The following *is a non-exclusive list of* persons *who* shall not be considered independent:

(a) A director who is*, or during the past three years was,* employed by the *company or by any parent or subsidiary of the company* [corporation or any of its affiliates for the current year or any of the past three years]; *

(b) A director who accepts *or has an immediate family member who accepts* any [compensation] *payments* from the *company* [corporation] or any [of its affiliates] *parent or subsidiary of the company* in excess of $60,000 during the *current or* previous fiscal year, other than compensation for board service, *payments arising solely from investments in the company's securities, compensation paid to an immediate family member who is an employee of the company or a parent or subsidiary of the company (but not if such person is an executive officer of the company or any parent or subsidiary of the company), or* benefits under a tax-qualified retirement plan, or non-discretionary compensation; *

(c) A director who is a*n* [member of the] immediate family *member* of an individual who is, or has been in any of the past three years, employed by the *company* [corporation] or any [of its affiliates] *parent or subsidiary of the company* as an executive officer[. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person's home]; *

(d) A director who is a partner in, or a controlling shareholder or an executive officer of, any [for-profit business] organization to which the *company* [corporation] made, or from which the *company* [corporation] received, payments (other than those arising solely from investments in the *company's* [corporation's] securities) that exceed 5% of the *recipient's* [corporation's or business organization's] consolidated gross revenues for that year, or $200,000, whichever is more, in any of the [past] most recent three *fiscal* years; *

(e) A director *of the listed company* who is employed as an executive *officer* of another entity where any of the *listed* company's executive[s] *officers* serve on that entity's compensation committee*;*

*(f) A director who is or was a partner or employee of the company's outside auditor, and worked on the company's audit engagement, during the past three fiscal years.**

** During the three years immediately following [insert effective date of rule change] the applicable ''look back'' period shall be the period since [insert effective date of the rule change] for independent directors who are not members of the Audit Committee.*

B. Audit Committee:

([a]*1*) Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit

Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify [the following]:

([i]*a*) The scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

([ii]*b*) The audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor; and

([iii]*c*) [the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement)] *That the audit committee is vested with all responsibilities and authority required by Rule 10A–3 under the Securities Exchange Act of 1934.*

([b]*2*) Composition

([i]*a*) Each issuer must have, and certify that it has and will continue to have, an *A*[a]udit *C*[c]ommittee of at least three members, [comprised solely of independent directors] each of whom [is]*:*

(i) *Satisfies the independence standards specified in Section 121A and Rule 10A–3 under the Securities Exchange Act of 1934; and*

(ii) *Is* able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement [or will become able to do so within a reasonable period of time after his or her appointment to the audit committee]. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee [that] *who* has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including *but not limited to* being or having been a chief executive officer, chief financial officer, [or] other senior officer with financial oversight responsibilities*, or an active participant on one or more public company audit committees.*

([ii]*b*) Notwithstanding paragraph ([i]*a*), one director who is not independent as defined in Section 121A, *but who satisfies the requirements of Rule 10A–3 under the Securities Exchange Act of 1934 (see sub-paragraph (a)(i)),* and is not a current *officer or* employee or an immediate family member of such *person* [employee], may be appointed to the *A*[a]udit *C*[c]ommittee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the *company*[corporation] and its shareholders, and the board discloses, in the next annual *meeting* proxy statement *(or in its next annual report on SEC Form 10–K or equivalent if the issuer does not file an annual proxy statement)* subsequent to such determination, the nature of the relationship and the reasons for that determination. *A director appointed to the Audit Committee pursuant to this exception may not serve for in excess of two consecutive years and may not chair the Audit Committee.*

([iii]*c*) [Exception for] Small Business Filers—[Paragraphs (b)(i) and (b)(ii) do not apply to] *I*[iI]ssuers that file reports under SEC Regulation S–B[. Such issuers] *are subject to all requirements specified in this Section, except that such issuers are only required to maintain a Board of Directors comprised of at least 50% independent directors,* [must establish] and [maintain] an Audit Committee of at least two [members, a majority of the members of which shall be] *members, comprised solely of* independent directors *who also meet the requirements of Rule 10A–3 under the Securities Exchange Act of 1934.*

See also Section 803.

** * * Commentary*

.01 ''Immediate family member'' includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person's home or is financially dependent upon such person.

.02 ''Parent'' or ''subsidiary'' includes entities that are consolidated with the issuer's financial statements.

.03 ''Officer'' shall have the meaning specified in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

.04 ''Executive Officer'' shall have the meaning specified in Rule 3b-7 under the Securities Exchange Act of 1934, or any successor rule.

.05 Foreign companies are permitted to follow home country practice in lieu of the audit committee requirements specified in this Section and in accordance with the provisions of Section 110, except that such companies must comply with Rule 10A–3 under the Securities Exchange Act of 1934.

Sec. 401, Outline of Exchange Disclosure Policies

The Exchange considers that the conduct of a fair and orderly market requires every listed company to make available to the public information necessary for informed investing and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the Exchange has adopted the following [seven] *eight* specific policies concerning disclosure, each of which is more fully discussed (in a Question and Answer format) in § 402:

(a) through (g)—No change.

(h) Receipt of Audit Opinion with Going Concern Qualification—A company is required to publicly disclose that it has received an audit opinion that contains a going concern qualification. (See Section 610(b).)

Sec. 402, Explanation of Exchange Disclosure Policies

(a) Immediate Public Disclosure of Material Information

Q. What standard should be employed to determine whether disclosure should be made?

A. Immediate disclosure should be made of information about a company's affairs or about events or conditions in the market for its securities when either of the following standards are met:

(i) Where the information is likely to have a significant effect on the price of any of the company's securities; or

(ii) Where such information (including, in certain cases, any necessary interpretation by securities analysts or other experts) is likely to be considered important by a reasonable investor in determining a choice of action.

Q. What kinds of information about a company's affairs should be disclosed?

A. Any material information of a factual nature that bears on the value of a company's securities or on decisions as to whether or not to invest or trade in such securities should be disclosed.

Included is information known to the company concerning:

(i) Its property, business, financial condition and prospects;

(ii) Mergers and acquisitions;

(iii) Dealings with employees, suppliers, customers and others; and

(iv) Information concerning a significant change in ownership of the company's securities by insiders, principal shareholders, or control persons.

In those instances where a company deems it appropriate to disclose internal estimates or projections of its earnings or of other data relating to its affairs, such estimates or projections should be prepared carefully, with a reasonable factual basis, and should be stated realistically, with appropriate qualifications. Moreover, if such estimates or projections subsequently appear to have been mistaken, they should be promptly and publicly corrected.

Q. What kinds of events and conditions in the market for a company's securities may require disclosure?

A. The price of a company's securities (as well as a reasonable investor's decision whether to buy or sell those securities) may be affected as much by factors directly concerning the market for the securities as by factors concerning the company's business. Factors directly concerning the market for a company's securities may include such matters as the acquisition or disposition by a company of a significant amount of its own securities, an event affecting the present or potential dilution of the rights or interests of a company's securities, or events materially affecting the size of the ''public float'' of its securities.

While, as noted above, a company is expected to make appropriate disclosure about significant changes in insider ownership of its securities, the company should not indiscriminately disclose publicly any knowledge it has of the trading activities of outsiders, such as trading by mutual funds or other institutions, for such outsiders normally have a legitimate interest in preserving the confidentiality of their securities transactions.

Q. What are some specific examples of a company's affairs or market conditions typically requiring disclosure?

A. The following events, while not comprising a complete list of all the situations which may require disclosure, are particularly likely to require prompt announcements:[;]

- A joint venture, merger or acquisition;
- The declaration or omission of dividends or the determination of earnings;
- A stock split or stock dividend;
- The acquisition or loss of a significant contract;
- A significant new product or discovery;
- A change in control or a significant change in management;
- A call of securities for redemption;
- The borrowing of a significant amount of funds;
- The public or private sale of a significant amount of additional securities;
- Significant litigation;
- The purchase or sale of a significant asset;
- A significant change in capital investment plans;
- A significant labor dispute or disputes with subcontractors or suppliers;
- An event requiring the filing of a current report under the Securities Exchange Act;
- Establishment of a program to make purchases of the company's own shares;
- A tender offer for another company's securities;
- An event of technical default or default on interest and/or principal payments;[.]
- *Board changes and vacancies; and*
- *Receipt of an audit opinion that contains a going concern qualification (see also Section 610(b)).*

Q. When may a company properly withhold material information?

A. Occasionally, circumstances such as those discussed below may arise in which—provided that complete confidentiality is maintained—a company may temporarily refrain from publicly disclosing material information. These situations, however, are limited and constitute an infrequent exception to the normal requirement of immediate public disclosure. Thus, in cases of doubt, the presumption must always be in favor of disclosure.

(i) When immediate disclosure would prejudice the ability of the company to pursue its corporate objectives.

Although public disclosure is generally necessary to protect the interests of investors, circumstances may occasionally arise where disclosure would prejudice a company's ability to achieve a valid corporate objective. Public disclosure of a plan to acquire certain real estate, for example, could result in an increase in the company's cost of the desired acquisition or could prevent the company from carrying out the plan at all. In such circumstances, if the unfavorable result to the company outweighs the undesirable consequences of non-disclosure, an announcement may properly be deferred to a more appropriate time.

(ii) When the facts are in a state of flux and a more appropriate moment for disclosure is imminent.

Occasionally, corporate developments give rise to information which, although material, is subject to rapid change. If the situation is about to stabilize or resolve itself in the near future, it may be proper to withhold public disclosure until a firm announcement can be made, since successive public statements concerning the same subject (but based on changing facts) may confuse or mislead the public rather than enlighten it.

For example, in the course of a successful negotiation for the acquisition of another company, the only information known to each party at the outset may be the willingness of the other to hold discussions. Shortly thereafter, it may become apparent to the parties that it is likely an agreement can be reached. Finally, agreement in principle may be reached on specific terms. In such circumstances (and assuming the maintenance of strict confidentiality), a company need not issue a public announcement at each stage of the negotiations, describing the current state of constantly changing facts, but may await agreement in principle on specific terms. If, on the other hand, progress in the negotiations should stabilize at some other point, disclosure should then be made if the information is material.

Whenever material information is being temporarily withheld, the strictest confidentiality must be maintained, and the company should be prepared to make an immediate public announcement, if necessary. During this period, the market action of the company's securities should be closely watched, since unusual market activity frequently signifies that a ''leak'' may have occurred. This is one reason why it is important to keep the company's Listing Qualifications Analyst fully apprised of material corporate developments.

Note: Federal securities laws may restrict the extent of permissible disclosure before or during a public offering of securities or a solicitation of proxies. In such circumstances (as more fully discussed below), a company should discuss the disclosure of material information in advance with the Exchange and the Securities and Exchange Commission. It is the Exchange's experience that the requirements of both the securities laws and regulations and the Exchange's disclosure policy can be met even in those instances where their thrust appears to be different.

Q. What action is required if rumors occur while material information is being temporarily withheld?

A. If rumors concerning such information should develop, immediate public disclosure becomes necessary. (See also ''Clarification or Confirmation of Rumors and Reports'', Section 402(c).)

Q. What action is required if insider trading occurs while material information is being temporarily withheld?

A. Immediate public disclosure of the information in question must be effected if the company should learn that insider trading, as defined in § 402(f) has taken or is taking place. In unusual cases, where the trading is insignificant and does not have any influence on the market, and where measures sufficient to halt insider trading and prevent its recurrence are taken, exemptions might be made following discussions with the Exchange. The company's Listing Qualifications Analyst, through the facilities of the Exchange's Stock Watch Department, can provide current information regarding market activity in the company's securities and help assess the significance of such trading.

Q. How can confidentiality best be maintained?

A. Information that is to be kept confidential should be confined, to the extent possible, to the highest possible echelons of management and should be disclosed to officers, employees and others on a ''need to know'' basis only. Distribution of paperwork and other data should be held to a minimum. When the information must be disclosed more broadly to company personnel or others, their attention should be drawn to its confidential nature and to the restrictions that apply to its use, including the prohibition on insider trading. It may be appropriate to require each person who gains access to the information to report any transaction which he effects in the company's securities to the company. If counsel, accountants, financial or public relations advisers or other outsiders are consulted, steps should be taken to ensure that they maintain similar precautions within their respective organizations to maintain confidentiality.

In general, it is recommended that a listed company remind its employees on a regular basis of its policies on confidentiality.

(b)—No change.

Sec. 610, Publication of Annual Report

(a) A listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements prepared in conformity with the requirements of the Securities and Exchange Commission. The company must disclose in its annual report to security holders, for the year covered by the report: (a) The number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options. Three copies of the report must be filed with the Exchange.

(b) A listed company that receives an audit opinion that contains a going concern qualification must make a public announcement through the news media disclosing the receipt of such qualified opinion. Prior to the release of the public announcement, the listed company must provide such announcement to the Amex's StockWatch and Listing Qualifications Departments. The public announcement shall be made as promptly as possible, but not more than seven calendar days following the filing of such audit opinion in a public filing with the Securities and Exchange Commission.*

* Notification should be provided to the Amex's StockWatch Department at (212) 306–8383 (telephone), (212) 306–1488 (facsimile), and to the Listing Qualifications Department at (212) 306–1331 (telephone), (212)–306–5325 (facsimile).

Part 8. Corporate Governance Requirements

Sec. 801, General

In addition to the quantitative listing standards set forth in Part 1, this Part 8 specifies certain corporate governance listing standards. These standards apply to all listed companies, subject to the following exceptions, to the extent not inconsistent with Rule 10A–3 under the Securities Exchange Act of 1934:

(a) *Controlled Companies—A company in which over 50% of the voting power is held by an individual, a group or another company (a ''controlled company'') is not required to comply with Sections 802(a), 804 or 805. A controlled company that chooses to take advantage of any or all of these exceptions must disclose in its annual meeting proxy statement (or in its next annual report on SEC Form 10–K or equivalent if the issuer does not file an annual proxy statement) that it is a controlled company and the basis for that determination.*

(b) *Limited Partnerships and Companies in Bankruptcy—Limited partnerships and companies in bankruptcy are not required to comply with Sections 802(a), 804 or 805.**

(c) *Other entities—Part 8 is not applicable to passive business organizations (such as royalty trusts) or to derivatives and special purpose securities listed pursuant to Amex Rules 1000, 1000A and 1200 and Sections 106, 107 and 118B. However, issuers of such securities are required to comply with Sections 121 and 803 to the extent required by Rule 10A–3 under the Securities Exchange Act of 1934.*[4]

(d) *Closed-End Management Companies—Such issuers are subject to extensive federal regulation and are therefore only required to comply with the audit committee requirements specified in Section 121 and 803 to the extent required by Rule 10A–3 under the Securities Exchange Act of 1934.*

(e) *Foreign Issuers—See Section 110.*

(f) *Preferred and debt listings—Companies listing only preferred or debt securities on the Exchange are only required to comply with Sections 121 and 803 to the extent required by Rule 10A–3 under the Securities Exchange Act of 1934.*

** If a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.*

Sec. 802, Board of Directors

(a) At least a majority of the directors on the Board of Directors of each listed company must be independent directors as defined in Section 121A, except for (i) a controlled company (see Section 801), and (ii) a Small Business filer (see Section 121B(2)(c)).

(b) Each company shall hold meetings of its Board of Directors on at least a quarterly basis. The independent directors shall meet on a regular basis as often as necessary to fulfill their responsibilities, including at least annually in executive session without the presence of non-independent directors and management.

*(c) The Board of Directors of each listed company may not be divided into more than three classes. Where the company's charter provides for classes, they should be of approximately equal size and tenure and directors' terms of office should not exceed three years.**

(d) A listed company is not permitted to appoint or permit an Exchange

[4] *See* Amendment No. 1, *supra* note 3.

employee or Floor Member to serve on its Board of Directors.

(e) Listed companies are urged to develop and implement continuing education programs for all directors, including orientation and training programs for new directors (see also Commentary .01 to Section 807)

** Paragraph (c) is not intended to restrict the number of terms of office that a director may serve, whether consecutive or otherwise.*

Sec. 803, Independent Directors and Audit Committee

(a) *No security is eligible for listing unless the issuer is in compliance with the audit committee requirements of Rule 10A–3 under the Securities Exchange Act of 1934, subject to an opportunity to cure any defects thereof in accordance with the procedures set forth in Section 1009 and Part 12. If a member of the issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A–3 under the Securities Exchange Act of 1934 (and the corresponding provisions of Section 121B(2)(a)(i)) for reasons outside the member's reasonable control, that person, with notice to the Exchange, may remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the member to be no longer independent. The text of Rule 10A–3 under the Securities Exchange Act of 1934 is reproduced in Commentary .01.*

(b) *A listed issuer must notify the Exchange promptly after an executive officer of the issuer becomes aware of any material noncompliance by the listed issuer with the requirements of paragraph (a).*

(c) *Any notification required pursuant to paragraphs (a) or (b) should be provided to the Exchange's Listing Qualifications Department at (212) 306–1331 (telephone), (212)-306–5325 (facsimile).*

(d) *The requirements of paragraphs (a) and (b) are operative as of*

(i) *July 31, 2005 for foreign private issuers and small business issuers (as defined in Rule 12b–2 under the Securities Exchange Act of 1934); or*

(ii) *For all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004 or October 31, 2004.*

See also Section 121.

*Commentary * * **

.01 For the convenience of listed companies, the text of Rule 10A–3 under the Securities Exchange Act of 1934 is reproduced below (as adopted April 25, 2003). Rule 10A–3—Listing standards relating to audit committees.

(a) Pursuant to section 10A(m) of the Act (15 U.S.C. 78j–1(m)) and section 3 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7202):

(1) National securities exchanges. The rules of each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) must, in accordance with the provisions of this section, prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(2) National securities associations. The rules of each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3) must, in accordance with the provisions of this section, prohibit the initial or continued listing in an automated inter-dealer quotation system of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(3) Opportunity to cure defects. The rules required by paragraphs (a)(1) and (a)(2) of this section must provide for appropriate procedures for a listed issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (a) of this section, before the imposition of such prohibition. Such rules also may provide that if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

(4) Notification of noncompliance. The rules required by paragraphs (a)(1) and (a)(2) of this section must include a requirement that a listed issuer must notify the applicable national securities exchange or national securities association promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.

(5) Implementation.

(i) The rules of each national securities exchange or national securities association meeting the requirements of this section must be operative, and listed issuers must be in compliance with those rules, by the following dates:

(A) July 31, 2005 for foreign private issuers and small business issuers (as defined in § 240.12b–2); and

(B) For all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.

(ii) Each national securities exchange and national securities association must provide to the Commission, no later than July 15, 2003, proposed rules or rule amendments that comply with this section.

(iii) Each national securities exchange and national securities association must have final rules or rule amendments that comply with this section approved by the Commission no later than December 1, 2003.

(b) Required standards.

(1) Independence.

(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

(ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an affiliated person of the issuer or any subsidiary thereof.

(iii) Independence requirements for investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or

her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an ''interested person'' of the issuer as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

(iv) Exemptions from the independence requirements.

(A) For an issuer listing securities pursuant to a registration statement under section 12 of the Act (15 U.S.C. 78l), or for an issuer that has a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) covering an initial public offering of securities to be listed by the issuer, where in each case the listed issuer was not, immediately prior to the effective date of such registration statement, required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)):

(1) All but one of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for 90 days from the date of effectiveness of such registration statement; and

(2) A minority of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for one year from the date of effectiveness of such registration statement.

(B) An audit committee member that sits on the board of directors of a listed issuer and an affiliate of the listed issuer is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for being a director on each such board of directors, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity.

(C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.

(D) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(1) The member is an affiliate of the foreign private issuer or a representative of such an affiliate;

(2) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and

(3) Neither the member nor the affiliate is an executive officer of the foreign private issuer.

(E) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(1) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and

(2) The member is not an executive officer of the foreign private issuer.

(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, the Commission may exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

(2) Responsibilities relating to registered public accounting firms. The audit committee of each listed issuer, in its capacity as a committee of the board of directors, must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.

(3) Complaints. Each audit committee must establish procedures for:

(i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and

(ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.

(4) Authority to engage advisers. Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(5) Funding. Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of:

(i) Compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;

(ii) Compensation to any advisers employed by the audit committee under paragraph (b)(4) of this section; and

(iii) Ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

(c) General exemptions.

(1) At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to the requirements of this section, the listing of other classes of securities of the listed issuer on a national securities exchange or national securities association is not subject to the requirements of this section.

(2) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of this section, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) is not subject to the requirements of this section.

(3) The listing of securities of a foreign private issuer is not subject to the requirements of paragraphs (b)(1) through (b)(5) of this section if the foreign private issuer meets the following requirements:

(i) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, established and selected pursuant to home country legal or listing provisions expressly requiring

or permitting such a board or similar body;

(ii) The board or body, or statutory auditors is required under home country legal or listing requirements to be either:

(A) Separate from the board of directors; or

(B) Composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;

(iii) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

(iv) Home country legal or listing provisions set forth or provide for standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;

(v) Such board or body, or statutory auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, are responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and

(vi) The audit committee requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section apply to such board or body, or statutory auditors, to the extent permitted by law.

(4) The listing of a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.

(5) The listing of a standardized option, as defined in § 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) is not subject to the requirements of this section.

(6) The listing of securities of the following listed issuers are not subject to the requirements of this section:

(i) Asset-Backed Issuers (as defined in § 240.13a–14(g) and § 240.15d–14(g));

(ii) Unit investment trusts (as defined in 15 U.S.C. 80a–4(2)); and

(iii) Foreign governments (as defined in § 240.3b-4(a)).

(7) The listing of securities of a listed issuer is not subject to the requirements of this section if:

(i) The listed issuer, as reflected in the applicable listing application, is organized as a trust or other unincorporated association that does not have a board of directors or persons acting in a similar capacity; and

(ii) The activities of the listed issuer that is described in paragraph (c)(7)(i) of this section are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(d) Disclosure. Any listed issuer availing itself of an exemption from the independence standards contained in paragraph (b)(1)(iv) of this section (except paragraph (b)(1)(iv)(B) of this section), the general exemption contained in paragraph (c)(3) of this section or the last sentence of paragraph (a)(3) of this section, must:

(1) Disclose its reliance on the exemption and its assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of this section in any proxy or information statement for a meeting of shareholders at which directors are elected that is filed with the Commission pursuant to the requirements of section 14 of the Act (15 U.S.C. 78n); and

(2) Disclose the information specified in paragraph (d)(1) of this section in, or incorporate such information by reference from such proxy or information statement filed with the Commission into, its annual report filed with the Commission pursuant to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(e) Definitions. Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:

(1)(i) The term affiliate of, or a person affiliated with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(ii)(A) A person will be deemed not to be in control of a specified person for purposes of this section if the person:

(1) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and

(2) Is not an executive officer of the specified person.

(B) Paragraph (e)(1)(ii)(A) of this section only creates a safe harbor position that a person does not control a specified person. The existence of the safe harbor does not create a presumption in any way that a person exceeding the ownership requirement in paragraph (e)(1)(ii)(A)(1) of this section controls or is otherwise an affiliate of a specified person.

(iii) The following will be deemed to be affiliates:

(A) An executive officer of an affiliate;

(B) A director who also is an employee of an affiliate;

(C) A general partner of an affiliate; and

(D) A managing member of an affiliate.

(iv) For purposes of paragraph (e)(1)(i) of this section, dual holding companies will not be deemed to be affiliates of or persons affiliated with each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and, in each case, receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

(2) In the case of foreign private issuers with a two-tier board system, the term board of directors means the supervisory or non-management board.

(3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term board of directors means the board of directors of the managing general partner, managing member or equivalent body.

(4) The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) The term dual holding companies means two foreign private issuers that:

(i) Are organized in different national jurisdictions;

(ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and

(iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.

(6) The term executive officer has the meaning set forth in § 240.3b–7.

(7) The term foreign private issuer has the meaning set forth in § 240.3b–4(c).

(8) The term indirect acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.

(9) The terms listed and listing refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities.

Instructions to § 240.10A–3.

1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Instruction 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with § 240.13d–3.

Sec. 804, Board Nominations

(a) Each listed company (except for a controlled company as defined in Commentary .01 to Section 121) must obtain approval of Board of Director nominations either by a Nominating Committee comprised solely of independent directors or by a majority of the independent directors.

(b) Notwithstanding paragraph (a) above, if the Nominating Committee is comprised of at least three members, one director who is not independent as defined in section 121A, and is not a current officer or employee or an immediate family member of such person, may be appointed to the Nominating Committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10–K or equivalent if the issuer does not file an annual proxy statement) subsequent to such determination, the nature of the relationship and the reasons for that determination. A director appointed to the Nominating Committee pursuant to this exception may not serve for in excess of two years.

(c) Notwithstanding paragraph (a) above, if the Nominating Committee is comprised of at least three members, and if the exception described in paragraph (b) above is not relied upon, one director who owns 20% or more of the company's common stock or voting power outstanding, and is not independent as defined in section 121A because that director is also an officer, may be appointed to the Nominating Committee if the board determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next proxy statement subsequent to such determination (or in its next annual report on SEC Form 10–K or equivalent if the issuer does not file an annual proxy statement), the nature of the relationship and the reasons for the determination.

** * * Commentary*

.01 If a company is legally required by contract or otherwise to provide third parties with the ability to nominate and/or appoint directors (e.g., preferred stock rights to elect directors upon dividend default, shareholder agreements, management agreements), the selection and nomination of such directors is not subject to approval by the Nominating Committee or a majority of independent directors.

Sec. 805, Executive Compensation

(a) Each listed company (except for a controlled company as defined in Commentary .01 to section 121) must obtain approval of its Chief Executive Officer's compensation either by a Compensation Committee composed of independent directors or by a majority of the independent directors on its Board of Directors. The Chief Executive Officer, in consultation with such Compensation Committee, or a majority of the independent directors on the company's Board of Directors, as applicable, shall recommend to the Board of Directors for its approval compensation for other officers (see Commentary .04 to section 121).

(b) Notwithstanding paragraph (a) above, if the Compensation Committee is comprised of at least three members, one director who is not independent as defined in section 121A, and is not a current officer or employee or an immediate family member of such person, may be appointed to the Compensation Committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10–K or equivalent if the issuer does not file an annual proxy statement) subsequent to such

determination, the nature of the relationship and the reasons for that determination. A director appointed to the Compensation Committee pursuant to this exception may not serve for in excess of two years.

** * * Commentary*

.01 The requirement to obtain approval of either the Compensation Committee or a majority of the independent directors does not preclude a company from seeking board ratification or approval as may be required to comply with applicable tax or State corporate laws.

Sec. 806, Stock Option Plans

See Section 711.

Sec. 807, Code of Conduct and Ethics

Each company shall adopt a Code of Conduct and Ethics, applicable to all directors, officers, and employees, which also complies with the definition of a ''code of ethics'' as set forth in item 406 of SEC Regulation S–K (or item 406 of SEC Regulation S–B with respect to a company which files reports under SEC Regulation S–B).

** * * Commentary*

.01 While each company should determine the appropriate standards and guidelines for inclusion in its Code, all Codes must promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; full, fair, accurate, timely, and understandable disclosure in periodic reports and documents required to be filed by the company; compliance with applicable Exchange and governmental rules and regulations; prompt internal reporting of violations of the Code to an appropriate person or persons identified in the Code; and accountability for adherence to the Code.

Sec. 808, Foreign Companies

See Section 110.

Sec. 1009, Continued Listing Evaluation and Follow-Up

(a) The following procedures shall be applied by the Exchange staff to companies identified as being below the Exchange's continued listing policies and standards. Notwithstanding such procedures, when [the Exchange staff deems it] necessary *or appropriate:*

(i) The Exchange staff may issue a Warning Letter to a company with respect to a minor violation of the Exchange's corporate governance or shareholder protection requirements (other than violations of the requirements pursuant to Rule 10A–3 under the Securities Exchange Act of 1934); or

(ii) For the protection of investors, *the Exchange may immediately suspend trading in any security, and make application to the SEC to delist the security* [trading in any security can be suspended immediately, and application made to the SEC to delist the security].

(b) through (i)—No change.

* * * * *

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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt comprehensive enhancements to the corporate governance requirements applicable to listed companies in order to promote accountability, transparency and integrity by such companies. The proposal encompasses significant changes to the following: board of director composition and independence standards, audit committee composition and authority, compensation and nominating committees, and ethics and disclosure obligations.[5]

Increased Board Independence

Most listed companies would be required to have a board of directors comprised of a majority of independent directors. In addition, the definition of ''independent'' would be tightened. Each listed company's board of directors would be required to affirmatively determine that an independent director has no material relationship with the company that would interfere with the exercise of independent judgment. However, certain specified relationships would preclude a board finding of independence. The current rules already specify certain of these relationships and the proposed changes would expand and clarify the types of relationships included in this category. Finally, independent directors serving on the audit committee would be subject to heightened requirements mandated by SEC Rule 10A–3, as described later.

Pursuant to the proposed rule change, the following individuals would not qualify as independent directors:

- Current officers and employees of the company or its subsidiaries.
- An individual who is or was employed by the company or any parent or subsidiary of the company during the past three years.
- An individual who accepts (or whose immediate family member[6] accepts) any payment from the company (or any parent or subsidiary of the company) in excess of $60,000 during the current or previous fiscal year. Compensation for board service, payments arising solely from investments in the company's securities, compensation paid to an immediate family member who is a non-executive officer employee of the company (or any parent or subsidiary of the company), or benefits under a tax-qualified retirement plan or non-discretionary compensation will not be included in the $60,000.
- An individual who is a partner, controlling shareholder or executive officer of any organization to which or from which the company made or received payments that exceed five percent of the recipient's consolidated gross revenues or $200,000 (whichever is more) in any of the most recent three fiscal years.
- An individual who is an immediate family member of an individual who is or has been employed by the company (or any parent or subsidiary of the company) as an executive officer during any of the past three years.
- An individual who is an executive officer of another entity where any of the listed company's executive officers serve on the compensation committee.
- An individual who is or was a partner or employee of the company's outside auditor, and worked on the audit engagement, during any of the past three fiscal years.

In view of the significant difficulties which many listed companies may face

[5] The Commission notes that the Amex has committed to consider appropriate revisions to its proposed rule change to achieve consistency with corporate governance listing standards approved by the Commission for other SROs. Telephone conference between Claudia Corwley, Vice President, Listing Qualitifcation, Amex, and Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commision, on October 27, 2003.

[6] The definition of ''immediate family member'' would be expanded to include anyone who resides in the director's home or is financially dependent upon the director, as well as the currently specified family relationships.

in recruiting enough independent directors to maintain a board with a majority of independent directors, the three year ''look back'' periods contained in certain of the independence requirements would be applied prospectively for independent directors who are not members of the audit committee. Thus for the first three years after the requirement becomes effective, the applicable ''look back'' period would be to the date the requirement to have a board comprised of a majority of independent directors becomes effective.

Listed companies would also be required to hold board meetings on at least a quarterly basis, and the independent directors serving on the board would be required to meet in executive session (*i.e.,* without the presence of non-independent directors) as often as necessary but at least once a year.

Audit Committees

The Exchange is proposing to adopt the rule changes mandated by Commission Rule 10A–3 under the Act to prohibit the listing of any security of an issuer that is not in compliance with the specified minimum audit committee standards with respect to independence and responsibilities. These standards would be incorporated into Sections 121 and 803 of the Amex *Company Guide.* In accordance with SEC Rule 10A–3, a listed company would be required to notify the Exchange promptly after an executive officer of the company becomes aware of any material noncompliance by the company, and any company not in compliance with the specified requirements would be afforded an opportunity to cure any defects thereof in accordance with the procedures set forth in Section 1009 and Part 12 of the Amex *Company Guide.* In addition, if a member of a listed company's audit committee ceases to meet the heightened audit committee independence requirements for reasons outside the member's reasonable control, with notice to the Exchange, that person would be permitted to remain an audit committee member until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the member to be no longer independent.

Listed companies (other than small business filers as discussed below) would continue to be required to maintain an audit committee of at least three independent directors. However, each director would now be required to satisfy both the general Amex independence standards as well as the heightened standards applicable to audit committee members as mandated by SEC Rule 10A–3. In addition, the Exchange would continue to require that each member of the audit committee be financially literate and that one member be financially sophisticated. While a listed company would continue to be able to appoint one non-employee director to the audit committee who does not meet the general Amex independence definition, pursuant to the ''exceptional and limited circumstances'' exception,[7] the proposed changes would permit the director in question to serve on the audit committee for only two years, and this director would not be permitted to not chair the audit committee. Anyone appointed pursuant to this exception would, of course, need to be qualified to serve on the committee under the heightened audit committee independence standards. Additionally, the audit committee responsibilities and charter requirements would be expanded to specify that the audit committees must be vested with all responsibilities and authority required by SEC Rule 10A–3.

Finally, audit committees would be required to hold meetings on at least a quarterly basis.

Compensation and Nominating Committees

The proposed rule changes would also increase the role of independent directors in the nomination and compensation decision-making process. For most listed companies, board nominations and chief executive officer compensation would have to be approved by a committee composed entirely of independent directors or by a majority of the independent directors on the company's board. One non-independent director would be permitted to be appointed to the compensation committee and/or the nominating committee pursuant to the ''exceptional and limited circumstances exception'' noted above. In addition, a director who is not independent as a result of being an officer of the company but who owns 20% or more of the company's stock could be appointed to the nominating committee in lieu of utilizing the ''exceptional and limited circumstances'' exception.

Ethics and Disclosure

The proposed changes would impose increased ethics and disclosure requirements in a number of respects. First, all Amex employees and Floor members would be prohibited from serving on the board of directors of any listed company. The Exchange believes that this prohibition is imperative in order to avoid even the appearance of a conflict of interest that could potentially interfere with its regulatory role and responsibilities. Second, all Amex listed companies would be required to adopt a code of ethics that meets the definition of a ''code of ethics'' under the Sarbanes-Oxley Act of 2002.[8] Third, listed companies would be required to issue a press release disclosing receipt of an audit opinion that contains a going concern qualification from the company's outside auditor, as well as any board changes and vacancies. And fourth, as discussed below, foreign issuers that elect to comply with certain home country corporate governance practices in lieu of Amex requirements would be required to provide disclosure thereof.

Applicability

The new corporate governance listing standards would apply to all listed companies with the exception of passive business organizations (such as royalty trusts) and derivatives and special purpose securities listed pursuant to Amex Rules 1000, 1000A and 1200 and Sections 106, 107 and 118B of the Amex *Company Guide.* Because of the nature and structure of such issuers, the Exchange does not believe that it is necessary or appropriate to apply the enhanced corporate governance requirements to them. However, issuers of some securities would be required to comply with Commission Rule 10A–3 to the extent required of them. In addition, the following types of issuers would be subject to limited exceptions as follows:

• Controlled Companies: A company in which over 50% of the voting power is held by an individual, a group or another company would not be required to comply with the requirement to have a board of directors comprised of a majority of independent directors, or with the compensation and nominating committee requirements. However, a controlled company that chooses to take advantage of any or all of these exceptions would be required to disclose in its annual meeting proxy that it is a controlled company and the basis for that determination. Controlled companies would, however, be subject to all other corporate governance requirements including those pertaining to audit committees.

• Limited Partnerships and Companies in Bankruptcy: Limited

[7] *See* Section 121B(2)(b) of the Amex *Company Guide.*

[8] See Item 406 of Regulation S–K and Item 406 of Regulation S–B.

partnerships and companies in bankruptcy would not be required to comply with the requirement to have a board of directors comprised of a majority of independent directors, or with the compensation and nominating committee requirements.

• Closed-End Management Companies: These issuers would be required to comply with the Exchange's audit committee requirements only to the extent required by SEC Rule 10A–3. Because closed-end management companies are subject to pervasive federal regulation relating, to among other things, their management structure and governance, the Exchange does not believe it is necessary or appropriate to apply the remaining corporate governance requirements to such issuers.

• Foreign Issuers: Foreign listed companies would be permitted to comply with home country practices as set forth in Section 110 of the Amex *Company Guide,* to the extent that such practices are not contrary to the federal securities laws. However, a foreign issuer would be required to provide English language disclosure of any significant ways in which its corporate governance practices differ from those followed by domestic companies pursuant to the Exchange's standards.

• Preferred and Debt Listings: Companies listing only preferred or debt securities on the Exchange would have to comply only with the Exchange's audit committee requirements to the extent required by SEC Rule 10A–3.

• Small Business Filers: The requirements applicable to small business filers would be enhanced. Under the proposed changes, such companies would be subject to the new corporate governance requirements, except that they would only be required to have a board of directors comprised of at least 50% independent directors and an audit committee of at least two independent directors. Such issuers would, of course, be required to comply with SEC Rule 10A–3.

The proposed changes would also authorize the Exchange staff to issue a public warning letter to a listed company for a minor violation of the Exchange's corporate governance and shareholder protection requirements. Amex rules do not currently provide for any sanction other than delisting for a company that has violated a corporate governance or shareholder protection requirement. Because delisting is obviously an extreme sanction that can be detrimental to a company's shareholders—the intended beneficiaries of such requirements—exchanges often do not have an appropriate approach to deal with these violations. Accordingly, the proposed changes would authorize Amex staff to issue a warning letter to a listed company for a minor corporate governance violation. Issuance of such letters would be subject to appropriate due process (*i.e.*, the staff would be required to advise the company of the apparent violation with an opportunity to respond prior to issuance of the warning letter) and would also require public disclosure by the company and correction within an appropriate time frame. Flagrant or repeat violations may subject the company to delisting.

Transition

The Exchange believes that many listed companies would face significant obstacles in complying with the enhanced board composition requirements. Therefore, other than for the audit committee requirements mandated by SEC Rule 10A–3, the new requirements, which require changes to board and committee composition and structure, would become effective two years following Commission approval. However, if a company already has a staggered board in place, and a change is required with respect to a director whose term does not expire during the two-year period, the company would have an additional year to fully comply with the board composition requirement. Companies listing in connection with an initial public offering or transferring from another marketplace that does not have substantially similar standards would be required to comply within two years of listing. Companies transferring from another marketplace which does have substantially similar standards would be given at least as long as any transition period afforded by that marketplace to comply.

The proposals that do not require changes to board composition would become effective six months following Commission approval. These changes include disclosure requirements, code of ethics requirements, and meeting requirements.

The public warning letter provision and the prohibition on Amex employees and Floor members serving on listed company boards will be effective upon SEC approval.

The audit committee changes implementing SEC Rule 10A–3 would become operative as required, on July 31, 2005 for foreign private issuers and small business filers, and for all other issuers by the earlier of either the issuer's first annual shareholders meeting after January 15, 2004 or October 31, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act [9] in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange represents that the proposed rule change, as amended, is designed to increase investor protection by promoting accountability, transparency, and integrity by listed companies.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

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

The Exchange did not receive any written comments on the proposed rule change.

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 self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. The Commission is also

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

interested in commenters' views on whether it is appropriate to permit small business filers to maintain a Board comprised of at least 50 percent independent directors, rather than a majority of independent directors, and to have an audit committee comprised of only two independent directors. 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 Amex.

All submissions should refer to the File No. SR–Amex–2003–65 and should be submitted by November 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27460 Filed 10–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48665; File No. SR–Amex–2003–85]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Adoption of a per Contract Licensing Fee for Transactions in Options on iShares Lehman U.S. Aggregate Bond Fund (AGG)

October 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 1, 2003, the American Stock Exchange LLC (''Exchange'' or ''Amex'') 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 Amex. 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

Amex proposes to amend its options fee schedule by adopting a per contract license fee in connection with specialist and registered options traders (''ROTs'') transactions in options on iShares Lehman U.S. Aggregate Bond Fund (AGG).[3]

The text of the proposed rule change is available at Amex 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, Amex 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. Amex 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 has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on certain exchange-traded funds (''ETFs''). Many agreements require the Exchange to pay a significant licensing fee to issuers or index owners as a condition to the listing and trading of these ETF options that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. The licensing fee currently imposed on specialists and ROTs is as follows: (1) $0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX), the iShares Goldman Sachs Corporate Bond Fund (LQD), the iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 Year Treasury Bond Fund (IEF), and iShares Lehman 20+ Year Treasury Bond Fund (TLT); (2) $0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (3) $0.05 per contract side for options on the S&P 100 iShares (OEF).[4]

The purpose of the proposed fee is for the Exchange to recoup its costs in connection with the index license fee for the trading of options on the iShares Lehman U.S. Aggregate Bond Fund. The proposed licensing fee will be collected on every option transaction of the iShares Lehman U.S. Aggregate Bond Fund in which the specialist or ROT is a party. The Exchange proposes to charge $0.10 per contract side for options on the iShares Lehman U.S. Aggregate Bond Fund. Accordingly, the Exchange believes that requiring the payment of a per contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per contract basis) along to the specialist(s) allocated to options on the iShares Lehman U.S. Aggregate Bond Fund and the ROTs trading such product, is efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

Amex notes that in recent years it has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[5] Amex believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange asserts that the proposed license fee will provide additional revenue for the purpose of recouping Amex's costs associated with the trading of options on the iShares Lehman U.S. Aggregate Bond Fund. In addition, Amex believes that this fee

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[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Commission notes that Amex is also deleting reference in its Options Fee Schedule to an expired three-month pilot program that reduced specialist and ROT transaction fees for equity and QQQ options. *See* Securities Exchange Act Release No. 48111 (June 30, 2003), 68 FR 40726 (July 8, 2003).

[4] *See* Securities Exchange Act Release Nos. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001), 47432 (March 3, 2003), 68 FR 11420 (March 10, 2003), 47431 (March 3, 2003), 68 FR 11882 (March 12, 2003), and 47956 (May 30, 2003), 68 FR 34687 (June 10, 2003).

[5] *See* Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002), and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).