

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54029; File No. SR-NYSE-2005-68)

June 21, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc. (a/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change Relating to Annual Financial Statement Distribution Requirements and Listed Company Manual Sections 103.00, 203.00, 203.01, 203.02, 203.03, 204.00 through .33, 303A.14, 313.00, 401.04, and 703.09

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 September 30, 2005, 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 NYSE. On June 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange’s proposed rule change reflects amendments that eliminate the current NYSE Listed Company Manual requirement that listed companies distribute an annual report to shareholders, specify more precisely certain requirements applicable to listed foreign private issuers, amend the Exchange’s requirements for notices to and filings with the Exchange, add a new section to the Listed Company Manual that specifically requires listed companies to have

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NYSE eliminated from the present filing other proposed rule changes to Sections 103 and 302 of the Listed Company Manual, and clarified certain details of its proposal. Amendment No. 1 replaced and superseded NYSE's original filing in its entirety.

and maintain a website, and reorganize and eliminate certain sections of the Listed Company Manual.⁴

The text of the proposed rule change, as amended, is available below. Proposed new language is underlined; proposed deletions are in [brackets].

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Listed Company Manual

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103.00 [Non-U.S. Companies] Foreign Private Issuers

The Exchange welcomes listing inquiries from [non-U.S. companies] foreign private issuers. [It continues to broaden its scope of trading in shares of internationally respected companies based in other countries. With the rapid growth and need for capital of multinational companies and the interdependence of the world's economies, the Exchange is prepared to be the global marketplace.]

Foreign private issuers [Non-U.S. companies] may elect to qualify for listing either under the Alternate Listing Standards for foreign private issuers [non-U.S. companies] or the Exchange's domestic listing criteria. [An applicant company] The foreign private issuer must meet all of the criteria within the standards under which it seeks to qualify for listing. For purposes of this Listed Company Manual, the terms “foreign private issuer” and “non-U.S. company” have the

⁴ See Telephone Conversation between Annemarie Tierney, Assistant General Counsel, NYSE, and Raymond Lombardo, Special Counsel, Division of Market Regulation, Commission and Rahman Harrison, Special Counsel, Division of Market Regulation, Commission, on June 20, 2006.

same meaning and are defined in accordance with the SEC's definition of foreign private issuer set out in Rule 3b-4(c) of the Securities Exchange Act of 1934.

The Alternate Listing Standards are designed to encourage major non-U.S. companies to list their shares on the Exchange. Domestic listing requirements call for minimum distribution of a company's shares within the United States, or in the case of North American companies, within North America. This is a major obstacle for many large non-U.S. companies which otherwise fulfill many times over the normal size and earnings requirements for listing on the Exchange. The principal Alternate Listing Standards focus on worldwide rather than U.S. or North American distribution of a non-U.S. company's shares.

In addition to the minimum numerical standards for listing, the Exchange has established policies and requirements concerning certain corporate governance practices and the reporting of interim earnings. For example, in many foreign countries, controlling law or common practice compel or permit the non-U.S. company to issue interim earnings reports on a semi-annual, as opposed to quarterly, basis or to have a class or classes of common stock having more or less than one vote per share.

Other Exchange policies concerning the corporate governance practices required of domestic companies which may not be consistent with the home country laws or practices of non-U.S. companies include those which address the structure and composition of the Board of Directors, shareholder approval, quorum requirements for shareholders' meetings and related continued listing criteria.

[Where it appears to the Exchange that a non-U.S. company's interim earnings reporting or corporate governance practices are not prohibited by the law in the country in which it is domiciled, such practices need not necessarily be barriers to listing or continued listing. In addition, the Exchange will permit non-U.S. issuers to follow home-country practices regarding the distribution of annual reports to shareholders, if, at a minimum, (a) shareholders are provided at least summary annual reports, including summary financial information, (b) shareholders have the ability, upon request, to receive an annual report that complies with the requirements of Para. 203.01 (a "full annual report"), and (c) the financial information contained in the summary annual report is reconciled to U.S. generally-accepted accounting principles to the extent that such reconciliation would be required in the full annual report.

A non-U.S. issuer that seeks to use a summary annual report in lieu of a full annual report should contact its Exchange representative to determine whether the proposed use of the summary annual report would meet these requirements.]

To assist the Exchange in considering the question of the listing or continued listing of the securities of a non-U.S. company whose interim earnings reporting or corporate governance practices are not in compliance with Exchange requirements for domestic companies, the non-U.S. company should furnish the Exchange with a written certification from independent counsel in the country of the non-U.S. company's domicile as to whether or not the non-complying practices are prohibited by home country law.

The Alternate Listing Standards for non-U.S. companies apply only where there is a broad, liquid market for the company's shares in its country of origin.

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202.00 Material Information

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202.05 Timely Disclosure of Material News Developments

A listed company is expected to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities. This is one of the most important and fundamental purposes of the listing agreement which the company enters into with the Exchange.

A listed company should also act promptly to dispel unfounded rumors which result in unusual market activity or price variations.

The issuer of income deposit securities traded as a unit shall publicize any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such publication shall be made as soon as practicable in relation to the effective date of the change, and should otherwise be made in accordance with the procedures specified in [Para.] Section 202.06 below. In addition, the issuer must provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax

attributes of any component), and the ratio of the components comprising the unit[,] on its website [or, if it does not maintain a website, in its annual report to unit holders].

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203.00 Reporting Financial Information to Shareholders [Annual and Interim Reporting Requirements]

203.01 Annual Financial Statement [Report] Requirement

Any company with voting or non-voting common securities listed on the Exchange that is required to file with the SEC an annual report that includes audited financial statements (including on Forms 10-K, 20-F, 40-F or N-CSR) is required to simultaneously make such annual report available to shareholders of such securities on or through the company's website.

Companies must also post to their website a prominent undertaking in the English language to provide all holders (including preferred stockholders and bondholders) the ability, upon request, to receive a hard copy of the company's complete audited financial statements free of charge. In addition, simultaneously with this posting, the company must issue a press release stating that its annual report has been filed with the SEC. This press release must also indicate that shareholders have the ability to receive a hard copy of the company's complete audited financial statements free of charge upon request. Companies must provide such hard copies within a reasonable period of time following the request. Moreover, the press release must be published pursuant to the Exchange's press release policy (see Section 202.06 above).

A company that fails to file its annual report on Forms 10-K, 20-F, 40-F or N-CSR with the SEC in a timely manner is subject to the procedures in Section 802.01E.

[The Exchange requires that companies publish at least once a year and distribute to shareholders an annual report containing financial statements of the company and its consolidated subsidiaries prepared in conformity with generally accepted accounting principles. The company must distribute its annual report to its shareholders not later than 120 days (225 days for Non-U.S. issuers) after the close of each fiscal year. Notwithstanding the foregoing, domestic issuers must make this distribution at least fifteen days in advance of the annual meeting. (Non-U.S. issuers are encouraged to do so when possible.) When the annual report is distributed to shareholders, two copies should be sent to the Exchange together with advice as to the date of distribution to shareholders.

The company must distribute its annual report to its shareholders not later than 120 days (225 days for Non-U.S. issuers) after the close of each fiscal year. Notwithstanding the foregoing, domestic issuers must make this distribution at least fifteen days in advance of the annual meeting. (Non-U.S. issuers are encouraged to do so when possible.) When the annual report is distributed to shareholders, two copies should be sent to the Exchange together with advice as to the date of delivery to shareholders.

Companies may satisfy the annual distribution requirement either by distributing an annual report to shareholders, or by distributing to shareholders the Form 10-K (or Form 20-F for Non-U.S. issuers) filed with the SEC, with an indication that it is distributed in lieu of a separate annual report. When the annual report (or Form 10-K or Form 20-F) is distributed to shareholders, two copies should be sent to the Exchange, together with advice as to the date of delivery to shareholders. Distribution shall be in such format and by such means as permitted or

required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, the following interpretations by the SEC: Release No. 34-36345; File No. S7-31-95; Release No. 34-37182, File No. S7-13-96; and Release No. 34-42728, File No. S7-11-00).

A company that is unable to timely file its Form 10-K or Form 20-F with the SEC must notify the Exchange prior to the SEC filing deadline, explaining the reason for the delay and the anticipated filing date. The Exchange will evaluate the circumstances and the continued listing status of the company, and at a minimum will require the company to issue a press release indicating the delay, the reason for the delay and the anticipated filing date. In making its evaluation, the Exchange will consider whether the company has released or plans to release to the press information regarding its financial results for the fiscal year. Once the company does file its Form 10-K (Form 20-F) with the SEC, it must then distribute to the shareholders an annual report or a Form 10-K (Form 20-F) in lieu thereof no later than 15 days (30 days for a non-U.S. issuer) after the filing.

(A) Method of Publication

The Exchange requires publication of the annual financial statements, as well as their submission to shareholders.

While distribution of the statements to shareholders usually results in their receiving some publicity, to be sure of news coverage, companies should submit the statements, or a news release based thereon, to newspapers of general circulation in large cities and to the national news wire services as described in the "Immediate Release Policy." (See Para. 202.06(A).) In

addition, the statements, in the form in which sent to shareholders, should also be sent to the securities statistical services, in whose publications they will remain available for ready public reference.

In the case of a company having only bonds listed on the Exchange, the Exchange expects that the required statements or news releases based thereon be sent to the securities statistical services and requires that copies of the statements be sent to bondholders who request them. It also urges that the statements, or news releases based thereon, be sent to newspapers of general circulation in large cities and to the national news wire services.

(B) Annual Statement to be Independently Audited

The Exchange requires that all financial statements contained in annual reports of the company to its shareholders be audited by independent public accountants who are qualified under the laws of some state or country and are subject to a code of professional ethics of the professional accountancy body in that state or country. The financial statements will be accompanied by a copy of the report issued by the independent public accountants with respect to their examination of such statements.

(C) Form of Financial Statements

The Exchange requires that all financial statements contained in annual reports to shareholders be in the same form as the corresponding statements contained in the company's original listing application or as modified to include the additional disclosure agreed upon by the company and the Exchange. The statements are to be prepared in conformity with generally accepted

accounting principles.

(D) General Information in Annual Report

The Exchange recommends that the following information be included in all annual reports:

- Address of principal office.
- Names of directors and officers.
- Identification of directors comprising the Audit Committee and other major committees of the Board of Directors.
- Names and addresses of trustees, transfer agents and registrars.
- Number of employees.
- Number of shareholders.

(E) Occasional Delay in Issuance of Statements

The probability of a delay in the issuance of annual financial statements can ordinarily be foreseen. As soon as it becomes apparent that there may be a delay, the company should advise its Exchange representative of the circumstances and the probable extent of the delay.

If the statements cannot be sent to shareholders at least fifteen days in advance of the annual meeting, it may be necessary for the company to postpone the meeting or to adjourn it without transaction of business to a date which shall be fifteen days after the statements are issued.

Whether or not such postponement or adjournment will be necessary can be determined only in the light of the particular circumstances. The matter should be discussed with the Exchange representative as soon as the possibility of the delay becomes apparent.

So far as the 120 day (225 day) time limit stated in the first paragraph of this section Section 203.01 is concerned, the Exchange, while ready to extend such time limit on the basis of necessity, does not feel free to do so on the basis of convenience. For example it cannot consent to a delay in the issuance of the statements just to make possible their simultaneous distribution with the proxy material.

In the event of a delay in issuance of the audited financial statements, unaudited earnings information, if expected to be substantially in agreement with the final audited figures, should be released to the financial press. (See Para. 202.06(C) for details.) If that procedure is not feasible, general newspaper publicity should be given to the audited figures as soon as they become available without awaiting completion of the full, formal annual report.]

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203.02 Interim Earnings [Reporting] Release Requirement

Any company with voting or non-voting common securities listed on the Exchange that is required to file interim financial statements with the SEC is required to release to the press an interim earnings release as soon as its interim financial statements are available. See Section 202.06 above for the Exchange's press release policy.

While the Exchange does not require that the interim reports be sent to shareholders, as a matter of fairness, listed companies that distribute interim reports to shareholders should distribute such reports to both registered and beneficial shareholders.

[(A) Time of Publication

No specific time limit for publication of interim earnings statements has been set, but it is assumed that such statements will be published as soon as available.

It is expected that, in this respect, each company will conform at least to the pattern established by the majority of companies in its industry and, where the company has a previous record of publication of interim statements, to the pattern established by that previous record.

(B) Method of Publication

The Exchange requires publication of interim statements as news items in the public press. It is not required that the statements be sent to shareholders. As a matter of fairness, corporations which distribute interim reports to shareholders should distribute such reports to both registered and beneficial shareholders.

Whether or not the statements are sent to shareholders, to be sure of adequate coverage the statements should be released to newspapers and to the national news wire services, as described in the "Immediate Release Policy." (See Para. 202.06(A).) In addition, they should be sent to the securities statistical services.

Two copies of each interim earnings statement, in the form released for publication, should be filed with the Exchange. If the company sends interim statements to its shareholders, two copies should be filed with the Exchange.

(C) Form of Interim Financials

The listing agreement merely requires publication (quarterly or semi-annually, as the case may be), of a statement of earnings; it does not require that such statement be sent to shareholders. Interim earnings statements shall be on the same basis of consolidation as the company's annual financial statements and shall disclose, at a minimum, any substantial items of unusual or non-recurrent nature and either net income before and after federal income taxes or net income and the amount of federal taxes. Additional information, and particularly sales data, will, of course, be useful to shareholders.

Such statements may cover each quarter individually or may cover, cumulatively, the elapsed quarters of the current fiscal year; i.e., the statement for the first quarter covering three months, that for the second quarter covering six months and that for the third quarter covering nine months. Publication, each quarter, of a statement covering the preceding twelve months is not generally acceptable, although such moving-year statement may be included as a supplement to the individual or cumulative quarterly statement.

It is recommended that each interim statement include like figures of the same period of the previous year, to afford a basis for comparison. This device may be particularly useful in a case

where there is a seasonal cycle in the business.

(D) Exceptions to Policy

Exceptions have been made to this requirement only in cases where conditions peculiar to the type of company, or to the particular company itself, would make quarterly statements impracticable or misleading, as in the case of companies dependent upon long-term contracts, or companies dependent upon the growth and sale of a crop in an annual cycle, or companies operating under conditions which make publication of quarterly statements virtually impossible.

In a case where the Exchange is convinced that quarterly statements are impracticable, or misleading, it may require an agreement to publish semi-annual statements of earnings, or interim statements reporting certain operating statistics which will strive to indicate the trend of the company's business during the period between annual reports.

While no fourth quarter statement is required, items of unusual or non-recurrent nature occurring in the fourth quarter should be reflected separately in the full year earnings release.]

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[203.03 Distributing Annual and Interim Reports to Beneficial Owners of Stock

In order to assure that annual and interim reports are distributed to beneficial owners of stock held in street name by Exchange member organizations, Exchange Rules provide that a member organization, when requested by a company and given assurance that it will be reimbursed for all reasonable out-of-pocket and clerical expenses, is required to transmit copies of annual and interim reports to each U.S. resident beneficial owner. This requirement applies to both listed

and unlisted companies. The Exchange has approved, as fair and reasonable, certain rates of reimbursement of member organizations for all out-of-pocket and clerical expenses incurred in connection with mailing annual and interim reports. See Para. 402.10 for full details and current rates of reimbursement.]

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204.00 Notice[s] to and Filings with [by the Company to] the Exchange

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(A) Prompt Written Notice to the Exchange

Prompt written notice from the listed company to the Exchange is required in connection with certain actions or events as specified in Sections 204.01 through 204.25, [These notices are essential for the Exchange to exercise its self-regulatory responsibilities under the Securities Exchange Act of 1934, including its function of providing a fair and orderly market for a company's securities. Filings required of the company under the 1934 Act do not satisfy the company's obligation to give prompt written notice to the Exchange.]

Prompt written notice is required and is] in addition to notice required to be given through the Exchange's telephone alert procedures. (See [Para.] Section 202.06(B).)

[While the Exchange does take note of advertisements, circulars, SEC filings and news items appearing in the public press, such material is not acceptable as authoritative advice from the company. As to many matters concerning which notice is required, some action on the part of the Exchange may be necessary and such action can only be taken on the basis of direct, authoritative advice from the company.]

(B) Filings with the Exchange

The Exchange[, as well as the SEC,] requires that listed companies file hard copies of certain SEC reports and other materials (such as proxies [and prospectuses]) with the Exchange. Since all [domestic and non-U.S.] listed companies are required to file their periodic and current reports, as well as other materials, through the SEC's Electronic Data Gathering Analysis and Retrieval (EDGAR) system, the Exchange [will access certain SEC documents through that system and, except as provided below,] will not also require a listed company to file hard copies of most SEC filings with the Exchange. Specifically, the Exchange only requires companies to file:

- one hard copy[ies] of materials necessary to support a listing application [(see Paras. 703.00 & 903.00)] as required by Sections 702.04, 703.00 and 903.00,
- six hard copies of proxy materials not later than the date on which the material is physically or electronically delivered to shareholders (see Section 402.00),
- one hard copy of any filing[s] made on Form 6-K that is [are] not required to be filed through EDGAR not later than the date on which the Form 6-K is filed with the SEC, and
- one hard copy of notice to shareholders with respect to any proposed amendments to the company's charter, as well as a certified copy of the amended charter along with a letter of transmittal indicating the sections amended since the previous filing of amendments or amended documents, promptly following the date that the notice is given or the charter is amended. Similar procedure shall be followed

with respect to resolutions of the Board of Directors, or any certificate or other document, having the effect of an amendment to the charter or by-laws.

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[204.03 Amendment of Charter or By-Laws

Four copies of any notice to shareholders with respect to proposed amendments to the company's charter are required to be sent promptly to the Exchange.

When such amendments have become effective, a certified copy is required to be sent promptly to the Exchange.

Similar procedure shall be followed with respect to resolutions of the Board of Directors, or any certificate or other document, having the effect of an amendment to the charter or by-laws.

If the company so desires, it may file copies of the charter or by-laws as amended. If this is done, it will be helpful if the amended documents are accompanied by a letter of transmittal indicating the sections amended since the previous filing of amendments or amended documents.

204.04 Annual Report

The Exchange requires that two copies of the company's annual report be provided to the Exchange when it is distributed to shareholders. These reports should be accompanied by notice to the Exchange as to the date distributed to shareholders.]

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204.[05]03 Auditors Changed

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204.[06]04 Business Purpose Changed

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204.[07]05 Capital Surplus Charges

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204.[08]06 Closing of Transfer Books

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204.[09]07 Collateral Removed or Changed

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[204.10 Communications to Shareholders

The company is required to send two copies to the Exchange of every communication directed to shareholders.

204.11 Control, Change of

The Exchange does not require notice from the company in the event of a change in control but relies instead upon filings made with it pursuant to the Securities Exchange Act of 1934.]

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204.[12]08 Conversion Rate, Changes

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204.[13]09 Decrease in Floating Supply of Stock

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204.[14]10 Directors or Executive Officers Changed

Prompt notice is required to be given to the Exchange of any changes in directors or executive officers of the company. (Please also see Section 303A.12(c) which requires that listed companies file an interim written affirmation relating to changes to the board of directors.)

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204.[15]11 Disposition in Assets

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204.[16]12 Dividends and Stock Distributions

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204.[17]13 Form or Nature of the Listed Securities Changed

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204.[18]14 Interest Payments

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204.[19]15 Contingent Interest Payments

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[204.20 Interim Earnings Statements

The Exchange requires that two copies of each interim earnings statement in the form released for publication be filed promptly with the Exchange.]

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204.[21]16 Legal Proceedings

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204.[22]17 Meetings of Shareholders

The Exchange is required to be given at least ten days' notice of the fixing of a date for the closing of transfer books in connection with any meeting of shareholders. See [Para. 204.29] Section 204.21. The notice should include the record date and the meeting date.

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204.[23]18 Name Change

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204.[24]19 Nature of Business Changed

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204.[25]20 Increases In Outstanding Amount Of Securities[, Increases In]

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[204.26 Press Release

Two copies of any press release are required to be sent promptly to the Exchange.

204.27 Prospectus

Seven copies of any prospectus or offering circular required to be used pursuant to the Securities Act of 1933 in connection with the sale of a listed security are required to be filed promptly with the Exchange.

204.28 Proxy Material

Six definitive copies of all proxy material of the company are required to be filed with the Exchange not later than the date on which such material is sent to any security holder.

The Exchange urges that preliminary proxy material be submitted for review as more fully discussed in Section 4.]

204.[29]21 Record Date

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204.[30]22 Redemption of Listed Securities

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204.[31]23 Rights or Privileges of Listed Security Changed

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204.[32]24 Rights to Subscribe

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204.[33]25 Treasury Stock Changes

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303A Corporate Governance Standards

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14. Listed companies must have and maintain a publicly accessible website.

Commentary: To the extent that a listed company is subject to the requirements of Sections 303A.04, .05, .07(c), .09 or .10, each listed company’s website must include a printable version of the applicable charters of its compensation, nominating and audit committees, as well as its corporate governance guidelines and code of business conduct and ethics. In addition, a listed company that is a foreign private issuer is required to include the disclosure required by Section

303A.11 on its website in the English language and such website must be accessible from the United States.

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313.00 Voting Rights

313.00 Voting Rights

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(B) Non-Voting Common Stock

The Exchange's voting rights policy permits the listing of the voting common stock of a company which also has outstanding a non-voting common stock as well as the listing of non-voting common stock. However, certain safeguards must be provided to holders of a listed non-voting common stock:

(1) Any class of non-voting common stock that is listed on the Exchange must meet all original listing standards. The rights of the holders of the non-voting common stock should, except for voting rights, be substantially the same as those of the holders of the company's voting common stock.

(2) [The requirement that listed companies publish at least once a year and submit to shareholders an annual report (Para. 203.01) applies equally to holders of voting common stock and to holders of listed non-voting common stock.

(3) In addition, a] Although the holders of shares of listed non-voting common stock are not entitled to vote generally on matters submitted for shareholder action, holders of any listed non-voting common stock must receive all communications, including proxy material, sent generally to the holders of the voting securities of the listed company.

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401.00 Shareholders' Meetings

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[401.04 Interval between End of Fiscal Year and Annual Meeting of Shareholders

There is no Exchange requirement relating to the interval between the end of a company's fiscal year and the date of its annual meeting of shareholders. However, the Exchange believes that the annual meeting should be held within a reasonable interval after the close of the fiscal year so that the information in the annual report is relatively timely.

The standard Listing Agreement requires that the annual report be sent to shareholders not later than 120 days (225 days for non-U.S. issuers) after the close of the company's fiscal year and at least 15 days in advance of the annual meeting.]

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703.00 Subsequent Listing Applications and Debt Securities Applications

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703.09 Stock Option, Stock Purchase and Other Remuneration Plans Listing Process

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[(C) Disclosure of Options, etc. in Annual Report

A listed company's annual report to shareholders should disclose the following information as to its option plans:

- The number of shares of its stock issuable under outstanding options at the beginning of the year.

- Separate totals of changes in the number of shares of its stock under option resulting from issuance, exercise, expiration or cancellation of options.
- The number of shares issuable under outstanding options at the close of the year.
- The number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan.
- Any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options.]

(C) [(D)] Filing a Listing Application Relative to Stock Option, Stock Purchase or Other Remuneration Plans

It is recommended that an application for listing of unissued shares in connection with a stock option, stock purchase or other remuneration plan be filed as soon as possible after all required corporate and shareholder action has been taken.

(D) [E] Supporting Documents

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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 Exchange 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 IV below. The Exchange 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

The Exchange has long recognized the importance of investors receiving adequate financial information regarding listed companies and, in fact, has required for many years that all listed companies distribute an annual report including annual audited financial statements to their shareholders.⁵ However, Rule 14a-3⁶ of the Act has for many decades made that requirement redundant for most NYSE-listed U.S. companies, since the Commission rule requires companies subject to the proxy rules to distribute annual audited financials to shareholders with or prior to the distribution of the annual meeting proxy statement.⁷ The Commission's proxy rules do not apply to foreign private issuers who are exempt as a result of Rule 3a12-3 of the Act.⁸

Today all listed companies, U.S. and foreign, are required to file annual reports containing audited financial statements prepared in accordance with or reconciled to U.S. GAAP (including on Forms 10-K, 20-F, 40-F and N-CSR) with the Commission via the Electronic Data Gathering, Analysis and Retrieval system (EDGAR). Many of these companies also post such annual reports to their corporate websites. In SR-NYSE-2001-40,⁹ the NYSE specified that U.S.

⁵ This requirement is presently contained in Section 203.01 of the Listed Company Manual. It can be traced back to an 1895 recommendation that all listed companies send their shareholders an annual report with an income statement and balance sheet.

⁶ 17 CFR 240.14a-3.

⁷ The requirement to distribute annual reports in Rule 14a-3 of the Act does not apply to registered investment companies. However, registered investment companies, at least semi-annually, must transmit reports to shareholders under Section 30(e) of the Investment Company Act of 1940 and the rules thereunder.

⁸ 17 CFR 240.3a12-3.

⁹ See Securities Exchange Act Release No. 45838 (April 26, 2002), 67 FR 22144 (May 2, 2002) (SR-NYSE-2001-40).

companies were permitted to use Commission-approved methods of electronic delivery to satisfy the annual financial statement delivery requirement.

A recent Nielsen/Net Ratings study¹⁰ shows that 75% of Americans have access to the Internet in their homes, and that those numbers are steadily increasing among all age groups. As a result, the NYSE believes that the vast majority of people in this country that review company financials access them online - either through the company's own website, EDGAR, or some other service provider. The Exchange also notes the Commission's statement when proposing changes in its Securities Offering Reform Act filing¹¹ that, "[a]t this time, we believe that Internet usage has increased sufficiently to allow us to propose a prospectus delivery model for issuers and their intermediaries that relies on timely access to filed information and documents."

The Exchange believes that the ability to review a company's financials electronically provides a more timely, efficient and cost effective method for companies to provide and investors to access current financial information. The proposed amendments to the Exchange's rules regarding annual reports reflect that current reality.

For these reasons, the NYSE proposes to amend its rules to provide that companies can satisfy the annual financial statement distribution requirement by making the company's annual report on Form 10-K, 20-F, 40-F or N-CSR available on or by a link through its corporate website, with a prominent undertaking in English to deliver a paper copy of the company's complete audited financial statements free of charge to any shareholder who requests it. Listed

¹⁰ See Three out of Four Americans Have Access to the Internet, Nielsen/NetRatings, March 18, 2004.

¹¹ See Securities Act Release No. 8501 (November 3, 2004), 69 FR 71126 (December 8, 2004).

companies will also be required to issue a press release simultaneously with their website posting stating that their annual report has been filed with the Commission. This press release must also indicate that shareholders have the ability to receive a hard copy of the complete audited financial statements free of charge upon request within a reasonable period of time.

The Exchange believes that existing Commission requirements regarding delivery of proxy statements mean that the proposed rule changes will have minimal effect on domestic companies subject to the proxy rules, but the proposed changes will provide significant efficiencies to listed foreign private issuers exempt from the proxy rules under Rule 3a12-3 of the Act.¹²

The Exchange also proposes to eliminate other elements of current Section 203.01 of the Listed Company Manual, including the requirement that a company inform the NYSE if it is unable to file its annual report with the Commission in a timely manner. Under the current rule, U.S. companies are required to distribute annual reports to shareholders no later than 120 days from the close of the fiscal year (225 for foreign private issuers). In order to police compliance with this distribution requirement, the Exchange currently requires that companies inform us of delays in filing annual reports with the SEC. NYSE then considers the circumstances surrounding the delay in determining whether to allow an extension of time for the distribution of annual reports past the required date. Due to the fact that under the rules as proposed, the

¹² The Exchange notes that the Commission's proposed release on internet availability of proxy materials would, if adopted, provide companies an internet posting alternative to the current requirement for physical delivery or electronic delivery only upon the consent of shareholders of such materials. See Securities Exchange Act Release No. 52926 (December 8, 2005), 70 FR 74598 (December 15, 2005). If adopted as proposed, the internet posting alternative in the Commission proposed release would not apply to the requirement for every registered investment company to transmit reports to shareholders under Section 30(e) of the Investment Company Act of 1940 and the rules thereunder.

Exchange will no longer be requiring the distribution of annual reports, the current language setting out the timeframe by which annual reports must be distributed will no longer be applicable. As a result, the Exchange proposes to eliminate this provision. The Exchange notes that the Commission's proxy rules set forth requirements for U.S. companies on how far in advance of shareholder meetings proxies must be sent to shareholders, as well as requirements that such proxy be preceded or accompanied by annual audited financial information.

The Exchange also proposes to eliminate the requirement that a company notify the NYSE prior to the filing deadline if it will not file its annual report with the Commission on time, as well as the language setting out the date by which a company must distribute its annual report once the late annual report has been filed with the Commission. The Exchange notes that Section 802.01E of the Listed Company Manual now provides a specific process for the requirements applicable to companies that fail to file their required annual reports with the Commission by the required date, including a requirement that a company issue a press release disclosing the status of the filing.¹³ Moreover, the Exchange monitors listed companies for timely filing of their Commission reports on an ongoing basis.¹⁴

¹³ The Exchange has contracted with an outside vendor to provide us with ongoing reports listing those companies that failed to file their annual or quarterly reports with the Commission on the required date. The Exchange receives notification of these late filings on the next business day after the filing due date. Exchange staff confirms via an EDGAR search that the listed filing is actually late and then programs an internal electronic alert that notifies the applicable compliance staff member when the delinquent filing is subsequently made.

¹⁴ See Telephone Conversation between Annemarie Tierney, Assistant General Counsel, NYSE, and Raymond Lombardo, Special Counsel, Division of Market Regulation, Commission and Rahman Harrison, Special Counsel, Division of Market Regulation, Commission, on June 20, 2006.

The Exchange also proposes to eliminate language from Section 203.01 of the Listed Company Manual that sets out requirements that the annual financial statements be independently audited and prepared in accordance with generally accepted accounting principals in light of the fact that these requirements reflect Commission rules relating to the preparation of financial statements.

In light of the fact that the proposed amendment to Section 203.01 of the Listed Company Manual requires that companies post their annual reports filed with the Commission to their website, the Exchange proposes to add a new section to the Listed Company Manual – Section 303A.14 - that specifically requires listed companies to have and maintain a website. This proposed section also collects into one provision the information required under Section 303A of the Listed Company Manual that listed companies must post to their websites, including committee charters, corporate governance guidelines and their code of business conduct and ethics.

Currently, Section 103.00 of the Listed Company Manual specifies that foreign private issuers must distribute US GAAP or US GAAP reconciled financial statements in the form of an annual report, or summary annual report to shareholders. Since many NYSE-listed foreign private issuers are also required by home country law to distribute home country financial statements to shareholders months in advance of the completion of the US GAAP or US GAAP reconciled financials, these companies are required to distribute two annual reports – one to satisfy home country requirements and one to satisfy the NYSE's requirements. On the other hand, some NYSE-listed foreign private issuers are incorporated in countries that have no requirement to distribute financials to stockholders, so the NYSE requirement is the only one mandating a physical distribution of annual financial statements.

The Exchange proposes to amend Section 103.00 of the Listed Company Manual to eliminate the requirement that foreign private issuers distribute to shareholders at least a summary annual report that includes summary financial information reconciled to US generally accepted accounting principals and provide a full annual report to shareholders upon request. Under the proposed changes to Section 203.01 of the Listed Company Manual, foreign private issuers will be required to post their annual report on Form 20-F or 40-F to their website and to provide hard copies of the full audited, US GAAP reconciled, financial statements to shareholders upon request within a reasonable period of time. The Exchange also proposes to amend Section 103.00 of the Listed Company Manual to eliminate the requirement that a company that proposes to distribute a summary annual report contact an Exchange representative to determine whether the proposed use of the summary annual report meets the Exchange's requirements. The Exchange believes that since companies will no longer be required to distribute full or summary annual reports, this language is superfluous. NYSE also proposes to eliminate language from the first and sixth paragraphs of Section 103.00 of the Listed Company Manual to the extent that such language does not set forth actual listing requirements as part of our overall effort to remove superfluous language and guidance from the Listed Company Manual.

Incidental conforming and cleanup amendments to the NYSE's requirements relating to annual reports are required to Sections 202.05, 203.03, 204.00 through .33 and 313.00 of the Listed Company Manual. These proposed cleanup changes include renumbering of sections and the elimination of references to annual report obligations throughout the Listed Company Manual, including with respect to procedures relating to the distribution of annual reports. The Exchange also proposes to restructure Sections 203.01 and 203.02 of the Listed Company

Manual to present our annual and interim financial statement requirements in a more logical and orderly manner.

The Exchange also proposes to amend Section 204.00 of the Listed Company Manual to consolidate and streamline the requirements for companies to provide notice to and file certain documents with the Exchange. In relation to this change, the Exchange proposes to limit the need for companies to provide information that is available via the Commission's Electronic Data Gathering Analysis and Retrieval (EDGAR) system or through electronic media alerts subscribed to by the NYSE. For example, the Exchange proposes to eliminate the requirement that companies provide us with two copies of every communication sent to shareholders and with copies of press releases as the appropriate Exchange staff is automatically notified of EDGAR filings or press release dissemination through electronic alert systems to which the Exchange subscribes. The Exchange also proposes to eliminate certain explanatory language from this section that the Exchange considers to be superfluous as a result of the proposed changes. For example, the Exchange no longer believes that it needs to specify that advertisements, circulars and news items appearing in the public press are acceptable as authoritative advice of the company in light of the clear list of items that must be directly noticed or provided to the Exchange.

The Exchange further proposes to eliminate Section 401.04 of the Listed Company Manual. This section provides guidance regarding the interval between end of fiscal year and annual meeting of shareholders. While the Exchange is not disavowing that best practice would be to hold the annual meeting of shareholders at a reasonable interval after the close of the fiscal year, as part of overall efforts to streamline the provisions of the Listed Company Manual, the Exchange has been proposing on an ongoing basis to eliminate sections that provide "best

practice” guidance, as opposed to requiring specific action. The Exchange ultimately intends that the Listed Company Manual will include only those specific rules that listed companies must satisfy in order to list and remain listed.

The Exchange further proposes a cleanup of Section 703.09 of the Listed Company Manual regarding disclosure of options, stock purchase and other remuneration plans. Due to the fact that the Form 10-K requirements for comprehensive disclosure on options available under equity compensation plans pursuant to Item 201(d) of Regulation S-K and on options issued as executive compensation pursuant to Item 402 of Regulation S-K subsume the Exchange’s disclosure requirements, the Exchange no longer deems it necessary to itself recommend specific disclosure of these items, particularly in light of the proposed elimination of the Exchange’s requirement that listed companies distribute an annual report to shareholders.

2. Statutory Basis

The Exchange believes that its proposed rule change, as amended, is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁶ in particular, in that it is designed 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, in general, to protect investors and the public interest.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change, as amended, would 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, as amended.

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 NYSE consents, the Commission will:

- 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 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-2005-68 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2005-68. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the

Exchange. 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 publicly available. All submissions should refer to File Number SR-NYSE-2005-68 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.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).