

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49700; File No. SR-Amex-2004-12)

May 13, 2004

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Audit Committee Meeting Requirements Applicable to Registered Closed-End Management Investment Companies

I. Introduction

On February 13, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 121 of the Amex Company Guide to modify the audit committee meeting requirements applicable to registered closed-end management investment companies ("closed-end funds"). On March 12, 2004, the Commission published the proposed rule change for comment in the Federal Register.³ The Commission received one comment letter on the proposal.⁴ This Order approves the proposed rule change.

II. Description of the Proposed Rule Change

In December 2003, the Commission approved a broad array of enhancements to the corporate governance requirements applicable to companies listed on the Amex.⁵ Included within those changes was a revision to Section 121 of the Amex Company

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49371 (March 5, 2004), 69 FR 11919 (March 12, 2004).

⁴ Letter from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated March 31, 2004 ("ICI Letter").

⁵ See Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (order approving File No. SR-Amex-2003-65).

Guide to explicitly require listed company audit committees to meet on at least a quarterly basis. The Amex states that the quarterly meeting requirement was intended to codify the existing practice of virtually all operating companies. The Amex proposes to modify this requirement with respect to closed-end funds to specify that the audit committee of a closed-end fund must meet on a regular basis as often as necessary to fulfill its responsibilities, including at least annually in connection with the issuance of the fund's audited financial statements. The Amex believes that its proposal would align more closely the requirement for closed-end funds with the customary practices of most of these entities.

The one comment letter received by the Commission with respect to the proposal supported the proposed rule change.⁶

III. Discussion

After careful review, the Commission finds that the proposed rule change 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.⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ in that it is designed, among other things, 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 mechanism of a free

⁶ Specifically, the commenter maintained that because Commission rules do not require closed-end funds to file quarterly financial statements, it is not necessary or appropriate to impose a quarterly audit committee meeting requirement on them. See ICI Letter.

⁷ 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).

⁸ 15 U.S.C. 78(b)(5)

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.

In the Commission's view, Amex's proposal to require the audit committee of a closed-end fund to meet on a regular basis as often as necessary to fulfill its responsibilities, including at least annually in connection with issuance of the fund's audited financial statements, is designed to help ensure the effective operation of a closed-end fund's audit committee. Under the Investment Company Act of 1940,⁹ a closed-end fund is not required to file quarterly reports, and thus the Amex proposal does not mandate quarterly meetings of the audit committee. Nevertheless, as recognized by the Exchange, the proposed rule change would require closed-end fund audit committees to meet as often as necessary, even if more frequently than quarterly, if the unique circumstances facing a particular fund so require.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁰, that the proposed rule change (File No. SR-Amex-2004-12) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor
Assistant Secretary

⁹ 15 U.S.C. 80a-1 et seq.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).