

behalf of defined contribution plans as defined in Section 414(i) of the Internal Revenue Code of 1986, as amended;

(vii) It is an Investment Advisor as defined in Section 202(a)(ii) of the Investment Advisors Act of 1940, as amended;

(viii) If it does not qualify under paragraphs (i) through (vii) above, it has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services.

Users of Rule 59 information that are not members or participants of NSCC in any other capacity would be bound by the terms and conditions of a standard NSCC contract applicable to such service, and the rules of NSCC would not apply to them. The contract would state that the user cannot hold itself out as a member of NSCC unless approved for NSCC membership under a different NSCC rule. Such contracts would also include terms regarding limitations of liability, standard of care, and indemnification substantially similar to those contained in NSCC's membership agreement and rules.

NSCC anticipates that the first such information service to be authorized under proposed Rule 59 would be a messaging system used by participants in the separately managed accounts industry.<sup>3</sup> It is expected that the Separately Managed Account Service ("SMAS") would be used for the transmission of information between sponsors of separately managed account programs and the investment managers participating in their programs in order to coordinate information such as account opening data and verification of funding amounts.<sup>4</sup> Currently, this information is generally communicated by a combination of methods such as multiple vendor platforms, faxes, emails, and telephone.

NSCC believes that the proposed rule change would facilitate the transmission of information for investment products in a standardized and automated format, using NSCC's connectivity. Standardization and automation of information on investment products can be expected to reduce processing errors that are typically associated with

manual processes or the use of multiple platforms and methods to transmit information. Accordingly, NSCC believes this filing is consistent with the requirements of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities and other related transactions.

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

NSCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. NSCC has, however, worked closely with the MMI regarding standardization of information for the separately managed accounts industry. NSCC will notify the Commission of any written comments received by NSCC.

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

Within thirty five 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 ninety 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 or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NSCC-2003-01. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently,

comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR-NSCC-2003-01 and should be submitted by May 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47671; File No. SR-NYSE-2002-11]

### **Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 and Notice of Filing And Order Granting Accelerated Approval to Amendment No. 2 Thereto by the New York Stock Exchange, Inc. to Establish a Six-Month Pilot Program Permitting a Floor Broker to Use an Exchange Authorized and Issued Portable Telephone on the Exchange Floor**

April 11, 2003.

On February 28, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to implement a six-month pilot program that would amend NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Information about the separately managed account industry is available on the website of The Money Management Institute ("MMI"): <http://www.moneyinstitute.com>. The MMI is the national organization for the managed account industry, which is comprised principally of portfolio management firms and sponsors of investment programs.

<sup>4</sup> NSCC will file a Section 19(b) proposed rule change with the Commission before implementing any new service, such as the separately managed account service, under Rule 59.

Exchange. On December 30, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended by Amendment No. 1, was published in the **Federal Register** on January 28, 2003.<sup>4</sup> One comment was received on the published proposed rule change, as amended by Amendment No. 1.<sup>5</sup> On March 24, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>6</sup> This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. Amendment No. 2 is being approved on an accelerated basis.

### I. Description of the Proposal

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Rule 36.20 prohibits the use of portable telephone communications between the Trading Floor and any off-Floor location. According to the Exchange, the only way that voice communication can be conducted today by Floor brokers between the Trading Floor and an off-Floor location is by means of a telephone located at a broker's booth. Communications often involve a customer calling a broker at the booth for "market look" information. A broker may not use a portable phone currently in a trading crowd at the point of sale to speak with a person located off the Floor.

The Exchange proposes to amend NYSE Rule 36 to permit a Floor broker

to use an Exchange authorized and issued portable telephone on the Floor with the approval of the Exchange. As noted above, the Exchange currently does not permit the use of portable telephones on its Floor. Thus, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as provide "market look" observations as are routinely transmitted from a broker's booth location today. Only portable telephones authorized and issued by the Exchange would be permitted on the Exchange Floor. Any other type of portable telephone would continue to be prohibited.

Under the proposal, both incoming and outgoing calls, and orders on such calls, would be allowed, provided the requirements of all other Exchange rules have been met. A broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture ("FESC").<sup>7</sup> In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to do direct access business under Exchange Rules 342 and 345, among others.<sup>8</sup> As a result, NYSE

Rule 36 would be amended to specifically state that any Floor broker receiving orders from the public over portable phones must be properly qualified to do a public customer business.

Furthermore, the Exchange originally proposed in Amendment No. 1 that it would not permit portable communications at the point of sale for orders in ETFs, because there was an exception to NYSE Rule 123(e) that permitted orders in ETFs to first be executed and then entered into FESC.<sup>9</sup> In its original filing, the NYSE stated that technical restraints would be developed to implement this policy, thus preventing the use of portable phones where ETFs currently trade. The NYSE, however, determined that technical restraints could not be developed to prevent the use of portable phones in the Expanded Blue Room of the NYSE where ETFs currently trade. As a result, in Amendment No. 2, the Exchange proposed to eliminate the exception to NYSE Rule 123(e) for ETFs<sup>10</sup> and allow the use of portable phones for orders in ETFs.<sup>11</sup> Orders in ETFs would thus be subject to the same FESC requirements as orders in any other security listed on the Exchange. The Exchange states that requiring orders in ETFs to be first entered into FESC before execution or representation on the Floor would place them on an equal footing with orders in other securities with respect to order entry and recording procedures. As a result, the Exchange believes that allowing portable phones for orders in ETFs should be permitted. The Exchange also notes that the same surveillance procedures applicable to trading in all other equities would also apply to ETFs.

Although the Exchange originally stated in Amendment No. 1 that the proposal would be implemented on a six-month pilot basis from the date of Commission approval, and contained a

(November 21, 2001), Information Memo 01-18 (July 11, 2001) (available on [www.nyse.com/regulation/regulation.html](http://www.nyse.com/regulation/regulation.html)), and Information Memo 91-25 (July 8, 1991).

<sup>9</sup> See Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002) (SR-NYSE-2001-52) (discussing an exception to FESC that allowed orders in ETFs to be entered within 90 seconds of execution for a one-year pilot period). See also Securities Exchange Act Release No. 46713 (October 23, 2002), 67 FR 66033 (October 29, 2002) (SR-NYSE-2002-48) (extending the exception until January 5, 2004), and note 7 and accompanying text.

<sup>10</sup> The Exchange stated in Amendment No. 2 that a separate proposed rule change would be filed with the Commission to eliminate the exception in Supplementary Material .23 of NYSE Rule 123(e) for ETF orders. See SR-NYSE-2003-09 which discusses in more detail the rationale for eliminating the exception.

<sup>11</sup> See Amendment No. 2, *supra* note .

<sup>3</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 30, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, clarification and further details on the use of Exchange authorized and issued portable telephones on the Exchange Floor, and also proposes, among others, a pilot program for six months.

<sup>4</sup> See Securities Exchange Act Release No. 47221 (January 21, 2003), 68 FR 4261.

<sup>5</sup> See letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley & Co. Incorporated, to Jonathan G. Katz, Secretary, Commission, dated March 6, 2003 ("Morgan Stanley Letter").

<sup>6</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 21, 2003 ("Amendment No. 2"). Amendment No. 2 specifies the timing for the notification and implementation of the six-month pilot program as well as for the completion of a study, and eliminates the proposed prohibition against using Exchange authorized and provided portable telephones for orders in Investment Company Units (as defined in Section 703.16 of the Listed Company Manual), also known as Exchange-Traded Funds ("ETFs"). See notes 11 through 15, and accompanying text. Amendment No. 2 also extends the statutory time for the Commission to take action on the filing for a period of forty-five days.

<sup>7</sup> See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR-NYSE-98-25). See also Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR-NYSE-2001-39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed). The Exchange believes that the exceptions to FESC for bona fide arbitrage and orders to offset transactions made in error do not raise unique issues with respect to the use of portable telephones on the Floor. The NYSE believes that the purpose of the FESC requirement is to ensure that orders are entered into an Exchange data base before they are executed, thereby minimizing the possibility that orders are being initiated on the Floor in contravention of NYSE and SEC rules. Members may, however, initiate bona fide arbitrage and error offset orders on the Floor, as expressly permitted by NYSE Rule 112 and SEC Rule 11a-1. The Exchange believes that the use of portable telephones, therefore, does not raise on-Floor trading concerns as to these types of orders because these orders are not normally transmitted by phone. Telephone conversation between Jeff Rosenstock, Senior Special Counsel, NYSE, and Cyndi Rodriguez, Special Counsel, Division, Commission, on April 11, 2003.

<sup>8</sup> For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, see Information Memo 01-41

commitment to complete, within three months of Commission approval, a study of communications on the Exchange Floor pursuant to the recommendation of an Independent Consultant retained by the Exchange,<sup>12</sup> the Exchange now proposes in Amendment No. 2 to provide for Exchange authorized and provided portable phones on the Exchange Floor as a six-month pilot beginning on or about May 1, 2003.<sup>13</sup> Furthermore, the Exchange has committed to complete the study within three months of implementation of the pilot program, which would be on or about August 1, 2003.<sup>14</sup> The Exchange has also committed to notify the Division, OCIE, and the Exchange's membership within one week prior to the actual implementation date of this proposal.<sup>15</sup>

In its filing, the Exchange also noted that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.<sup>16</sup> The Exchange's proposed amendment to NYSE Rule 36 would not apply to specialists, who would continue to be prohibited from speaking from the post to upstairs trading desks or customers.

## II. Discussion

After careful review, the Commission finds that the proposed rule change and Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,<sup>18</sup> which requires, among other things, that the Exchange's rules be 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 regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities, 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.

Specifically, the proposal, as amended, would eliminate the requirement that an off-Floor customer must communicate with the Exchange Floor by calling a broker's booth and using the booth clerk as an intermediary to access the trading crowd, which may help to facilitate transactions in securities consistent with section 6(b)(5) of the Act.<sup>19</sup> While the Commission believes that the proposal to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor on a six-month pilot basis could provide certain benefits, as stated by the NYSE in its filing, such as more direct access to the Exchange's trading crowds, and increased speed in the transmittal, and execution, of orders, it believes there are certain concerns.

The prohibition on the use of portable telephones in trading crowds on the NYSE was adopted in 1988.<sup>20</sup> In approving the prohibition, the Commission noted that the use of portable telephones in the trading crowd was different from such access at a booth phone. In particular, the Commission stated that the ability of a customer to communicate directly with a broker in the trading crowd could provide a significant time and place advantage to the customer, who invariably would be a large or institutional customer. The Commission also noted certain concerns that could result from such advantage.

While the Commission recognized that the NYSE had reasonable concerns for imposing the portable phone prohibition, the Commission noted that the NYSE's decision to prohibit the use of portable telephones on the Floor was not the only approach that could be consistent with the Act. The Commission further stated that its order did not foreclose an exchange from devising a program that would permit the use of portable telephones.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> The proposal resulting in the adoption of the prohibition was in response to a Commission order setting aside actions by the Exchange denying two of its members permission to install telephone connections to communicate from the Exchange Floor with non-member customers located off-Floor. See Securities Exchange Act Release No. 24429, May 6, 1987, 38 SEC Doc. 432. The NYSE's proposal that was ultimately approved by the Commission permitted access to non-member customers at the Floor booth, but prohibited such access through portable phones that could be used in the trading crowd.

Under NYSE rules, a broker would not be permitted to represent and execute an order unless it was inputted into FESC. In addition, the filing has been amended so that only Exchange authorized and issued portable telephones would be permitted on the Floor. The benefit of this requirement is that the Exchange would have access to all phone records. This ability to track phone calls, along with the data captured in FESC, should aid the Exchange in surveilling for compliance with Exchange rules and address concerns identified in the adoption of the original prohibition. In this regard, the Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 will require,<sup>21</sup> and that orders are being handled in compliance with NYSE rules. The six-month pilot approval should provide the NYSE with an opportunity to review these procedures and address any potential concerns that have arisen during the pilot.

The Commission notes that the NYSE is expected to complete within three months of implementation of the portable phones a study of communications on the Exchange Floor, pursuant to a recommendation of an Independent Consultant retained by the Exchange.<sup>22</sup> In addition to this study, the Commission requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers use of an Exchange authorized and issued portable telephone on the Floor. If the NYSE decides to request permanent approval or an extension of the pilot, we would expect, in addition to the report due in three months, that the NYSE submit information documenting the usage of the phones, any problems that have occurred, and any advantages or disadvantages that have resulted.<sup>23</sup>

In summary, the Commission notes that the proposal, by enabling customers to speak directly to a Floor broker in a trading crowd on Exchange authorized and issued portable phones, rather than being routed through the Floor broker booth, may help to expedite orders and make more direct the flow of

<sup>21</sup> See note 8 and accompanying text for other NYSE requirement that Floor brokers be properly qualified before doing a public customer business.

<sup>22</sup> See *supra* note 12.

<sup>23</sup> This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

<sup>12</sup> See *In the Matter of New York Stock Exchange*, 70 S.E.C. Docket 106, Release No. 41574, 1999 WL 430863 (June 29, 1999).

<sup>13</sup> See Amendment No. 2, *supra* note 6.

<sup>14</sup> See Amendment No. 2, *supra* note 6.

<sup>15</sup> See Amendment No. 2, *supra* note 6. The Commission notes that should the NYSE be unable to implement the filing on or about May 1st, it would have to submit a rule proposal under Section 19(b) of the Act to change the date.

<sup>16</sup> See Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR-NYSE-00-31) (discussing restrictions on specialists' communications from the post).

<sup>17</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

information. The six-month pilot should help the Exchange to provide information to the Commission to ensure that these benefits exist, and provide for fair access with adequate monitoring of the orders being taken, and information being provided, over the portable phones.<sup>24</sup>

Finally, the Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.<sup>25</sup> Since the NYSE is also proposing in a separate rule filing to eliminate the exception to NYSE Rule 123(e), which provided that orders in ETFs must be entered into FESC within 90 seconds of execution,<sup>26</sup> the Commission believes that good cause exists to approve the portion of Amendment No. 2 that would allow the use of Exchange-provided and authorized portable phones for orders in ETFs on the Floor. As noted above, the prohibition of using portable phones for ETF orders was based on the 90-second delay for inputting ETF orders in FESC. Because this exception to FESC has been eliminated, the Commission believes that portable phones can be used for ETF orders as with other equity securities.<sup>27</sup> In addition, the Commission believes that it is beneficial to investors and Exchange members that the NYSE specified, in Amendment No. 2, a general time frame of approximately May 1, 2003 to implement the pilot program and of August 1, 2003 to

<sup>24</sup> In addition, as noted above, the Commission received one comment letter in support of the proposed rule change and Amendment No. 1. This commenter stated that the proposal would improve the overall quality of the flow of information and the efficiency of the communication process between the Exchange Floor and off-Floor participants, including both "direct access" investors and "upstairs" trading desks of NYSE member organizations. Furthermore, the commenter considered the use of portable phones to communicate directly to and from the Floor as enabling vigorous competition, innovative trading services, and faster executions on the Floor. See Morgan Stanley Letter, *supra* note 5. The commenter also suggested that the Exchange should aim to implement the rule change as fully contemplated and not make calls on portable phones linked through the booth, as some market participants might desire. In response, the Exchange stated that they were aware of certain market participants who preferred that phone calls between Floor brokers and off-Floor participants be connected through a Floor booth intermediary, and that, while technologically Floor brokers would have the ability on their portable phones to conference in Floor booth intermediaries on calls, such action is not required by this proposal. Telephone conversation between Jeff Rosenstock, Attorney, NYSE, and Cyndi Rodriguez, Special Counsel, Division, Commission, on April 11, 2003.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> See notes 9 and 10, and accompanying text.

<sup>27</sup> During the pilot, the NYSE should address whether additional surveillance would be needed because of the derivative nature of the ETFs.

complete the study of communications on the Exchange Floor. This should help firms and brokers in planning for the upcoming changes. Finally, we believe notice for NYSE members, the Division, and OCIE one week prior to the pilot program's implementation will be beneficial to market participants and the Commission. Based on the above, we believe good cause exists to grant accelerated approval to Amendment No. 2, consistent with sections 19 and 6(b) of the Act.<sup>28</sup>

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2002-11 and should be submitted by May 8, 2003.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change and Amendment No. 1 (SR-NYSE-2002-11) be, and it hereby is, approved, and that Amendment No. 2 be, and it hereby is, approved on an accelerated basis, as a pilot program for six months beginning on or about May 1, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>28</sup> 15 U.S.C. 78s and 15 U.S.C. 78f(b).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47672; File No. SR-NYSE-2002-33]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Corporate Governance

April 11, 2003.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the NYSE. On April 4, 2003, the NYSE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE proposes to amend its Listed Company Manual ("Manual") to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*  
301.00 Introduction  
\* \* \* \* \*

This section describes the Exchange's policies and requirements with respect to independent [audit committees] *directors*, [ownership interests of corporate directors and officers.] shareholders' voting rights, and other matters affecting [shareholders' ownership interests and the maintenance of fair and orderly markets

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 3, 2003 ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety. Telephone call between Annemarie Tierney, Office of General Counsel, NYSE, and Jennifer Lewis, Attorney, Division, Commission, on April 9, 2003.