

section 102(a) of the *Amex Company Guide*.⁶

In addition, pursuant to the pilot, the Exchange permits the listing of a group of closed-end funds listed by a single "fund family" (i.e., funds which have a common investment advisor or investment advisors who are "affiliated persons" as defined in section 2(a)(3) of the Investment Company Act of 1940, as amended),⁷ subject to the following standards:

- The total group has a market value of publicly held shares or net assets of at least \$75,000,000;
- The average market value of publicly held shares or net assets per fund of the group is at least \$15,000,000; and
- No fund in the group has a market value of publicly held shares or net assets of less than \$10,000,000.

The group standards would be applicable to any closed-end fund that is part of a "fund family" even if the closed-end fund is not listed concurrently with other funds in the family, as long as at the time of listing, the individual fund, the entire "fund family" is in compliance with the group standards. Therefore, all funds listed on the Amex which are part of the "fund family" will be evaluated in determining whether a fund applicant is eligible for listing. Each fund will also be individually subject to the distribution criteria specified in section 102(a) of the *Amex Company Guide*.⁸ The Exchange will not have discretion to list a closed-end fund that does not satisfy the quantitative criteria set forth in section 101(e) of the *Amex Company Guide*, but will have discretion to exclude a closed-end fund that otherwise satisfies the criteria.

The Exchange represents that the "fund family" standards will enable the Exchange to accommodate the needs of fund sponsors, which often prefer to offer, issue, and list funds in groups. The Exchange believes that when a fund is part of a larger family, compliance with a \$20,000,000 market value of publicly held shares or net asset requirement is not necessary for the fund to be suitable for listing, since the size of the fund family indicates that there is sufficient investor interest in the sponsor's funds.

The Exchange is also proposing to permanently amend section 1003 of the *Amex Company Guide* to specify that each closed-end fund (regardless of whether it is part of a "fund family") will be subject to delisting if its market value of publicly held shares and net assets are each less than \$5,000,000 for more than 60 consecutive days, or it ceases to qualify as a closed-end fund (unless the resultant entity otherwise qualifies for listing).

The Exchange represents that the pilot program has enabled the Exchange to apply more objective and transparent listing criteria to closed-end funds without unnecessarily limiting the listing of specialized and smaller funds that are suitable for listing, and has provided greater clarity to listing applicants and investors as to the applicable Exchange listing standards. The Exchange represents that the pilot program has operated smoothly, and the Exchange is not aware of any problems or concerns that have developed since approval thereof. It should also be noted that the Exchange is aware of only one comment letter submitted with respect to the pilot program, which supports the proposed rule change.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁰ in general, and furthers the objectives of section 6(b)(5),¹¹ 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change will continue to provide greater transparency with respect to the listing of closed-end funds, and potentially provide a larger number of such funds and their investors with the benefits inherent in an Amex listing of comprehensive regulation, transparent price discovery and trade reporting to facilitate best execution, and increased depth and liquidity resulting from the confluence

of order flow found in an auction market environment.

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

The Exchange does not believe that the proposed rule change 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 has neither solicited nor received any written comments with respect to the proposed rule change.

III. 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. 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 the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR-Amex-2002-113 and should be submitted by February 24, 2003.

IV. Comment Summary

As noted above, the Commission received one comment letter from the ICI regarding the five-month pilot program, which supported the pilot.¹² The ICI believed that the changes set forth in the five-month pilot program would facilitate the listing of closed-end funds on the Amex, particularly listings of closed-end funds from a single fund family. The ICI noted the adoption of listing eligibility criteria for closed-end funds should take into account that closed-end funds are structured and regulated differently from regular operating companies. Further, the ICI asserted that, in light of these

⁶ Section 102(a) of the *Amex Company Guide* requires a minimum public distribution of (i) 500,000 shares and 800 public shareholders; or (ii) 1,000,000 shares and 400 public shareholders; or (iii) 500,000 shares and 400 public shareholders and average daily trading volume of approximately 2,000 shares for the six months preceding the date of application.

⁷ 19 U.S.C. 80a-2(a)(3).

⁸ See *supra* note 6.

⁹ See letter from Ari Burstein, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, Commission, dated December 6, 2002 ("ICI Letter").

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See letter from Ari Burstein, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated December 6, 2002 ("ICI Letter").