

with respect to the proposed rule change 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2003-34 and should be submitted by December 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.⁷

Jonathan G. Katz,
Secretary.

Exhibit A.—Text of the Proposed Rule Change (Changes are italicized; deleted material is in brackets)

New York Stock Exchange, Inc.

CONSTITUTION

Article I

Title—Objects—Definitions

Sec. 1. *Title.* The title of the corporation is the "New York Stock Exchange, Inc."

Sec. 2. *Objects and Purposes.* Its objects and purposes shall be:

(a) To furnish exchange rooms for the convenient transaction of their business by its members; to furnish other facilities for its members, allied members and member organizations; to maintain high standards of commercial honor and integrity among its members, allied members and member organizations; and to promote and inculcate just and equitable principles of trade and business;

(b) to conduct and carry on the functions of a "board of trade" within the meaning of that term in the New York Not-for-Profit Corporation Law;

(c) to conduct and carry on the functions of an "exchange" within the meaning of that term in the Act; and

(d) to conduct and carry on any and all activities incidental to the foregoing which may lawfully be conducted and carried on by a corporation of its type formed under the New York Not-for-Profit Corporation Law.

Sec. 3. *Definition of Terms.* Unless the context requires otherwise, the terms defined in this Section shall, for all purposes of this Constitution, have the meanings herein specified:

(a) The term "Act" means the Securities Exchange Act of 1934 and the

rules and regulations thereunder, as from time to time amended.

(b) The term "Exchange" means the New York Stock Exchange, Inc.

Membership

(c) The term "allied member" means:

(i) a general partner in a member firm, or an employee who controls a member firm, who is not a member of the Exchange and who has become an allied member as provided in the rules of the Exchange, or

(ii) an employee of a member corporation who is not a member of the Exchange, who has become an allied member as provided in the rules of the Exchange, and who is either:

—a principal executive officer of such corporation, or

—a person who controls such corporation.

(d) The term "approved person" means a person who is not a member or an allied member of the Exchange or an employee of a member organization, who has become an approved person as provided in the rules of the Exchange and who is either:

(i) a person who controls a member or member organization, or

(ii) a person engaged in a securities or kindred business who is controlled by or under common control with a member or member organization.

(e) The term "electronic access member" means one of the members who has the right to maintain electronic or telephonic access to the floor facilities of a member or member organization, the Designated Order Turnaround System of the Exchange and such other automated trading systems of the Exchange as the Board may determine.

(f) The term "lessee member" means a member who has become a member by leasing the membership of a regular member.

(g) The term "lessor member" means regular member who has leased his or her membership.

(h) The term "member" means a natural person who is a member of the Exchange. A member may be associated as a member with no more than one member organization.

(i) The term "member corporation" means a corporation or other limited liability entity, registered as a broker or dealer in securities under, unless exempted by, the Act, approved by the Board as a member corporation, at least one of whose officers or employees is a member of the Exchange, or which has the status of a member corporation by virtue of permission given to it pursuant to the rules of the Exchange.

(j) The term "member firm" means a partnership, registered as a broker or

dealer in securities under, unless exempted by, the Act, approved by the Board as a member firm, at least one of whose general partners or employees is a member of the Exchange, or which has the status of a member firm by virtue of permission given to it pursuant to the rules of the Exchange.

(k) The term "member organization" includes "member firm" and "member corporation."

(l) The term "membership" refers to the members of the Exchange.

(m) The term "physical access member" means one of the members who is not a regular member but has the right to enter physically upon the trading floor and to have facilities thereon for the execution of orders.

(n) The term "regular member" means one of the members who upon liquidation, dissolution or winding up of the affairs of the Exchange, has distributive rights in its assets.

Board and Board of Executives

(o) The term "Board" means the Board of Directors of the Exchange.

(p) The term "entire Board" means the total number of directors [which] that the [Exchange] Board would have if there were no vacancies, [other than any vacancy that may exist in the office of Executive Vice Chairman or President, or both] on the Board.

[(q) The term "industry director" means a director of the Exchange who is

(i) a member or allied member of the Exchange who is

—the chief executive officer, or a principal executive officer, and a director of a member corporation; or

—the general partner of a member firm who has primary executive responsibilities; or

(ii) a member of the Exchange who is not a holder of voting stock in any member corporation or a partner in any member firm; or

(iii) the chief executive officer, or a principal executive officer, and a director of a person which controls and has as its principal subsidiary a member corporation.]

(q) The term "Board of Executives" means the Board of Executives of the Exchange described in Article V of this Constitution.

[(r) The term "public director" means a director of the exchange who is a representative of the public, except that no person who is or is affiliated with a broker or dealer in securities shall be a public director. For the purposes of this definition, a person shall be considered to be affiliated with a broker or dealer in securities if such person is a partner, officer, employee or director of such

⁷ 17 CFR 200.30-3(a)(12).