

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.¹⁴ Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,¹⁵ in that it is designed, among other things, to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest; and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change will foster greater transparency, accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of Amex listed issuers. The proposal also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the Amex has amended its proposal to harmonize it in many areas with rule changes recently approved by the Commission for the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc.

In addition, in the Commission's view, the proposed rule change is consonant with Rule 10A-3, which requires that the rules of a national securities exchange prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph 9(b) or (c) of Rule 10A-3. In this regard, the proposed rule change will promote independent and objective review and oversight of an Amex-listed issuer's financial reporting practices.

The Commission believes that the provisions that the Amex has included to accommodate small business filers by requiring them to have 50%, rather than a majority, of their boards comprised of independent directors, and by requiring them to have two, rather than three, members on their audit committees, are reasonable.

The Commission also believes that the provision added by Amex to prohibit a listed company from appointing or permitting an employee or Floor Member of the Exchange to serve on its board is reasonable and appropriate, as is the provision placing certain limits on the division of a listed company's board of directors into classes.

The Commission notes that other provisions proposed by Amex vary somewhat from corporate governance rules recently approved by the Commission for other SROs. For example, with respect to the proposed three-year "look back" periods that would apply to relationships that preclude a finding of director independence, certain "look-back" periods would cover only one year for the first year following Commission approval of the requirements, while other "look-back" periods would cover three years following Commission approval of the requirements. Amex also would require each company listed on the Exchange to adopt either a formal written charter or board resolution, as applicable, that addresses the nominations process. Amex also has included a provision to explicitly require an audit committee to meet on a quarterly basis. The Commission believes that these provisions are reasonable.

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,¹⁶ to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that most of the changes proposed in Amendment No. 2 correspond to similar provisions approved by the Commission for other self-regulatory organizations,¹⁷ and raise no new issues. With respect to changes proposed in Amendment No. 2 that are unique with respect to Amex, the Commission believes that these provisions are reasonable and that accelerating their approval will enable Amex to put into place its complete set of corporate governance standards for listed companies in time for the 2004 proxy season for the large majority of its listed companies. In addition, the Amex provisions relating to audit committees respond to the mandate of Rule 10A-3, which requires SROs to have such rules in place by December 1, 2003.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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-Amex-2003-65 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹⁸, that Amendment No. 2 be granted accelerated approval and that the proposed rule change (File No. SR-Amex-2003-65), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48859; File No. SR-CHX-2003-23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Incorporated to Amend Article XX, Rule 37(a)(4) Relating to the Definition of Preopening Order

December 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,²

¹⁴ 15 U.S.C. 78(b). In approving the proposed rule change, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See NYSE/NASD Corporate Governance Release, *supra* n. 11.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.