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**VIA E-MAIL: rule-comments@sec.gov**

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: Comments on Proposed Change in NYSE Continued Listing Standards
File No. SR-NYSE-2004-20

Dear Mr. Katz:

We are writing this letter to comment on the proposed changes to the continued listing standards of the New York Stock Exchange (Sections 802.00, et. seq., of the NYSE Listed Company Manual), which were published in the Federal Register on July 2, 2004. Although the proposed revisions to the NYSE's Listed Company Manual would lower the continued listing requirements for larger companies traded on the NYSE (e.g., the requirements for certain companies would be lowered from $500 million in market capitalization and $20 million in revenues to $375 million and $15 million, respectively), the continued listing requirements for smaller companies traded on the NYSE are proposed to be raised significantly. If adopted, the rules would allow the NYSE to delist a company if its global market capitalization and total stockholders' equity both fall below $75 million. This represents a 50% increase from the current $50 million requirements for market capitalization and total stockholders' equity.

For the reasons discussed below, we oppose the portion of the revisions to the continued listing standards that would raise the market capitalization and stockholders' equity requirements to $75 million. We request that the Commission disapprove this portion of the proposed rule change, or alternatively, that it institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(2)(B)) to determine whether the proposed rule change should be disapproved. If the Commission is inclined to approve the proposed rule change, we request that the Commission require further amendments to grandfather companies that are in compliance with the current listing standards.

**THE REVISIONS TO THE NYSE'S CONTINUED LISTING STANDARDS WOULD NOT BE IN THE BEST INTERESTS OF SHAREHOLDERS OF COMPANIES AFFECTED BY THE CHANGE**

Under Section 6(b)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)(5)), the rules of an exchange must be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect

investors and the public interest. In our opinion, the NYSE has not adequately explained how raising the market capitalization and stockholders' equity requirements for continued listing by 50% satisfies these standards.

The increase in the market capitalization and stockholders' equity requirements for continued listing is not in the best interests of shareholders of companies impacted by the change. These companies are already devoting significant resources toward compliance with the requirements of the Sarbanes-Oxley Act of 2002 (the "Act"), especially the internal control requirements of Section 404 of the Act. Requiring such companies to devote additional resources to satisfy the revised listing standards, or to seek an alternative marketplace for their publicly traded securities, is particularly burdensome at this time.

Moreover, one of the main concerns behind the Act was the emphasis by certain companies on manufacturing short-term, unsustainable increases in stock price at the expense of the long-term growth and health of the company. The NYSE rule change, by requiring companies previously in compliance with its listing standards to develop a plan to increase their market capitalization and/or stockholders' equity by as much as 50% in 18 months in order to remain listed, would push some companies to sacrifice long-term strategic plans in favor of such short-term growth.

The only stated reason for increasing the market capitalization and stockholders' equity requirements is "to reflect marketplace expectations of those companies deemed suitable for listing." In our opinion, this conclusory statement is not a sufficient reason to increase the NYSE's market capitalization and stockholders' equity requirements. First, the NYSE has not cited any studies or surveys indicating that such "marketplace expectations" actually exist. Second, it is important to consider this statement in light of the NYSE's prior changes in its listing standards, which occurred in 1999. At that time, the major market indices were climbing toward all-time record highs, and many companies were seeing significant increases in market capitalization and/or shareholder equity. In response to these market conditions, it made sense for the NYSE to adopt the $50 million market capitalization/stockholders' equity requirements for continued listing (prior to the change, the NYSE had a requirement that listed companies maintain aggregate market value of publicly traded shares of $8 million). However, since then, numerous factors contributed to a significant market downturn. Many companies suffered a serious decline in market capitalization and stockholders' equity as a result. Moreover, the downturn in the market contributed to significant unfunded pension liabilities, which further eroded stockholders' equity. There clearly has not been a market rise commensurate with the 50% increase in the NYSE's market capitalization/stockholders' equity requirements; indeed, the broader markets have only recently begun to reach the 1999 levels. Based on these facts, it is hard to understand the NYSE's position that "marketplace expectations" have rendered companies that were deemed suitable for listing under the updated 1999 listing standards no longer suitable for listing today.

In light of the burdens that the revised listing standards will place on affected listed companies and their shareholders, it is incumbent on the NYSE to proffer sound reasons for increasing the market capitalization/stockholders' equity requirements for continued listing. We do not believe that the NYSE's stated reasons are sufficient to justify these changes to the listing standards.

**THE CONTINUED LISTING STANDARDS SHOULD BE FURTHER AMENDED TO ALLOW FOR AN EXTENDED COMPLIANCE PERIOD FOR COMPANIES IN COMPLIANCE WITH CURRENT STANDARDS**

The revised listing standards do not grandfather or otherwise provide an extended compliance period for companies that are in compliance with the listing standards as they are currently stated. In fact, companies that are below the current listing standards are in some instances treated more favorably than companies that are in compliance with those standards. Companies that are following an 18 month plan for compliance with the current listing standards would be permitted to finish their 18 month plan in order to come into compliance with the current standards, and would then be afforded an additional 12 months to come into compliance with the new standards. Companies that are in compliance with the current listing standards may be required to come into compliance with the new standards sooner, as they will only have 18 months to satisfy the new standards. Such a result seems intrinsically unfair to the latter set of listed companies.

**THE EFFECTIVE DATE OF THE PROPOSED RULE CHANGE NEEDS TO BE CLARIFIED**

The NYSE states that the proposed rule change raising the requirements for market capitalization and shareholder equity will not become effective for a period of 30 trading days from the date of Commission approval of the rule amendments. A straightforward reading of this statement would lead one to believe that the NYSE will not begin measuring compliance with the new rules until 30 trading days pass after Commission approval. However, the following statement by the NYSE

> For an issuer that is in compliance with the continued listing standards now in force, but that might be below the continued listing standards proposed herein, the proposed 30-day measurement period *prior to effectiveness* would allow the Exchange sufficient time to provide early warnings to any issuer that would potentially be below compliance at the end of that period. If, at the end of the 30-trading-day measurement period, an issuer is below the increased requirements set forth above, the Exchange would formally notify the issuer of such non-compliance…. (emphasis added)

In other words, it appears that the NYSE intends to begin measuring compliance with the new rules before the new rules become effective. Because the rules themselves require a 30-trading-day period of non-compliance before delisting procedures may begin, the NYSE's proposed action would essentially put the new rules into full play before the purported effective date of the rules.

We suggest that the interplay between the effective date of the new rules and the measurement period for non-compliance be clarified. We would ask that the 30-trading-day measurement period begin only after the new rules become effective. The NYSE could still issue early warning letters to companies that would fall below the new standards, but these letters, if issued after Commission approval but before the effective date of the new rules, could then provide a future, definitive date on which the 30-trading-day measurement period would begin.

**CONCLUSION**

Based on the above, we respectfully request that the Commission disapprove the portion of the proposed rule changes increasing the market capitalization and stockholders' equity requirements of the NYSE's continued listing standards. Alternatively, we request that the Commission initiate proceedings under Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(2)(B)) to determine whether the proposed rule change should be disapproved.

If the Commission is inclined to approve the substance of the proposed rule changes, we request that the Commission require further amendments to the proposed change in the NYSE's continued listing standards that in some way grandfather companies that satisfy the current listing standards. Such grandfathering could include, for example, delaying the date by which the NYSE may seek to delist such companies, or allowing such companies an extended period of time to come into compliance with the revised standards.

Thank you very much for your consideration of these comments. If you would like to discuss these matters further, please contact the undersigned.

Very truly yours,

von BRIESEN & ROPER, s.c.

Kenneth A. Hoogstra

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cc: Glenn Tyranski, NYSE

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