

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50196; File No. SR-NYSE-2004-04)

August 13, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Its Rules Regarding Listed Company Relations Proceedings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 9, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 29, 2004, the Exchange submitted Amendment No. 1 to the original proposal.³ On August 3, 2004, the Exchange submitted Amendment No. 2 to the original proposal.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated March 26, 2004 (“Amendment No. 1”). Amendment No. 1 replaced the proposed rule text in the original proposal to reflect changes in NYSE Rule 103C that the Commission recently had approved. See Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004).

⁴ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 2, 2004 (“Amendment No. 2”). Amendment No. 2 deleted NYSE Rule 103C and added the text of NYSE Rule 103C, as proposed to be amended, to the Listed Company Manual; added proposed rule text to provide for a review of the issuer’s notice of a request for a change of specialist unit by the Exchange’s Regulatory Group; and replaced a portion of the discussion in the purpose section of the filing to reflect these changes.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change, as amended, seeks to remove NYSE Rule 103C (Listed Company Relations Proceedings), to add a new Section 806.01 to NYSE's Listed Company Manual (Change of Specialist Unit upon Request of Company), and to add new rule text to NYSE Rule 103B pertaining to specialist reallocations following a specialist removal pursuant to the new Listed Company Manual Rule 806.01.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The proposed changes to the rule text for NYSE Rules 103B and 103C and for new Section 806.01 in the NYSE's Listed Company Manual, marked to show changes from the Exchange's existing rules, is set forth in Exhibit A hereto.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove Rule 103C (Listed Company Relations Proceedings) and substitute it with a new Listed Company Manual Section 806.01 in order to provide a more efficient and meaningful method for resolving disputes between listed companies and their assigned specialist units.

The Exchange recognizes that the working relationship between a listed company and its specialist unit is of paramount importance. To help further this relationship, the Exchange provides a listed company with the opportunity to participate in the selection of its assigned specialist unit in accordance with the policies and procedures set forth in Exchange Rule 103B.⁵ Similarly, NYSE Rule 106 provides for a high level of interaction between the listed company and its specialist unit. These provisions are extremely beneficial to both the listed company and its specialist unit and promote a closer working relationship between them. Notwithstanding the success of these provisions, situations may occasionally arise in which a listed company and its specialist unit cannot easily resolve differences.

To address such listed company relations and compatibility issues, the Exchange adopted its current Rule 103C, which sets forth the process by which listed companies can request reassignment to a different specialist unit. However, the procedure set forth in its current Rule 103C is cumbersome and extremely lengthy. Moreover, under the current rule, even if it quickly becomes apparent that the listed company and its specialist unit are unable to resolve their differences, no reassignment can occur until at least one year after the listed company's request. It is likely for these reasons that no listed company has commenced a Rule 103C proceeding since the rule's adoption. Thus, it is necessary to provide a more meaningful and responsive mechanism to address non-regulatory issues between a listed company and its assigned specialist unit. This will promote the continued efficient operation of the marketplace and promote good relationships with and between listed companies and their specialists.

⁵ See Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR-NYSE-2002-31) (codifying the specialist stock allocation policy as Rule 103B).

In addition, proceedings under its current Rule 103C occur under the oversight of the Quality of Markets Committee, before a subcommittee consisting of, among others, certain Exchange officials. This process no longer makes sense given the recent changes to the Exchange's governance structure.⁶

The Exchange will codify in its Listed Company Manual a new section, 806.01, entitled "Change of Specialist Unit upon Request of Company." This is the same section of the Listed Company Manual that includes the provision under which listed companies may voluntarily delist from the Exchange. Codification in this section reflects the fact that under these circumstances, the change of specialist represents an issuer choice: in this case, a choice to change its specialist rather than a choice to change the market on which the company is listed. Section 806.01 will provide a formal procedure whereby a listed company may give written notice to the Exchange of its request to change its specialist unit (the "Issuer Notice"). The subject specialist unit will be provided with the Issuer Notice and given an opportunity to respond in writing. The Exchange will then appoint a committee to conduct a mediation of the issues that have arisen between the company and the specialist unit, consisting of representatives from the Exchange's Board of Executives ("BOE"), including at least one BOE floor broker representative, at least one BOE investor representative and at least one BOE listed company representative. At any time the listed company may give the Exchange notice that it is concluding the mediation because it wishes to continue with its specialist unit. However, after three months if the listed company wishes to proceed with the change of specialist unit, it may do

⁶ See Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (SR-NYSE-2003-34). See also Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004) (SR-NYSE-2004-02).

so by filing a notice to that effect with the Exchange. The listed company stock would then be put up for allocation under NYSE Rule 103B (Specialist Stock Allocation).

The procedure also requires that a copy of the Issuer Notice and any specialist response be provided to the Exchange's Regulatory Group for its review. The Regulatory Group will have two weeks to review the Issuer Notice before the earliest date that the mediation could get underway, and the Regulatory Group may request a review of the matter by the Regulatory Oversight Committee ("ROC") of the Exchange's Board of Directors, a committee consisting entirely of independent directors. The mediation process may commence and continue during the Regulatory Group's review. However, where a review by the ROC has been requested, no change of specialist may occur until the ROC makes a final determination that, as a regulatory matter, it is appropriate to permit such a change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules.

When a listed company change of specialist occurs under this new procedure, and the listed company's security is put up for allocation to a specialist, the currently assigned specialist unit may apply for the allocation consistent with the policies and procedures set forth in NYSE Rule 103B. If the currently assigned specialist unit does not apply for the allocation, the unit may not be allocated the security under the provisions of NYSE Rule 103B relating to selection of a specialist unit by the Allocation Committee. No negative inference for allocation or regulatory purposes may be made against a specialist unit that has been changed pursuant to Section 806.01 of the Listed Company Manual. Similarly, the specialist unit shall not be

afforded preferential treatment in subsequent allocations as a result of a change pursuant to such provision.

2. Statutory Basis

The basis under the Act for this proposed rule change, as amended, is the requirement under Section 6(b)(5)⁷ that an Exchange have rules that are designed 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

⁷ 15 U.S.C. 78f(b)(5).

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-04 on the subject line.

Paper comments:

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).

Text of the Proposed Rule Change
(Changes are italicized; deleted material is in [brackets])

[Listed Company Relations Proceedings]

Rule 103C. (a) A listed company may file with the New Listings & Client Service Division a written notification (“Issuer Notice”), signed by the company’s chief executive officer, that it wishes to commence a proceeding whereby the Quality of Markets Committee (“QOMC”) shall attempt to mediate and resolve non-regulatory issues that have arisen between the company and its assigned specialist unit. The Issuer Notice shall indicate the specific issues sought to be mediated and resolved, and what steps, if any, have been taken to try to address them before the filing of the Notice.

(b) The QOMC shall refer the Issuer Notice to its Listed Company Relations Subcommittee (the “Subcommittee”) which shall consist of four Board of Executives members (two of whom are representatives of listed companies and a senior officer of the Exchange. The Subcommittee shall review the Issuer Notice and shall notify the subject specialist unit that a Listed Company Relations Proceeding (“LCRP”) is being commenced pursuant to this rule, and that the LCRP shall run for one year from the date of notice to the specialist unit, unless concluded earlier by the listed company. The specialist unit shall be provided with a copy of the Issuer Notice, and shall be given two weeks within which to submit a written response to the Subcommittee.

(c) After the two-week period for a response from the subject specialist unit, the Subcommittee shall meet with representatives of the listed company and the specialist unit that are parties to the LCRP, and shall identify specific steps that may be taken to mediate and resolve matters indicated in the Issuer Notice.

(d) The parties to the LCRP shall each submit a written report to the Subcommittee no later than three months from the date the LCRP is commenced with respect to all matters indicated in the Issuer Notice, and any other matter that either party believes may have a bearing on the LCRP. The written report shall include a description of the progress each party has made on the specific steps established by the Subcommittee. The listed company may give written notice that it is concluding the LCRP at any time if it believes matters have been satisfactorily addressed. If the listed company wishes the LCRP to continue, it must so state. After receiving the written reports from the parties to the LCRP, the Subcommittee shall then advise the QOMC on the Subcommittee's conclusions regarding whether or not the specialist has successfully completed the specific steps established by the Subcommittee. The Subcommittee may meet further with the parties to the LCRP, and identify such other specific steps that may be taken to resolve matters, as it deems appropriate. The same process shall be followed at six and nine month intervals from the date the LCRP is commenced, unless the listed company has chosen to conclude the LCRP.

(e) At the end of one year from the commencement of the LCRP, the listed company shall, in writing, either (i) inform the Subcommittee that it wishes to conclude the LCRP; or (ii) inform the Subcommittee that matters between it and its specialist unit remain unresolved, and that it wishes that its stock be assigned to a different specialist unit. The Subcommittee shall prepare a report to the QOMC recommending that it is in the best interest of the continued efficient operation of the Exchange's market, either that (i) the LCRP should be concluded; or (ii) that the listed company's stock should be assigned to a different specialist unit. The Subcommittee's report to the QOMC shall indicate whether or not the specialist has successfully completed the specific steps established by the Subcommittee.

(f) The QOMC shall review the report prepared by the Subcommittee and shall give the parties to the LCRP an opportunity to present their views in writing. The QOMC shall then make a recommendation to the Exchange's Board of Directors as to the disposition of the LCRP, including a recommendation as to whether the listed company's stock should be assigned to a different specialist unit.

(g) The Exchange's Board of Directors shall review the QOMC's recommendation and may give the parties to the LCRP an opportunity to present their views in writing. The Board of Directors shall consider the efforts taken by the specialist to complete the Subcommittee's specific steps and then determine the appropriate disposition of the LCRP. The Board of Directors may, if it determines the non-regulatory issues that have arisen between the listed company and the specialist to be irreconcilable differences, not based upon bias or other violations of public policy, and that a reallocation would be in the best interest of the continued efficient operation of the Exchange's market, direct that the Allocation Committee reallocate the listed company's stock to a different specialist unit. The currently-assigned specialist unit and the member organization of any specialist member of the Board of Directors shall be precluded from applying to be allocated the stock. No reference to the LCRP or the Board's action shall be retained in the information maintained by the Allocation Committee with respect to the currently-assigned specialist unit, and the currently-assigned specialist unit shall not be afforded preferential treatment in subsequent allocations as a result of a reallocation pursuant to this rule.]

New York Stock Exchange Listed Company Manual

806.0 [Rule of the Exchange in Respect of Removal from List upon Request of Company]
Request of Listed Company for a Change of Specialist Unit or for Removal from the List.

806.01 Change of Specialist Unit upon Request of Company.

(a) A listed company may file with the Corporate Secretary of the Exchange a written notice (the “Issuer Notice”), signed by the company’s chief executive officer, that it wishes to request a change of specialist unit. The Issuer Notice shall indicate the specific issues prompting this request, and what steps, if any, have been taken to try to address them before the filing of the Issuer Notice. The Corporate Secretary shall provide copies of the Issuer Notice to both the Exchange’s New Listings & Client Service Division and to its Regulatory Group.

(b) The Corporate Secretary shall notify the subject specialist unit that a Listed Company Change of Specialist Mediation (“Mediation”) is being commenced pursuant to this provision, and shall provide the specialist with a copy of the Issuer Notice. Within two weeks, the specialist unit may submit a written response to the Exchange’s Corporate Secretary. The Corporate Secretary shall provide copies of any such written response to both the New Listings & Client Service Division and the Regulatory Group. The last day of that two-week period shall be referred to herein as the “Specialist Response Date”.

(c) The Regulatory Group shall review the Issuer Notice and any specialist response, and may request a review of the matter by the Regulatory Oversight Committee (“ROC”) of the Exchange’s Board of Directors. The Mediation process described hereunder may continue during the Regulatory Group’s review, however, where a review by the ROC has been requested, no change of specialist unit may occur until the ROC makes a final determination that it is appropriate to permit such change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a

refusal by a specialist to engage in conduct that is illegal or violates Exchange rules.

Notwithstanding the Regulatory Group's review of any matter raised during the process described herein, the Regulatory Group may at any time take any regulatory action that it may determine to be warranted.

(d) The Exchange shall facilitate a mediation of the issues that have arisen between the company and the specialist unit. The Exchange shall appoint a committee consisting of at least one floor broker representative from the Exchange's Board of Executives ("BOE"), at least one BOE investor representative and at least one BOE listed company representative for each Mediation ("the Mediation Committee").

(e) As soon as practicable after the Specialist Response Date, the Mediation Committee shall commence to meet with representatives of the listed company and the specialist unit in an attempt to mediate the matters indicated in the Issuer Notice.

(f) Any time after the filing of the Issuer Notice, the listed company may file with the Corporate Secretary of the Exchange a written notice, signed by the company's chief executive officer, that it is concluding the Mediation because it wishes to continue with the same specialist unit.

(g) After the expiration of three months from the Specialist Response Date, the listed company may file with the Corporate Secretary of the Exchange written notice, signed by the company's chief executive officer, that it wishes to proceed with the change of specialist unit. Subject to paragraph (c) above, as soon as practicable thereafter, the security shall be put up for allocation under Exchange Rule 103B.

806.[00]02 Removal from List upon Request of Company.

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New York Stock Exchange Rules

Specialist Stock Allocation

Rule 103B.

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Allocation Policy and Procedures

PURPOSE

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This document presents the policy of the Exchange with respect to the allocation of equity securities when: (1) [when] a common stock is to be initially listed on the Exchange; (2) [when] a security is to be reallocated as a result of disciplinary or other proceedings under Exchange Rules 103A, 475 and 476; [or] (3) [when] a specialist unit voluntarily surrenders its registration in a security as a result of possible disciplinary or performance improvement action; (4) a specialist unit is changed pursuant to Section 806.01 of the Exchange's Listed Company Manual; or (5) [and the allocation of] an Exchange-Traded Fund[s] is to be admitted to trading on the Exchange on an unlisted trading privileges basis (see Section VIII).

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V. POLICY NOTES

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Change of Specialist Unit upon Request of Issuer

When an issuer has requested a change of specialist unit pursuant to Section 806.01 of the Exchange's Listed Company Manual, that unit may apply for the allocation consistent with the policies and procedures set forth in this Rule 103B. If the specialist unit does not apply for such

allocation, the unit may not be allocated the security under the provisions of this rule relating to selection of a specialist unit by the Allocation Committee (Option 1).

No negative inference for allocation or regulatory purposes is to be made against a subject specialist unit in the event that a specialist unit is changed pursuant to Section 806.01 of the Exchange's Listed Company Manual. Similarly, the specialist unit shall not be afforded preferential treatment in subsequent allocations as a result of a change pursuant to such provision.