

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NASD-2001-47), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-2485 Filed 1-31-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47253; File No. SR-NYSE-2001-27]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to Section 804 of the Listed Company Manual and Rule 499 of the Exchange

January 24, 2003.

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 August 17, 2001, 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, and III below, which Items have been prepared by the NYSE. On January 22, 2003, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.<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 Section 804 of the Listed Company Manual to specify that public directors will constitute a majority of the directors of

the Committee for Review voting on final delisting determinations. The NYSE also proposes to codify this change in the parallel Exchange Rule 499, as well as make other minor conforming changes.

The text of the proposal is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 804.0 Procedure for Delisting

- If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's web site.

- The notice to the issuer shall also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange ([comprised of] a majority of *the members of such Committee voting on each determination must be public* Directors), provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice.

\* \* \* \* \*

If a review is requested, the review will be scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. *The chairman of the Committee will disclose to the company and the staff at the commencement of the review which of the industry Directors present will be voting on the matter, although all directors will be entitled to participate in the discussion.* The Committee's review and final decision shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties.

\* \* \* \* \*

#### Delisting of Securities

Suspension from Dealings or Removal from List by Action of the Exchange

\* \* \* \* \*

Rule 499. Securities admitted to the list may be suspended from dealings or removed from the list at any time.

\* \* \* Supplementary Material

\* \* \* \* \*

#### .70 Procedure for Delisting

a. If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin [appending a suffix to the security's ticker symbol identifying the security's status] *daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's web site.* The notice to the issuer shall also inform the issuer of its right to a review of the determination by a Committee of the Board of Directors of the Exchange ([comprised of] a majority of *the members of such Committee voting on each determination must be public* Directors), provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice.

\* \* \* \* \*

c. If a review is requested, the review will be scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. *The chairman of the Committee will disclose to the company and the staff at the commencement of the review which of the industry Directors present will be voting on the matter, although all directors will be entitled to participate in the discussion.* The Committee's review and final decision shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties.

\* \* \* \* \*

#### 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 NYSE 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 NYSE has prepared summaries, set forth in

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</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> See letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 17, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced its original proposal in its entirety. In part, the Exchange clarified its rotation system with respect to the industry directors voting on a particular matter, clarified the basis for a decision made by the Committee for Review, specified the quorum requirements for the Committee for Review, and made conforming changes to the Exchange's rule text.