

clearly at the Board of Executives, the Board of Directors may solicit the advice and expertise of the Board of Executives, but may not delegate ultimate responsibility.

#### *Engagement With the Membership*

The proposed architecture recognizes the need to engage fully and substantively with the membership through: (a) The direct election of directors, (b) the ability to propose nominations to the Board through their representatives on the Board of Executives and by direct petition, (c) the ability to require special votes by the membership (including for the recall of directors for cause), (d) their representation on the Board of Executives and on standing Committees, (e) the occasion to meet annually through their representatives with the Board of Directors to bring special concerns of the membership to the attention of the Board, and (f) the ability of members to come to the annual meeting and propose resolutions on that occasion.

#### **Advisory Committees**

The Board of Directors will maintain several advisory committees. The advisory committees will consist primarily of constituent representatives not serving on the Board of Executives. Like the Board of Executives, the advisory committees will be organized to represent a range of constituencies, helping the Board of Directors and management to hear regularly from all of the Exchange's constituencies and to maintain a broad perspective on the market and its participants.

By way of example, at present the Individual Investors Advisory Committee, the Institutional Traders Advisory Committee and the Pension Managers Advisory Committee represent various investor interests. The Listed Company Advisory Committee, which represents the views of the U.S. listed companies, has European, Latin American and Pacific Rim counterparts. In addition, a number of advisory committees represent diverse industry interests, such as the Exchange Traders Advisory Committee and the Upstairs Traders Advisory Committee. Finally, the Legal Advisory Committee draws practitioners from law firms and the legal staffs of institutional investors, member organizations and listed companies, as well as law professors.

#### **Other Governance Reforms**

In addition to the governance reforms that require Constitutional amendments discussed above, the Exchange will implement other reforms that do not

require Constitutional amendment. Certain of these reforms were implemented by the Board in June 2003, based on the recommendation of the Special Committee on Governance of the NYSE. Other reforms were recommended by the Special Committee at the October 2003 Board meeting. The reforms listed below, which meet, and when appropriate, exceed the disclosure requirements imposed on the Exchange's listed companies, are designed to further enhance the transparency and accountability of the Board.

#### **Publication and Disclosure**

In addition to the various transparency initiatives that the cover letter notes, the Exchange will:

- Adhere to the SEC's proposed rule regarding director nominating committee responsibilities, including, among other things, disclosure concerning the Exchange's policy regarding consideration of individuals recommended by the public as potential nominees to the Board; the procedures enabling the public to suggest nominees; and the process for identifying and evaluating nominees and any differences in evaluation if the nominee is recommended by the public.
- Periodically update and post on the NYSE's web-site written governance principles and the Exchange's codes of business conduct and ethics.

#### **Governance Procedures and Policy**

In addition to the various detail on governance procedure and policy that the cover letter notes:

- The Finance Committee is expected to be responsible for recommending the non-regulatory budget of the Exchange to the Board for its review and approval, and fee changes to the Board of Directors, if appropriate. The Market Structure & Strategy Committee is expected to be responsible for examining issues of the Exchange's market structure and competitive position. Finally, the Quality of Markets Committee is expected to advise the Board on member and listed company rules and oversee the Market Performance Committee and the Allocation Committee.
- The Exchange will prohibit service by NYSE employees on the boards of directors of business corporations. The NYSE's Officers' and Employees' Statement of Business Conduct and Ethics already prohibits such service, but authorizes the Board to waive the provisions (subject to firewalls). Waivers are currently in effect until no later than Spring 2004 with respect to

the service of the Presidents on the boards of two public companies.

#### **Other Issues**

During the several weeks preceding the mailing of this proxy statement, members have identified a variety of other important issues outside the scope of addressing our governance and process failures. These issues include, among others, proposals for changing the Gratuity Fund, for permitting the transfer of memberships to trusts and other juridical persons, for reducing the number of outstanding trading rights by eliminating the physical access membership or by the Exchange buying back regular memberships, and for separating the trading right from the equity ownership of the Exchange. In some cases, addressing these issues requires amending the Exchange's certificate of incorporation; others raise access issues as to which the SEC can be expected to have strong views. Some of the issues may also be controversial given the current 50/50 split between member owners affiliated with member organizations and those who are not. (The 688 of our 1366 regular members (1/2 is 683) who are not so affiliated are composed of 415 retired members, 35 widows and other relatives of deceased members, 86 estates and 152 members who themselves or their family members have never been so affiliated.)

Each of these issues requires thoughtful consideration by an unconflicted Board. Therefore, these important issues will be placed on the agenda of the new Board for its consideration in the coming months. The directors will report to you on these issues, among others, at the next annual meeting in June 2004.

Note in this connection that, under State law, the NYSE is required to have an annual meeting for the election of directors. While the fact that the entire new Board will stand for election a mere six months after taking office arguably makes elections premature, these elections will provide an early check on the new Board's progress towards implementation of our ambitious restructuring of our governance, as well as its progress in addressing these issues.

#### **"Fast Track" Issues**

The extraordinary circumstances under which the restated and amended Constitution is being proposed and the initial Board of Directors is being constituted caused the Exchange to dispense, in whole or in part, with certain requirements under the current Constitution, including (a) use of the Nominating Committee to nominate