

audit committees of listed issuers; include a requirement that audit committees have a written charter; and set forth other standards relating to audit committees and the contents of their charters. It would also set forth the operative dates for the new requirements. The proposed rule change also would make several other changes to Article IV of the By-Laws, as more fully described in the Notice.<sup>6</sup> The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 20, 2003.<sup>7</sup> The Commission received no comments on the proposal. On November 19, 2003, the Exchange submitted an amendment to the proposed rule change.<sup>8</sup> On November 21, 2003, the Exchange submitted a second amendment to the proposed rule change.<sup>9</sup> This order approves the proposed rule change and Amendment No. 2, other than the proposed amendment to Article IV, Section 2 of the By-Laws relating to unlisted trading privileges; publishes notice of Amendment No. 1; and approves Amendment No. 1 on an accelerated basis.<sup>10</sup>

## II. Discussion

After careful review, the Commission finds that the amended proposed rule change, except for the provision of the proposal relating to unlisted trading privileges, is consistent with the

requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies and the other proposed revisions to Article IV, Sections 1 and 3 of the Exchange's By-Laws are consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.<sup>13</sup> Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act<sup>14</sup> and Rule 10A-3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the Exchange intends to file an additional rule proposal relating to other corporate governance listing standards.<sup>15</sup>

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>16</sup> to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the Exchange expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A-3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."<sup>17</sup> The amended Exchange proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of

such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A-3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.<sup>18</sup> In Amendment No. 1, the Exchange also made several technical revisions to the rule text. The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,<sup>19</sup> and the amendment raises no new substantive issues.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CSE-2003-06 and should be submitted by December 24, 2003.

<sup>18</sup> See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A-3).

<sup>19</sup> See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR-NYSE-2002-33 and SR-NASD-2002-141).

<sup>6</sup> See Securities Exchange Act Release No. 48624 (October 10, 2003), 68 FR 59957 (October 20, 2003) ("Notice").

<sup>7</sup> *Id.*

<sup>8</sup> See letter from Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 18, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made minor, non-substantive changes to the text of the proposed rule and, with respect to investment companies, expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

<sup>9</sup> See letter from Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated November 20, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange made minor, non-substantive changes to the text of the proposed rule by replacing references to "CSE" with "Exchange." This was a technical amendment and is not subject to notice and comment.

<sup>10</sup> Rule 10A-3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change in part, the Exchange can comply with this deadline.

<sup>11</sup> In approving these portions of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> The Commission notes that it is not approving the proposed changes to Article IV, Section 2 of the Exchange's By-Laws pertaining to unlisted trading privileges. The Exchange intends to revise at a later date its proposal relating to unlisted trading privileges. Any such amendment would require an affirmative vote by the Exchange's membership. Telephone conversation between Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, Nancy Sanow, Assistant Director, Division, Commission, and Ira L. Brandriss, Special Counsel, Division, Commission, on November 18, 2003.

<sup>14</sup> 15 U.S.C. 78j-1(m).

<sup>15</sup> See Notice at note .

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 240.10A-3(b)(3)(ii).