

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49371; File No. SR-Amex-2004-12)

March 5, 2004

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

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 13, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend Section 121 of the Amex Company Guide to modify the audit committee meeting requirements applicable to registered closed-end management investment companies. Proposed new language is in italics; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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American Stock Exchange Company Guide

Section 121. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. – No change.

B (1) and (2) – No change.

(3) Meeting Requirements

The Audit Committee of each listed company must meet on at least a quarterly basis[.], except that with respect to listed registered closed-end management investment companies, the Audit Committee must meet on a regular basis as often as necessary to fulfill its responsibilities, including at least annually in connection with issuance of the company's audited financial statements.

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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 Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

In December 2003, the Commission approved a broad array of enhancements to the corporate governance requirements applicable to listed companies.³ Included within those changes is a revision to Section 121 of the Amex Company Guide to explicitly require listed company audit committees to meet on at least a quarterly basis. This change was intended to codify the existing practice of virtually all operating companies.

The Exchange is proposing 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 issuance of the fund's audited financial statements. This change will more closely align the Amex requirement to the customary practices of most closed-end funds. In particular, while there is some variation in practice with respect to the frequency of closed-end fund audit committee meetings, most funds hold one or more audit committee meetings in connection with the preparation, review and issuance of their audited financial statements. While closed-end funds are subject to the pervasive federal regulation pursuant to the Investment Company Act of 1940 (which imposes specific corporate governance requirements), Commission rules do not require them to file quarterly reports with the Commission. The Exchange therefore does not believe it is necessary or appropriate to impose a quarterly audit committee meeting requirement. However, the proposed rule would require closed-end fund audit

³ See Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (order approving File No. SR-Amex-2003-65).

committees to meet as often as necessary, even if more frequently than quarterly, depending on the unique circumstances facing a particular fund.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in particular in that it is designed 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 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to 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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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:

- A. by order approve the 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 proposed rule change, including whether the proposed rule change 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Amex-2004-12. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to the File No. SR-Amex-2004-12 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).