

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51015; File No. SR-NYSE-2004-54)

January 11, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the NYSE Constitution and the Adoption of an Independence Policy of the NYSE Board of Directors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 17, 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 self-regulatory organization. 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 Exchange is proposing amendments to the various provisions of the NYSE Constitution. These amendments further implement the new governance architecture adopted by the Exchange in December 2003. The text of the proposed rule change is attached hereto as Exhibits A-1 and A-2.

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, its proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The NYSE has

¹ 15 U.S.C. 78s (b)(1).

² 17 CFR 240.19b-4.

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

Changes to the NYSE Constitution

The proposed amendments to the NYSE Constitution follow the basic constructs of the Exchange's new governance architecture. The proposed amendments to the various provisions of the NYSE Constitution and the proposed Independence Policy of the Exchange Board of Directors, containing standards which NYSE directors must meet in order to be considered independent, are attached, respectively, as Exhibits A-1 and A-2 hereto.

The proposed amendments to the NYSE Constitution mostly clarify the positions of the separate Chief Executive Officer and the members of the Exchange's Board of Executives under that architecture. One proposed change allows the Board to set the annual membership meeting earlier in the year than the June date set under the current scheme.

Under Article XIV, Section 1 of the Constitution, amendment to many Constitutional provisions requires adoption by the members. However, amendment to certain Constitutional provisions (generally, provisions dealing with the internal Exchange matters not directly involving the membership or other Exchange constituent groups) may be made by the Board without the vote of members, except that no such amendment by the Board alone can take effect without two weeks' notice being given to the members. Following are descriptions of the proposed amendments to the NYSE Constitution. The last five amendments, amendments (6) - (10), did not require a membership vote.

1. An amendment to Article III, Section 1 of the Constitution will enable the Board to move up the Annual Meeting of members closer to the end of the fiscal (calendar) year. The amendment also provides the Board a degree of time flexibility in reporting nominations to the membership, but without reducing the current time period for members to propose nominations by petition.
2. An amendment to Article IV, Section 14(b) of the Constitution will recuse the Chief Executive Officer from participation in the review by the Board of Directors of decisions by Exchange staff, officers and committees. The Exchange believes that this is appropriate because decisions appealed to the Board include decisions in the regulatory area, and decisions by the Chief Executive Officer and those reporting to the Chief Executive Officer. Such recusal of the Chief Executive Officer is consistent with the oversight of Exchange management by the independent Directors.
3. An amendment to Article IX, Section 3 will prohibit Board of Executives members from serving on the Hearing Board in light of the participation of certain Board of Executives members on the Regulation, Enforcement & Listing Standards Committee.
4. An amendment to Article IX, Section 6 will prohibit the Chief Executive Officer from requiring reviews of disciplinary decisions and will recuse the Chief Executive Officer from participating in reviews by the Board of disciplinary decisions. The Exchange believes that this is consistent with the Chief Executive Officer's separation from the regulatory function.
5. An amendment to Article XV, Section 9 will correct an incomplete cross-reference in that section from "Nominating Committee" to "Nominating & Governance Committee."

As discussed above, the following amendments did not require a member vote.

6. An amendment to Article IV, Section 12(a)(1)(vii) will eliminate the Chairman as a mandated subject of succession planning by the Nominating & Governance Committee. Under the Exchange's new governance architecture, the Board determines from time to time whether to continue to separate the offices of the Chairman of the Board and the Chief Executive Officer. The Exchange believes that succession planning with respect to the Chief Executive Officer is the norm in corporate governance practice.
7. An amendment to Article IV, Section 14(a) will correct an erroneous cross-reference from "Article VII, Section 1" (which pertains to Exchange Contracts), to "Article VIII, Section 1" (which pertains to regulation).
8. Amendments to Article V, Sections 2(b) and 6(a), and to Article VI, Section 2 will permit either the Chairman of the Board, or the Chief Executive Officer, as the Chairman determines from time to time, to preside over meetings of the Board of Executives, to call meetings of the Board of Executives and to determine when circumstances require shorter notice of meetings of the Board of Executives than otherwise provided for that group – all in the event the Chairman is not also the Chief Executive Officer. The Exchange believes that these changes are consistent with the function of the Board of Executives to advise the Chief Executive Officer in the management of the operations of the Exchange.
9. An additional amendment to Article V, Section 2(b) will clarify that the Board may appoint as a non-specialist floor member of the Board of Executives any non-specialist who spends a substantial part of his or her time on the Floor of the Exchange. (The current description of the non-specialist floor members of the Board of Executives was carried over from a category of "industry director" which applied under the prior

Exchange governance structure and appears to not include the entire non-specialist constituency as it exists today.)

10. An amendment to Article V, Section 11 will replace the requirement for Plenary Sessions of the Board and the Board of Executives with a more specific requirement for each director to be present for at least three meetings of the Board of Executives each year. A related change in Article VI, Section 2 provides for the Chairman to make the Annual Report on the Exchange's activities to the Board of Executives, rather than to a "Plenary Session" of the Board and the Board of Executives.

Independence Policy of the NYSE Board of Directors

The NYSE Board of Directors also has adopted an Independence Policy of the Exchange Board of Directors (the "Independence Policy") in accordance with the Constitution to ensure the independence of its elected Directors and its non-executive Chairman. Under the Independence Policy, an elected Director will not be considered independent unless he or she meets the independence standards required of a director of an NYSE listed company. Additional requirements address independence from Exchange constituents. Under Article IV, Section 2 of the Exchange Constitution, the Independence Policy must be filed with and approved by the Commission. The Board is following this policy pending Commission action.³

2. Statutory Basis

³ The Commission notes that it recently published for comment a proposed rulemaking that, among other things, would establish governance requirements for national securities exchanges and registered securities associations and would include a definition of the term "independent director." See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004).

The Exchange represents that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁴ that an exchange have rules that are 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 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 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:

- (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

⁴ 15 U.S.C. 78f(b)(5).

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-2004-54 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-2004-54. 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 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-2004-54 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.⁵

Jill M. Peterson
Assistant Secretary

⁵ 17 CFR 200.30-3(a)(12).

Text of the Proposed Rule Change
(New language is italicized; deletions are [bracketed])

Constitution of the NYSE

Article III. Meetings of Members

Sec. 1. Annual Meeting. A meeting of the members of the Exchange entitled to vote thereat shall be held annually for the election of directors and other elective positions, and for the transaction of any other proper business, at such time and date as the Board may select [on] , but in no event later than the first Thursday in June [in each year] or, if the Exchange is not open for business on that day, on the next succeeding business day. At such annual election, there shall be elected by the membership by ballot:

- a) all directors to be elected by members to serve for a term of one year;
- b) two Trustees of the Gratuity Fund who shall be regular members (and not lessor members), to serve for a term of three years; and
- c) qualified persons to fill any vacancies among the trustees of the Gratuity Fund.

The Board shall distribute its annual nominating report, which lists the nominees to serve in the elective positions, to each member [not less than 60 days in advance of the annual meeting] a sufficient number of days in advance of the annual meeting to take into account the number of days for the filing of petitions by members for the proposal of nominations for elective positions, the determination by the Board of eligibility of persons nominated by petition and the notice to members of said annual meeting, all as provided in this Article III.

Article IV. Board of Directors

Sec. 12. Standing Committees. The Standing Committees and their respective Chairmen shall be appointed by the Board at its annual organizational meeting. The Board shall adopt for each Standing Committee a charter consistent with the duties prescribed in the subsections below, and including such additional duties as may be considered appropriate and not inconsistent with this Constitution. Each Standing Committee shall have the authority to engage independent legal counsel and other advisors as it determines necessary to carry out its duties, but may not use counsel or other advisors who advise Exchange officers or employees.

(a) *Committees Consisting Solely of Directors.* The Standing Committees described in Section 12(a)(1)-(4) shall consist solely of directors, other than the Chief Executive Officer, and shall report to the Board. Such Standing Committees may be combined with any other such Standing Committee, be subdivided into one or more such Standing Committees, or the Board may constitute itself as a committee of the whole in respect of such a Standing Committee. The Chief Executive Officer shall be recused from deliberations of the Board, whether it is acting as the Board or as a committee of the whole, with respect to the activities of the Nominating & Governance Committee, the Human Resources & Compensation Committee, the Audit Committee or the Regulatory Oversight & Regulatory Budget Committee.

(1) *Nominating & Governance Committee.* The Nominating & Governance Committee shall be responsible for (i) recommending to the Board candidates for Board membership in accordance with Article IV, Section 2 and candidates for Trustees of the Gratuity Fund, (ii) recommending

to the Board candidates for Board of Executives membership, (iii) conducting the Board's annual governance review, (iv) reviewing and recommending the Exchange's corporate governance guidelines, (v) establishing an appropriate process for, and overseeing implementation of, the Board's self-assessments (including Board self-assessment, committee self-assessments and director assessments) and the Board of Executives' self-assessments, (vi) recommending director compensation, and (vii) succession planning for the [Chairman and] Chief Executive Officer of the Exchange. In discharging its responsibilities under clause (i) of the immediately preceding sentence, the Nominating & Governance Committee shall propose persons as candidates for the Board who, in the opinion of the Committee, (a) are committed to serving the interests of the public and strengthening the Exchange as a public securities market; and (b) include among their number individuals at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning issuers and at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning investors. In addition, the Nominating & Governance Committee shall establish procedures to solicit the input of investors in equity securities and members regarding Board candidates. The Nominating & Governance Committee shall also solicit input from the various Exchange communities regarding candidates for appointment by the Board to the Board of Executives. Consensus recommendations for candidates to represent the groups referenced in clauses (ii), (iii) and (iv) of Article V, Section 2(b) put forward by the respective representatives of those groups shall be forwarded to the Board as the recommendations of the Nominating & Governance Committee unless and to the extent such Committee determines that a candidate does not qualify for the position.

Article IV. Board of Directors

Sec. 14. Delegation. (a) *Delegation Authority*. The Board may delegate such of its powers as it may from time to time determine, subject to the provisions of the Constitution and applicable law, to the Board of Executives, to such officers and employees of the Exchange, and to such committees, composed either of directors or otherwise, as the Board may from time to time authorize; provided, however, that, except as this Constitution otherwise provides, the Board may not delegate, and no committee may re-delegate, to the Board of Executives, to officers and employees of the Exchange or to any committee other than a committee consisting solely of directors (other than the Chief Executive Officer) authority either to adopt rules under Article VIII, Section 1 or Article IX, Section 1, or to act on any subject matter described in Article IV, Section 12(a) or (b)(1), except by effecting a rule change within the meaning of Section 19(b)(1) of the Act. Notwithstanding the foregoing, the Board may authorize an officer or officers of the Exchange to adopt rules as aforesaid, so long as the Board is informed of any such action at its next meeting, and the prior approval of the Chief Regulatory Officer is obtained for any regulatory matter. Any committee of directors to which authority is delegated to adopt rules under Article [VII] VIII, Section 1 or Article IX, Section 1 shall include thereon at least one director nominated by the Industry Members of the Board of Executives, as provided in Article IV, Section 2. The Board shall diligently oversee the activities of the Board of Executives, the officers and employees of the Exchange, and any committees to which the Board has delegated authority pursuant hereto.

(b) *Limitation of Delegation Authority.* A member, member organization, allied member or approved person affected by a decision of any officer, employee or committee acting under powers delegated by the Board may require a review by the Board of such decision, by filing with the Secretary of the Exchange a written demand therefor[e] within 10 days after the decision has been rendered, except as otherwise provided in Article IX, Section 6. Any and all powers delegated by the Board may continue to be exercised by the Board notwithstanding such delegation, and the Board may exercise such review and oversight over the exercise of (or omission to exercise) any delegated authority as it shall at any time determine. Notwithstanding any other provisions of this paragraph (b), the Chief Executive Officer shall be recused from deliberations and actions of the Board with respect to matters to be reviewed by the Board pursuant to this paragraph (b).

Article V. Board of Executives.

Sec. 2. *Composition of Board of Executives.*

(b) The Board of Executives shall consist of the Chairman of the Board [(who shall be the Chairman of the Board of Executives)] (if such individual is not also the Chief Executive Officer), the Chief Executive Officer [(if such individual is not also the Chairman)], and at least 20 but no more than 25 members (“Board of Executives members”). Either the Chairman of the Board or the Chief Executive Officer, as the Chairman of the Board determines from time to time, shall serve as Chairman of the Board of Executives. The

Board of Executives members (other than the Chairman and Chief Executive Officer) shall be appointed by the Board at its annual organizational meeting and shall consist of (i) at least six individuals who are either the chief executive or a principal executive officer of a member organization that engages in a business involving substantial direct contact with securities customers, (ii) at least two individuals, each of whom is registered as a specialist and spends a substantial part of his or her time on the Floor of the Exchange, (iii) at least two individuals, each of whom spends a [majority] substantial part of his or her time on the Floor of the Exchange [, and has a substantial part of his or her business the execution of transactions on the Floor of the Exchange for other than his or her own account or the account of his or her member organization], but who shall not be registered as a specialist, (iv) at least two individuals who are lessor members who are not affiliated with a broker or dealer in securities, (v) at least four individuals who are either the chief executive or a principal executive officer of an institution that is a significant investor in equity securities, at[s] least one of whom shall be a fiduciary of a public pension fund; (vi) at least one individual intended to represent individuals who invest in equity securities and are retail clients of member organizations, and (vii) at least four individuals who are either the chief executive or a principal executive officer of a listed company (the members of the Board of Executives referenced in subsections (i), (ii), and (iii) herein collectively shall be called “Industry Members of the Board of Executives”). If the Board increases the size of the Board of Executives it shall strive to maintain approximately the same balance between Industry Members of the Board of Executives and other members of the Board of Executives as is represented above. If the Board increases the size of the Board of Executives, it shall also be free to add members to the Board of Executives who represent other elements of the

Exchange community. Each person who is not a member of the Exchange and is appointed to the Board of Executives shall, by the acceptance of such position, be deemed to have agreed to uphold this Constitution.

Sec. 6. *Meetings.* (a) *Frequency of Meetings.* The Board of Executives shall have not less than six meetings each year. Special meetings of the Board of Executives may be called by the Chairman of the Board or by the Chief Executive Officer, or pursuant to the written request of not less than one third of the Board of Executives members then in office, in accordance with the provision of notice of meetings, except that when in the judgment of the Chairman of the Board or the Chief Executive Officer, emergency requires shorter notice.

Sec. 11. [*Plenary Sessions of the*] Board Member Attendance at Meetings of [and] the Board of Executives. [The Board and the Board of Executives shall meet jointly (a “Plenary Session”)] Each member of the Board shall attend a meeting of the Board of Executives at least [twice] three times each year. [The Chairman of the Board shall chair all Plenary Sessions.]

Article VI. Officers.

Sec. 2. *The Chairman.* The Chairman shall preside at all meetings of the Board [and of the Board of Executives] and shall decide all questions of order, subject, however, to an appeal to the Board; provided, however, that if the Chairman is also the Chief Executive Officer, he or she shall not participate in executive sessions of the Board. If the Chairman is not the Chief Executive Officer, he or she shall act as liaison officer between the Board and the Chief Executive Officer. In addition to his or her usual duties, the Chairman shall make an Annual Report on the Exchange's activities to [a Plenary Session] the Board of Executives.

Article IX. Disciplinary Proceedings.

Sec. 3. *Hearing Board.* The Chairman of the Board, subject to the approval of the Board, shall from time to time appoint a hearing board to be composed of such number of members and allied members of the Exchange who are not members of the Board or of the Board of Executives, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board shall deem necessary. The members of the hearing board shall be appointed annually and serve at the pleasure of the Board. The Chairman of the Board, subject to the approval of the Board, shall also designate from among the officers and employees of the Exchange a chief hearing officer and one or more other hearing officers who shall have no Exchange duties or functions relating to the investigation

or preparation of disciplinary matters and who shall be appointed annually and shall serve as hearing officers at the pleasure of the Board.

Sec. 6. *Review.* In a disciplinary proceeding not involving a written consent to the imposition of a specified penalty, any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, adjudged guilty of any charge, or the division or department of the Exchange which brought the charges, or any member of the Board or the Board of Executives, may, in accordance with procedures set forth in the rules of the Exchange, require a review by the Board, of any determination or penalty, or both, imposed by the hearing panel. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may sustain any determination or penalty imposed, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under this Article as it deems appropriate.

In a disciplinary proceeding involving a written consent to the imposition of a specified penalty, any member of the Board or the Board of Executives may require a review by the Board of any determination or penalty, or both, imposed by the hearing panel. In any such proceeding, the division or department which entered into the written consent, may require a review by the Board of any penalty, including any determination related thereto, imposed by the hearing panel, which is less severe than the stipulated penalty. The respondent or the division or department which entered into the written consent may require a review by the Board of any rejection of the written consent by the hearing panel. Any review provided in

this paragraph shall be conducted in accordance with procedures set forth in the rules of the Exchange. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may fix and impose the penalty agreed to in such written consent or any penalty which is less severe than the stipulated penalty, or remand the case for further proceedings.

Notwithstanding any other provisions of this Section, the Chief Executive Officer (a) may not require a review by the Board under this Section and (b) shall be recused from deliberations and actions of the Board with respect to matters to be reviewed by the Board under this Section.

Article XV. The Gratuity Fund.

Sec. 9. Management of Gratuity Fund. The management and distribution of the Gratuity Fund shall be under the charge of a board of trustees, acting as agent for the Exchange, to be known as the “trustees of the Gratuity Fund,” and shall consist of six regular members of the Exchange who are not lessor members and are elected by the membership. In case of a vacancy among the trustees, the Board, at its next regular meeting thereafter, shall proceed to fill the same until the next annual election of the Exchange. Prior to filling such vacancy, the Board shall request the Nominating & Governance Committee to submit to the Board the name of the person recommended by the Nominating & Governance Committee to fill such vacancy.

Text of the Proposed Rule Change

(New language is italicized)

INDEPENDENCE POLICY OF THE EXCHANGE BOARD OF DIRECTORS

Purpose

The purpose of this Policy is to set forth the independence requirements that shall apply to the members of the Board of Directors (the “Board”) of the Exchange in accordance with Article IV, Section 2 of the New York Stock Exchange Constitution.

Independence Requirements

1. Each Director elected by the members and the Chairman of the Board if not also the Chief Executive Officer shall be independent within the meaning of this Policy. A list of the Directors shall be maintained on the Exchange’s web site.

2. A Director shall be independent only if the Board determines that the Director does not have any material relationships with the Exchange. When assessing a Director’s relationships and interests, the Board shall consider the issue not merely from the standpoint of

the Director, but also from the standpoint of persons or organizations with which the Director is affiliated⁶ or associated.

3. In making independence determinations, the Board shall consider the special responsibilities of a Director in light of the status of the Exchange as a New York not-for-profit corporation, and as a self-regulatory organization and national securities exchange subject to the supervision of the Securities and Exchange Commission.

4. The Board shall make an independence determination with respect to each Director elected by the members upon the Director's nomination or appointment to the Board and thereafter at such times as the Board considers advisable in light of the Director's circumstances and any changes to this Policy, but in any event not less frequently than annually. Upon adoption of this Policy, the Board shall make an affirmative determination with respect to the independence of each Director then serving on the Board.

5. It shall be the responsibility of each Director to inform the Chairman of the Board and the Chairman of the Nominating & Governance Committee promptly and otherwise as requested of the existence of such relationships and interests which might reasonably be considered to bear on the Director's independence.

⁶ An "affiliate" of, or a person "affiliated" with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

6. Any Director elected by the members who is no longer independent due to the existence of a relationship described in Article IV, Section 2(a)-(d) of the Constitution or whom the Board otherwise determines not to be independent from the Exchange under this Policy shall, pursuant to Article IV, Section 9, be deemed to have tendered his or her resignation for consideration by the Board, and such resignation shall not be effective unless and until accepted by the Board.

Independence Qualifications

1. In making an independence determination with respect to any Director or Director candidate, the Board shall consider the standards below with respect to relationships or interests of the Director or Director candidate with or in (a) the Exchange or its subsidiaries, (b) members, allied members, and lessor members, (c) member organizations of the Exchange (“Member Organizations”) or non-member broker-dealers that engage in business involving substantial direct contact with securities customers (“Non-Member Broker-Dealers”), and (d) companies other than Member Organizations whose securities are listed on the Exchange (“Listed Companies”). The standards below relating to category (a) are the same as those that the Exchange applies to its own listed companies. The standards below relating to categories (b), (c) and (d) stem from the differing regulatory responsibilities and roles that the Exchange exercises in overseeing the organizations and companies included in those categories.

2. The term “approved person” used herein has the meaning set forth in the NYSE Constitution.

3. The term “immediate family member” with respect to any Director has the meaning set forth in the NYSE Listed Company Manual.

4. The following independence criteria shall apply:

Independence from the Exchange

A Director is not independent if the Director or an immediate family member of the Director has or had a relationship or interest with or in the Exchange which, if such relationship or interest existed with respect to a Listed Company, would preclude a Director of the Listed Company from being considered an independent Director of the Listed Company pursuant to Section 303A.02(a) or (b) of the Listed Company Manual.⁷

Members, Allied Members and Lessor Members

A Director is not independent if he or she is, or within the last three years was, or has an immediate family member who is, or within the last three years was, a member, allied member, lessor member or approved person.

Member Organizations

A Director is not independent if the Director (a) is, or within the last three years was, employed by a Member Organization, (b) has an immediate family member who is, or within the last three years was, an executive officer of a Member Organization, (c) has within the last three years received from any Member Organization more than \$100,000 per year in direct compensation, or

⁷ The relevant sections of the Listed Company Manual and commentary are available on the website at www.nyse.com/pdfs/finalcorpgovrules.pdf

received from Member Organizations in the aggregate an amount of direct compensation which in any one year is more than 10 percent of the Director's annual gross income for such year, excluding in each case Director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), or (d) is affiliated, directly or indirectly, with a Member Organization.

Non-Member Broker-Dealers

A Director is not independent if the Director is employed by or affiliated, directly or indirectly, with a Non-Member Broker-Dealer.

Listed Companies

A Director is not independent if the Director is an executive officer of an issuer of securities listed on the Exchange.

5. The Exchange shall make disclosure of any charitable relationship that a listed company would be required to disclose pursuant to Listed Company Manual Section 303A.02(b)(v) and commentary. Gifts by the Exchange or by the NYSE Foundation shall not favor charities on which any Director serves as an executive officer or member of the board of trustees or directors or comparable governing body.