

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 8, 2004:

A closed meeting will be held on Tuesday, March 9, 2004 at 2 p.m. and an open meeting will be held on Thursday, March 11, 2004 at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(5), (6), (7), (9), and (10) and 17 CFR 200.402(a)(5), (6), (7), 9(ii), and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 9, 2004 will be:

- Formal orders of investigation;
- Institution and settlement of administrative proceedings of an enforcement nature;
- Settlement of an administrative proceeding;
- Institution and settlement of injunctive actions; and
- A litigation matter.

The subject matter of the open meeting scheduled for Thursday, March 11, 2004 will be:

1. The Commission will consider whether to propose amendments to Form 20-F that would allow an eligible foreign private issuer that adopts International Financial Reporting Standards ("IFRS") as its basis of accounting for the first time for any financial year beginning no later than January 1, 2007 to file two years, rather than three years, of financial statements in a registration statement or annual report filed for the year in which it first adopts IFRS, with appropriate related disclosure. In addition, the amendments would require all first-time adopters of IFRS to include certain information.

For further information please contact Michael Coco, Division of Corporation Finance, at (202) 942-2990.

2. The Commission will consider whether to adopt amendments to Form 8-K under the Securities Exchange Act of 1934 to add several new disclosure items, amend certain of the existing Form 8-K disclosure items and shorten the Form 8-K filing deadline. The amendments further the goals of Section 409 of the Sarbanes-Oxley Act of 2002 which requires public companies to disclose "on a rapid and current basis" material information regarding changes in their financial condition or operations as the Commission, by rule, determines to be necessary or useful for the protection of investors and in the public interest.

For further information, please contact Raymond Be or Julie A. Bell, Division of Corporation Finance, at (202) 942-2910 or (202) 942-2906, respectively.

3. The Commission will consider whether to propose amendments to Forms N-1A, N-2, and N-3 under the Securities Act of 1933 and the Investment Company Act of 1940, and amendments to Form N-CSR under the Investment Company Act of 1940 and the Securities Exchange Act of 1934, regarding the disclosure provided by registered management investment companies about their portfolio managers. The proposals would extend the existing requirement that a registered management investment company provide basic information in its prospectus regarding its portfolio managers to members of management teams. The proposals would also require a registered management investment company to disclose additional information about its portfolio managers in its Statement of Additional Information, including other investment companies and accounts they manage, compensation structure, and securities ownership in investment companies and accounts they manage.

For further information, please contact Sanjay Lamba at (202) 942-7926.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: March 2, 2004.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49332/February 27, 2004]

### Order Making Fiscal 2004 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

#### I. Background

Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") requires each national securities exchange and national securities association to pay transaction fees to the Commission.<sup>1</sup> Specifically, section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.<sup>2</sup> Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.<sup>3</sup>

Section 31(j)(1) and (3) require the Commission to make annual adjustments to the fee rates applicable under sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal year 2012 and beyond.<sup>4</sup> Section 31(j)(2) requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal 2002 through fiscal 2011.<sup>5</sup> The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under section 31 equal to the "target offsetting collection amount" specified in section 31(l)(1) for that fiscal year.<sup>6</sup> For fiscal 2004, the target offsetting collection amount is \$1,028,000,000.<sup>7</sup>

Congress established the target offsetting collection amounts in the Investor and Capital Markets Fee Relief Act ("Fee Relief Act") by applying reducing fee rates to the Congressional Budget Office's ("CBO") January 2001 projections of dollar volume for fiscal years 2002 through 2011.<sup>8</sup> In any fiscal

<sup>1</sup> 15 U.S.C. 78ee.

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

<sup>3</sup> 15 U.S.C. 78ee(c).

<sup>4</sup> 15 U.S.C. 78ee(j)(1) and (j)(3).

<sup>5</sup> 15 U.S.C. 78ee(j)(2).

<sup>6</sup> 15 U.S.C. 78ee(l)(1).

<sup>7</sup> *Id.*

<sup>8</sup> The target offsetting collection amounts for fiscal 2002 through 2006 were determined by applying a rate of \$15 per million to the CBO's

year through fiscal 2011, the annual, and in certain circumstances, mid-year adjustment mechanism will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

## II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2004

Under Section 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under sections 31(b) and (c) in fiscal year 2004 if it determines, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, that the baseline estimate (\$25,918,721,642,549) is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal 2004.<sup>9</sup> To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal 2004.

Based on data provided by the national securities exchanges and the national securities association that are subject to section 31,<sup>10</sup> the actual aggregate dollar volume of sales during the first four months of fiscal 2004 was \$8,654,590,961,387.<sup>11</sup> Using these data and a methodology for estimating the aggregate dollar amount of sales for the

January 2001 projections of dollar volume for those fiscal years. The target offsetting collection amounts for fiscal 2007 through 2011 were determined by applying a rate of \$7 per million to the CBO's January 2001 projections of dollar volume for those fiscal years. For example, CBO's January 2001 projection of dollar volume for fiscal 2004 was \$68,500,000,000,000. Applying the initial rate under the Fee Relief Act of \$15 per million to that projection produces the target offsetting collection amount for fiscal 2004 of \$1,028,000,000.

<sup>9</sup>The amount \$25,918,721,642,549 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2004 calculated by the Commission in its Order Making Fiscal 2004 Annual Adjustments to the Fee Rates Applicable Under section 6(b) of the Securities Act of 1933 and sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. Nos. 33-8225 and 34-47768 (April 30, 2003), 68 FR 24027 (May 6, 2003).

<sup>10</sup>Each exchange is required to file a monthly report on Form R-31 containing dollar volume data on sales of securities subject to section 31 on the exchange. The report is due by the end of the month following the month for which the exchange provides dollar volume data. The NASD Inc. ("NASD") provides data separately.

<sup>11</sup>Although section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2004 "based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year," data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, *i.e.*, March 1, 2004. Dollar volume data on sales of securities subject to section 31 for February 2004 will not be available from the exchanges and the NASD for several weeks.

remainder of fiscal 2004 (developed after consultation with the CBO and the OMB),<sup>12</sup> the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal 2004 to be \$22,548,401,329,881. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal 2004 will be \$31,202,992,291,268.

Because the baseline estimate of \$25,918,721,642,549 is more than 10% less than the \$31,202,992,291,268 estimated actual aggregate dollar volume of sales for fiscal 2004, section 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under sections 31(b) and (c).

## III. Calculation of the Uniform Adjusted Rate

Section 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2004. Specifically, the Commission must adjust the rates under sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of [fiscal 2004], is reasonably likely to produce aggregate fee collections under section 31 (including fees collected during such 5-month period and assessments collected under [section 31(d)]) that are equal to [\$1,028,000,000]."<sup>13</sup> In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under section 31(d) during all of fiscal 2004 from \$1,028,000,000, which is the target offsetting collection amount for fiscal 2004. That difference is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect \$622,904,612 in fees for the period prior to the effective date of the

<sup>12</sup> See Appendix A.

<sup>13</sup> 15 U.S.C. 78ee(j)(2). The term "fees collected" is not defined in section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of section 31 fees for fiscal 2004 until March 15, the Commission will not "collect" any fees in the first five months of fiscal 2004. See 15 U.S.C. 78ee(e) However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress by stating in section 31(j)(2) that the "uniform adjusted rate \* \* \* is reasonably likely to produce aggregate fee collections under Section 31 \* \* \* that are equal to [\$1,028,000,000]," intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

mid-year adjustment<sup>14</sup> and \$23,900 in assessments on round turn transactions in security futures products during all of fiscal 2004. Using the methodology referenced in part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal 2004 following the effective date of the new rate will be \$17,307,204,075,317. Based on these estimates, the uniform adjusted rate is \$23.40 per million of the aggregate dollar amount of sales of securities.<sup>15</sup>

This fee rate is substantially lower than the current fee rate of \$39.00 per million, but it is still higher than the fee rate in effect upon to the enactment of the Fee Relief Act. The fee rate remains above the initial fee rate as a direct consequence of the decline in the aggregate dollar amount of sales of securities in fiscal 2004 compared to the CBO's January 2001 projection of the aggregate dollar amount of sales for fiscal 2004. The aggregate dollar amount of sales of securities subject to section 31 fees is illustrated in Appendix A.

## IV. Effective Date of the Uniform Adjusted Rate

Section 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year in which such rate applies. Therefore, the exchanges and the national securities association that are subject to section 31 fees must pay fees under sections 31(b) and (c) at the uniform adjusted rate of \$23.40 per million for sales of securities transacted on April 1, 2004, and thereafter until the

<sup>14</sup>This calculation is based on applying a fee rate of \$46.80 per million to the projected aggregate dollar volume of sales of securities subject to section 31 through February 21, 2004, and a rate of \$39.00 for the period from February 22, 2004, to March 31, 2004. Because the Commission's regular appropriation for fiscal year 2004 was not enacted prior to the end of fiscal year 2003, Exchange Act section 31(k), the "Lapse of Appropriation" provision, required that the fee rate in use at the end of fiscal year 2003, \$46.80 per million, remain in effect until 30 days after the appropriation was enacted. See also Order Making Fiscal 2004 Annual Adjustments to the Fee Rates Applicable Under section 6(b) of the Securities Act of 1933 and sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. Nos. 33-8225 and 34-47768 (April 30, 2003), 68 FR 24027 (May 6, 2003). The Commission's regular appropriation for fiscal year 2004 was enacted on January 23, 2004, and the \$39.00 per million rate went into effect 30 days later, by operation of the statute. See Exchange Act section 31(j)(4)(A)(ii).

<sup>15</sup>The calculation is as follows: (\$1,028,000,000 - \$622,904,612 - \$23,900) / \$17,307,204,075,317 = \$0.0000234047. Consistent with the system requirements of the exchanges and the NASD, the Commission rounds this result to the seventh decimal point, yielding a rate of \$23.40 per million.

annual adjustment for fiscal 2005 is effective.<sup>16</sup>

## V. Conclusion

Accordingly, pursuant to section 31 of the Exchange Act,<sup>17</sup> *it is hereby ordered* that each of the fee rates under sections 31(b) and (c) of the Exchange Act shall be \$23.40 per \$1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2004.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

## Appendix A

### A. Baseline Estimate of the Aggregate Dollar Amount of Sales.

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (January 1994–January 2004). The data obtained from the exchanges and NASD are presented in Table A. The monthly aggregate dollar amount of sales (exchange plus Nasdaq) is contained in column E.

Next, calculate the change in the natural logarithm of ADS from month-to-month. The average monthly change in the logarithm of ADS over the entire sample is 0.015 and the standard deviation 0.118. Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 2.2 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume.

<sup>16</sup> Section 31(j)(1) and section 31(g) of the Exchange Act require the Commission to issue an order no later than April 30, 2004, adjusting the fee rates applicable under sections 31(b) and (c) for fiscal 2005. These fee rates for fiscal 2005 will be effective on the later of October 1, 2004, or thirty days after the enactment of the Commission's regular appropriation for fiscal 2005.

<sup>17</sup> 15 U.S.C. 78ee.

For example, one can use the ADS for January 2004 (\$120,604,513,953) to forecast ADS for February 2004 (\$123,288,117,886 = \$120,604,513,953 × 1.022).<sup>1</sup> Multiply by the number of trading days in February 2004 (19) to obtain a forecast of the total dollar volume forecast for the month (\$2,342,474,239,842). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column I of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column E) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column F).

2. For each month *t*, calculate the change in ADS from the previous month as  $\Delta_t = \log(\text{ADS}_t / \text{ADS}_{t-1})$ , where  $\log(x)$  denotes the natural logarithm of *x*.

3. Calculate the mean and standard deviation of the series  $\{\Delta_1, \Delta_2, \dots, \Delta_{120}\}$ . These are given by  $\mu = 0.015$  and  $\sigma = 0.118$ , respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that  $\Delta_s$  and  $\Delta_t$  are statistically independent for any two months *s* and *t*.

5. Under the assumption that  $\Delta_t$  is normally distributed, the expected value of  $\text{ADS}_t / \text{ADS}_{t-1}$  is given by  $\exp(\mu + \sigma^2/2)$ , or on average  $\text{ADS}_t = 1.022 \times \text{ADS}_{t-1}$ .

6. For February 2004, this gives a forecast ADS of  $1.022 \times \$120,604,513,953 = \$123,288,117,886$ . Multiply this figure by the 19 trading days in February 2004 to obtain a total dollar volume forecast of \$2,342,474,239,842.

7. For March 2004, multiply the February 2004 ADS forecast by 1.022 to obtain a forecast ADS of \$126,031,435,423. Multiply this figure by the 23 trading days in March 2004 to obtain a total dollar volume forecast of \$2,898,723,014,722.

<sup>1</sup> The value 1.022 has been rounded. All computations are done with the unrounded value.

8. Repeat this procedure for subsequent months.

### B. Using the Forecasts From A to Calculate the New Fee Rate

1. Using the data from Table A, determine the actual and projected aggregate dollar volume of sales between 10/1/03 and 2/21/04 to be \$10,380,624,611,797. (Allocate the projected aggregate dollar volume in February 2004 based on the number of trading days in the periods—14 trading days during 2/1/04 and 2/21/04, and 5 trading days during 2/22/04 and 2/29/04.) Multiply this amount by the fee rate of \$46.80 per million dollars in sales during this period and get an estimate of \$485,813,231 in actual and projected fees collected during 10/1/03 and 2/21/04. Determine the projected aggregate dollar volume of sales between 2/22/04 and 3/31/04 to be \$3,515,163,604,154. Multiply this amount by the fee rate of \$39.00 per million dollars in sales during this period and get an estimate of \$137,091,381 in projected fees collected during 2/22/04 and 3/31/04.

2. Estimate the amount of assessments on securities futures products collected during 10/1/03 and 9/30/04 to be \$23,900 by summing the amounts collected through January of \$7,700 with projections of a 2.2% monthly increase in subsequent months.

3. Using the data from Table A, determine the projected aggregate dollar volume of sales between 4/1/04 and 9/30/04 to be \$17,307,204,075,317.

4. The rate necessary to collect the target \$1,028,000,000 in fee revenues is then calculated as:  $(\$1,028,000,000 - \$485,813,231 - \$137,091,381 - \$23,900) \div \$17,307,204,075,317 = .000023405$ .

5. Consistent with the system requirements of the exchanges and the NASD, round the rate to the seventh decimal point, yielding a rate of .0000234 (or \$23.40 per million).

**BILLING CODE 8010-01-P**

**Table A. Estimation of baseline of the aggregate dollar amount of sales.**  
(Methodology developed in consultation with the Office of Management and Budget and the Congressional Budget Office.)

**Fee rate calculation.**

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/03 to 2/21/04 (\$Millions)	10,380,625
b. Baseline estimate of the aggregate dollar amount of sales, 2/22/04 to 3/31/04 (\$Millions)	3,515,164
c. Baseline estimate of the aggregate dollar amount of sales, 4/1/04 to 9/30/04 (\$Millions)	17,307,204
d. Estimated collections in assessments on securities futures products in FY 2004 (\$Millions)	0.024
e. Implied fee rate ((\$1,028,000,000 - 0.0000468*a - 0.0000390*b - d) / c)	\$23.40479

**Data**

(A) Month	(B) # of Trading Days in Month	(C) Exchange-Listed Dollar Amount of Sales	(D) Nasdaq Dollar Amount of Sales	(E) Aggregate Dollar Amount of Sales	(F) Average Daily Dollar Amount of Sales (ADS)	(G) Change in LN of ADS	(H) Forecast ADS	(I) Forecast Aggregate Dollar Amount of Sales
Jan-94	21	277,615,393,351	137,551,072,000	415,166,465,351	19,769,831,683	-		
Feb-94	19	281,053,587,314	122,882,920,000	403,936,507,314	21,259,816,174	0.073		
Mar-94	23	316,713,498,173	151,177,373,000	467,890,871,173	20,343,081,355	-0.044		
Apr-94	19	289,365,151,226	114,834,515,000	404,199,666,226	21,273,666,643	0.045		
May-94	21	241,278,516,490	112,318,747,000	353,597,263,490	16,837,964,928	-0.234		
Jun-94	22	245,067,967,632	112,555,736,000	357,623,703,632	16,255,622,892	-0.035		
Jul-94	20	221,511,138,952	100,563,525,000	322,074,663,952	16,103,733,198	-0.009		
Aug-94	23	255,511,795,450	127,675,353,000	383,187,148,450	16,660,310,802	0.034		
Sep-94	21	273,589,300,476	111,984,539,000	385,573,839,476	18,360,659,023	0.097		
Oct-94	21	266,363,537,805	129,089,600,000	395,453,337,805	18,831,111,324	0.025		
Nov-94	21	267,314,618,799	121,827,668,000	389,142,286,799	18,530,585,086	-0.016		
Dec-94	21	265,184,891,948	106,839,641,000	372,024,532,948	17,715,453,950	-0.045		
Jan-95	21	253,958,524,771	125,092,685,000	379,051,209,771	18,050,057,608	0.019		
Feb-95	19	263,486,075,035	125,574,811,000	389,060,886,035	20,476,888,739	0.126		
Mar-95	23	330,806,034,718	161,066,575,000	491,872,609,718	21,385,765,640	0.043		
Apr-95	19	285,586,213,818	149,741,420,000	435,327,633,818	22,911,980,727	0.069		
May-95	22	340,254,177,379	191,600,883,000	531,855,060,379	24,175,230,017	0.054		
Jun-95	22	376,703,055,609	197,629,158,000	574,332,213,609	26,106,009,710	0.077		
Jul-95	20	346,809,496,831	229,239,639,000	576,049,335,831	28,802,466,792	0.098		
Aug-95	23	327,435,391,060	243,203,335,000	570,638,726,060	24,810,379,394	-0.149		
Sep-95	20	352,176,019,676	225,957,920,000	578,133,939,676	28,900,696,984	0.153		
Oct-95	22	386,892,948,035	255,297,230,000	642,190,178,035	29,190,462,638	0.010		
Nov-95	21	340,868,134,565	255,556,416,000	596,424,550,565	28,401,169,075	-0.027		
Dec-95	20	386,356,222,037	238,254,219,000	624,610,441,037	31,230,522,052	0.095		
Jan-96	22	412,342,988,854	275,256,103,000	687,599,091,854	31,254,504,175	0.001		
Feb-96	20	432,110,721,273	255,121,750,000	687,232,471,273	34,361,623,564	0.095		
Mar-96	21	462,522,216,093	252,313,904,000	714,836,120,093	34,039,815,243	-0.009		
Apr-96	21	419,529,647,022	284,880,671,000	704,410,318,022	33,543,348,477	-0.015		
May-96	22	444,864,509,489	323,514,998,000	768,379,507,489	34,926,341,250	0.040		

Jun-96	20	364,047,300,223	267,051,480,000	631,098,780,223	31,554,939,011	-0.102
Jul-96	22	405,998,331,384	282,430,397,000	688,428,728,384	31,292,214,927	-0.008
Aug-96	22	347,207,351,036	222,902,421,000	570,109,772,036	25,914,080,547	-0.189
Sep-96	20	361,752,600,688	255,491,281,000	617,243,881,688	30,862,194,084	0.175
Oct-96	23	450,138,412,454	314,131,029,000	764,269,441,454	33,229,106,150	0.074
Nov-96	20	468,499,807,419	279,994,893,000	748,494,700,419	37,424,735,021	0.119
Dec-96	21	475,791,378,753	288,688,118,000	764,479,496,753	36,403,785,560	-0.028
Jan-97	22	578,613,348,586	378,819,289,000	957,432,637,586	43,519,665,345	0.179
Feb-97	19	500,101,991,446	337,072,192,000	837,174,183,446	44,061,799,129	0.012
Mar-97	20	526,670,517,788	312,522,211,000	839,192,728,788	41,959,636,439	-0.049
Apr-97	22	541,016,966,315	321,782,247,000	862,799,213,315	39,218,146,060	-0.068
May-97	21	560,712,670,647	365,021,182,000	925,733,852,647	44,082,564,412	0.117
Jun-97	21	590,497,004,859	339,912,081,000	930,409,085,859	44,305,194,565	0.005
Jul-97	22	665,142,486,898	420,540,220,000	1,085,682,706,898	49,349,213,950	0.108
Aug-97	21	646,260,997,751	385,083,141,000	1,031,344,138,751	49,111,625,655	-0.005
Sep-97	21	636,729,800,602	399,730,444,000	1,036,460,244,602	49,355,249,743	0.005
Oct-97	23	795,309,593,718	534,343,839,000	1,329,653,432,718	57,811,018,814	0.158
Nov-97	19	614,656,941,587	311,360,937,000	926,017,878,587	48,737,783,084	-0.171
Dec-97	22	670,717,275,199	375,503,531,000	1,046,220,806,199	47,555,491,191	-0.025
Jan-98	20	662,635,021,902	375,290,271,000	1,037,925,292,902	51,896,264,645	0.087
Feb-98	19	672,828,859,396	408,876,474,000	1,081,705,333,396	56,931,859,652	0.093
Mar-98	22	795,132,023,467	464,862,662,000	1,259,994,685,467	57,272,485,703	0.006
Apr-98	21	819,690,018,253	478,804,341,000	1,298,494,359,253	61,833,064,726	0.077
May-98	20	717,931,027,995	392,290,631,000	1,110,221,658,995	55,511,082,950	-0.108
Jun-98	22	778,892,937,913	464,886,854,000	1,243,779,791,913	56,535,445,087	0.018
Jul-98	22	837,582,352,748	561,429,081,000	1,399,011,433,748	63,591,428,807	0.118
Aug-98	21	812,804,954,442	494,696,509,000	1,307,501,463,442	62,261,974,450	-0.021
Sep-98	21	899,449,779,083	452,978,456,000	1,352,428,235,083	64,401,344,528	0.034
Oct-98	22	941,206,761,926	519,628,635,672	1,460,835,397,598	66,401,608,982	0.031
Nov-98	20	763,668,070,478	534,735,697,587	1,298,403,768,065	64,920,188,403	-0.023
Dec-98	22	832,619,360,060	610,078,427,246	1,442,697,787,306	65,577,172,150	0.010
Jan-99	19	1,002,792,782,534	881,762,273,376	1,884,555,055,910	99,187,108,206	0.414
Feb-99	19	884,236,683,650	771,821,519,115	1,656,058,202,765	87,160,958,040	-0.129
Mar-99	23	1,063,644,002,718	845,323,661,356	1,908,967,664,074	82,998,594,090	-0.049
Apr-99	21	1,202,755,130,954	974,846,639,688	2,177,601,770,622	103,695,322,411	0.223
May-99	20	1,055,752,423,736	728,648,483,251	1,784,400,906,987	89,220,045,349	-0.150
Jun-99	22	968,672,852,262	728,666,375,241	1,697,339,227,503	77,151,783,068	-0.145
Jul-99	21	971,377,415,431	795,657,683,556	1,767,035,098,986	84,144,528,923	0.087
Aug-99	22	910,143,257,265	782,763,893,461	1,692,907,150,726	76,950,325,033	-0.089
Sep-99	21	887,751,464,814	842,754,416,364	1,730,505,881,178	82,405,041,961	0.068

Oct-99	21	1,078,637,908,317	938,836,857,225	2,017,474,765,542	96,070,226,931	0.153
Nov-99	21	1,129,374,113,398	1,218,999,895,936	2,348,374,009,334	111,827,333,778	0.152
Dec-99	22	1,214,245,992,515	1,472,542,539,476	2,686,788,551,991	122,126,751,454	0.088
Jan-00	20	1,298,320,930,164	1,759,510,466,949	3,057,831,397,113	152,891,563,856	0.225
Feb-00	20	1,242,939,925,885	1,730,179,962,177	2,973,119,888,063	148,655,994,403	-0.028
Mar-00	23	1,674,957,313,287	2,460,195,052,947	4,135,152,366,234	179,789,233,315	0.190
Apr-00	19	1,435,035,900,103	1,739,658,625,584	3,174,694,525,687	167,089,185,562	-0.073
May-00	22	1,275,173,133,440	1,374,100,073,878	2,649,273,207,318	120,421,509,424	-0.328
Jun-00	22	1,288,821,230,447	1,594,692,767,334	2,883,513,997,781	131,068,818,081	0.085
Jul-00	20	1,210,411,492,966	1,594,341,902,395	2,804,753,395,361	140,237,669,768	0.068
Aug-00	23	1,212,084,264,128	1,508,704,131,703	2,720,788,395,832	118,295,147,645	-0.170
Sep-00	20	1,266,743,469,149	1,663,445,339,863	2,930,188,809,012	146,509,440,451	0.214
Oct-00	22	1,520,695,416,929	1,965,230,890,799	3,485,926,307,727	158,451,195,806	0.078
Nov-00	21	1,293,925,005,931	1,501,853,870,956	2,795,778,876,887	133,132,327,471	-0.174
Dec-00	20	1,372,200,223,377	1,437,717,126,473	2,809,917,349,851	140,495,867,493	0.054
Jan-01	21	1,553,316,868,836	1,590,184,256,408	3,143,501,125,244	149,690,529,774	0.063
Feb-01	19	1,229,720,673,393	1,142,699,849,893	2,372,420,523,286	124,864,238,068	-0.181
Mar-01	22	1,459,253,562,636	1,095,165,522,477	2,554,419,085,113	116,109,958,414	-0.073
Apr-01	20	1,320,145,219,933	1,004,204,287,812	2,324,349,507,745	116,217,475,387	0.001
May-01	22	1,321,526,084,016	1,031,653,304,287	2,353,179,388,303	106,962,699,468	-0.083
Jun-01	21	1,247,283,258,199	864,638,855,037	2,111,922,113,236	100,567,719,678	-0.062
Jul-01	21	1,242,431,937,109	761,952,097,446	2,004,384,034,554	95,446,858,788	-0.052
Aug-01	23	1,126,055,224,969	677,510,112,826	1,803,565,337,795	78,415,884,252	-0.197
Sep-01	15	1,047,626,761,645	525,858,184,738	1,573,484,946,383	104,898,996,426	0.291
Oct-01	23	1,349,118,916,636	798,119,956,408	2,147,238,873,044	93,358,211,871	-0.117
Nov-01	21	1,172,054,711,429	767,372,506,089	1,939,427,217,518	92,353,677,025	-0.011
Dec-01	20	1,163,934,125,870	757,164,612,243	1,921,098,738,113	96,054,936,906	0.039
Jan-02	21	1,295,560,129,211	853,683,183,221	2,149,243,312,432	102,344,919,640	0.063
Feb-02	19	1,265,596,423,330	663,234,172,254	1,928,830,595,585	101,517,399,768	-0.008
Mar-02	20	1,391,686,235,846	610,530,138,668	2,002,216,374,514	100,110,818,726	-0.014
Apr-02	22	1,425,803,762,869	636,298,103,636	2,062,101,866,506	93,731,903,023	-0.066
May-02	22	1,389,719,439,112	596,147,222,417	1,985,866,661,529	90,266,666,433	-0.038
Jun-02	20	1,346,504,731,252	535,838,197,360	1,882,342,928,611	94,117,146,431	0.042
Jul-02	22	1,788,275,328,841	563,694,536,838	2,351,969,865,679	106,907,721,167	0.127
Aug-02	22	1,370,483,507,861	427,166,695,393	1,797,650,203,254	81,711,372,875	-0.269
Sep-02	20	1,146,955,551,522	376,346,966,238	1,523,302,517,760	76,165,125,888	-0.070
Oct-02	23	1,605,473,978,372	529,782,736,090	2,135,256,714,462	92,837,248,455	0.198
Nov-02	20	1,287,672,575,420	498,605,599,233	1,786,278,174,653	89,313,908,733	-0.039
Dec-02	21	1,150,267,594,827	415,897,247,519	1,566,164,842,346	74,579,278,207	-0.180
Jan-03	21	1,248,793,946,741	474,904,883,673	1,723,698,830,414	82,080,896,686	0.096

Feb-03	19	1,070,048,068,849	341,674,336,507	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,293,340,642,585	406,242,999,932	1,699,583,642,517	80,932,564,406	0.085		
Apr-03	21	1,310,080,563,238	449,316,319,231	1,759,396,882,469	83,780,803,927	0.035		
May-03	21	1,451,830,957,154	419,562,973,291	1,871,393,930,445	89,113,996,688	0.062		
Jun-03	21	1,656,129,355,959	466,098,458,761	2,122,227,814,720	101,058,467,368	0.126		
Jul-03	22	1,622,749,852,799	478,067,675,641	2,100,817,528,440	95,491,705,838	-0.057		
Aug-03	21	1,407,923,702,993	356,078,779,421	1,764,002,482,414	84,000,118,210	-0.128		
Sep-03	21	1,615,383,245,929	444,929,704,768	2,060,312,950,696	98,110,140,509	0.155		
Oct-03	23	1,828,085,746,139	486,831,267,393	2,314,917,013,532	100,648,565,806	0.026		
Nov-03	19	1,538,248,661,152	356,092,108,495	1,894,340,769,647	99,702,145,771	-0.009		
Dec-03	22	1,690,021,194,145	343,221,705,000	2,033,242,899,145	92,420,131,779	-0.076		
Jan-04	20	1,929,842,015,739	482,248,263,325	2,412,090,279,064	120,604,513,953	0.266		
Feb-04	19						123,288,117,886	2,342,474,239,842
Mar-04	23						126,031,435,423	2,898,723,014,722
Apr-04	21						128,835,795,266	2,705,551,700,579
May-04	20						131,702,555,684	2,634,051,113,688
Jun-04	22						134,633,105,171	2,961,928,313,763
Jul-04	21						137,628,863,114	2,890,206,125,385
Aug-04	22						140,691,280,483	3,095,208,170,629
Sep-04	21						143,821,840,537	3,020,258,651,273

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**SECURITIES AND EXCHANGE  
COMMISSION**[Release No. 34-49331; File No. SR-Amex-  
2004-15]**Self-Regulatory Organizations; Notice  
of Filing and Immediate Effectiveness  
of Proposed Rule Change and  
Amendment No. 1 Thereto by the  
American Stock Exchange LLC  
Relating to Disclosure of Independent  
Director Determinations**

February 27, 2004.

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> notice is hereby given that on February 23, 2004, the American Stock Exchange LLC (the “Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On February 26, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Amex has filed the proposed rule change as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend section 802 of the Amex *Company Guide* to specify that a listed company must disclose those directors that its board of directors has determined to be independent. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

<sup>1</sup> 15 U.S.C. 78s(b)(1).<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 26, 2004. Amendment No. 1 made a technical correction to the text of the proposed rule change to reflect a revision that was made in File No. SR-Amex-2004-06. See Securities Exchange Act Release No. 49295 (February 23, 2004).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).**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 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**

On December 1, 2003 the Commission approved comprehensive enhancements to the corporate governance requirements applicable to listed companies in order to promote accountability, transparency, and integrity by such companies, including the changes required by Commission Rule 10A-3<sup>5</sup> with respect to listed company audit committees.<sup>6</sup> Among other things, these enhancements require that for most listed companies at least a majority of the directors on the company’s board of directors must be independent as defined in section 121A of the *Amex Company Guide*. Small business issuers are required to maintain a board of directors comprised of at least 50% independent directors.<sup>7</sup> In order to provide increased disclosure to investors, the Exchange is proposing to amend section 802 of the Amex *Company Guide* to specify that a listed company 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) those directors that the board of directors has determined to be independent pursuant to section 121A of the Amex *Company Guide*.

**2. Statutory Basis**

The Amex believes that the proposed rule change, as amended, is consistent

<sup>5</sup> 17 CFR 240.10A-3.

<sup>6</sup> See Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (order approving File No. SR-Amex-2003-65).

<sup>7</sup> The disclosure required in the proposed rule change will apply equally to small business issuers. Telephone conference between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission, on February 25, 2004.

with section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of section 6(b)(5) of the Act,<sup>9</sup> 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

**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**

The proposed rule change has been filed by the Amex as a “non-controversial” rule change pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup>

Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

Pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> a proposed “non-controversial” rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may

<sup>8</sup> 15 U.S.C. 78f(b).<sup>9</sup> 15 U.S.C. 78f(b)(5).<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).<sup>11</sup> 17 CFR 240.19b-4(f)(6).<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).