

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 Act⁹ 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).