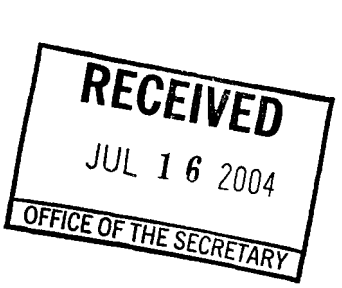
microfinancial



July 15, 2004

Via e-mail: rule-comments@sec.gov

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

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

Dear Mr. Katz:

As a New York Stock Exchange listed company, we are writing to give our perspective on the NYSE's proposed rule changes to the original and continued quantitative listing standards. Notice of these proposed changes (the "Proposal") was published by the SEC on June 25, 2004 (in Release No. 34-49917, or the "Release"), and was published in the Federal Register on July 2, 2004.

We appreciate the opportunity to provide input into the Proposal and its effect on companies such as ours.

MicroFinancial Incorporated was founded in 1987 as a specialized commercial finance company. We lease and rent "microticket" equipment and provide other financing services in amounts generally ranging from $400 to $15,000. We primarily lease and rent low-priced commercial equipment to small merchants who use the equipment in their daily operations. We originate leases for products that typically have limited distribution channels and high selling costs. We facilitate sales of such products by making them available to dealers' customers for a small monthly lease payment rather than a higher initial purchase price. We service leases, contracts and loans in all 50 states of the United States and its territories.

We have been listed on the New York Stock Exchange since our initial public offering in February 1999. In February 2003, we were notified by the Exchange that we were not in compliance with the continued listing standards at the time, because for a 30 consecutive trading day period, our average market capitalization was below $15 million and our share price was below $1 per share. After working with the Exchange to develop and then implement a plan to regain compliance, we were notified on July 7 of this year that we had been removed from the Exchange's "watch list" and that we are now considered a company in good standing.

Currently, Section 802.01B of the Listed Company Manual provides that a listed company which was originally qualified to list on the Exchange under the "Earnings Test" of Section 102.01C(I) will be considered out of compliance with continued listing standards if:

- average global market capitalization over a consecutive 30 trading-day period is less than $50 million and, at the same time, total stockholders' equity is less than $50 million; or

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- average global market capitalization over a consecutive 30 trading day period is less than $15 million.

The Proposal would increase these thresholds, so that a company would be considered out of compliance if its market capitalization and its total stockholders' equity were each less than *$75 million* over a 30-day period (in place of $50 million), or if its market capitalization alone were less than *$25 million* (in place of $15 million).

Our current market capitalization, based on recent share prices, is approximately $50.1 million. We reported total stockholders' equity of $66.6 million at the end of our first quarter of 2004. As you can see, we find ourselves in the unenviable position – having heard on July 7, 2004 that we had regained compliance with the continued listing standards after what we can only describe as a burdensome process – of having a market capitalization and total stockholders' equity that are each over $50 million, but under $75 million, and being subject to further compliance proceedings if the Proposal is adopted.

If the Proposal is approved by the Commission, the Exchange represents in the Release that it would provide a period of 30 trading days from the date of Commission approval until any amendments become effective, after which it would notify formally any issuers that are currently in compliance but would be out of compliance as a result of the changes in the Proposal. Issuers would then be required to submit a business plan within 45 days outlining definitive action that the issuer would take to bring it into conformity with the requirements within an 18 month period.

While the Release does not make any estimate of the number of listed companies that would be immediately affected by the Proposal – that is, companies which currently are in compliance but which would be considered out of compliance if the Proposal were implemented – we understand from conversations with the Exchange staff that the number is likely to be approximately 35 companies. According to the Exchange's web site, there were 2,574 listings of common stock on the Exchange at year-end 2003. The Proposal would therefore, at least in the near term, affect only a very small fraction of the Exchange's listings. We note that the articulated purpose of the Proposal is "to reflect marketplace expectations of those companies deemed suitable for continued listing." While we are sympathetic to the Exchange's efforts to strengthen its reputation as the world's premier stock exchange, we wonder whether the Proposals will really have the intended effect, given the very few companies which currently fall between the two standards. The Exchange has not articulated why the potential removal from its listed company roster of 35 companies – many of which, we understand, are quite profitable and healthy companies with strong cash flows, but which share the misfortune of being "small" – would markedly strengthen the Exchange.

At the same time, we hope that the Exchange is cognizant of the very significant impact the Proposal will have on the companies it affects – potential delisting aside, the Proposal would lead to uncertainty among both the affected issuers and their investors concerning the listing. The companies affected will face delisting or need to transfer to another exchange to avoid delisting. Transfers themselves are time-consuming (considering the application process, review process and diligence questions), expensive (considering the use of management resources,

application fees, initial listing and ongoing fees), and create shareholder uncertainty, all of which can serve significantly to reduce market price and to harm investors unfairly.

We note in particular that it is extremely difficult to regain compliance with the continued listing standards once a company falls below those standards. The Exchange places a "bc" (below compliance) suffix at the end of the company's ticker symbol which, in turn, drives away institutional and other sophisticated investors. Since price is driven largely by supply and demand, this acts to drive prices downward, driving companies further from compliance even though they might be achieving the goals and objecting laid out in the continued listing plan. Companies in our position would face these consequences without any change in their own financial condition or other circumstances.

It is our position that no changes to the current listing standards with respect to market capitalization and stockholders' equity should be made without a compelling reason articulated to the affected listed companies and their shareholders. The Exchange has represented that it maintains an ongoing dialog with "knowledgeable practitioners" at investment banks, broker-dealers and venture capital firms, and adjusts its listing standards periodically to ensure that the listing standards "reflect current market conditions" and allow the Exchange to continue to attract quality companies. However, the Release does not explain what current market conditions have led it to believe that a change from $50 million thresholds to $75 million is appropriate. Nor does it explain why the change is necessary to attract "quality companies." In the abstract, we understand why the Exchange believes that raising listing standard thresholds by 50% gives the appearance of strengthening the quality of the Exchange, at least in the sense of making listing available only to larger companies. But in practice, we wonder what has changed to merit the increase. For example, has the $1 minimum price requirement proven ineffective against companies with declining market values, in a way that the increased market capitalization requirement would succeed? Did the Exchange consider instead leaving the $50 million thresholds intact, but providing that a company will be considered out of compliance if the market capitalization alone were less than $25 million (as currently proposed, and in place of the currently applicable $15 million)? If the Exchange were to delist companies with over $50 million in market capitalization and $50 million in stockholders' equity, how does this put the Exchange in the position it wants to achieve? If indeed there are only approximately 35 companies which meet the old standards of stockholders' equity and market capitalization but not the proposed standards, we question whether the "marketplace expectations" that the Exchange refers to in the Release are based on any analysis of currently listed companies at all, but are instead in substance hypothetical and ideal expectations for a company seeking a new listing of its shares today.

If the Proposal is adopted as described in the Release, however, we would hope that the Exchange could implement a system whereby companies that are currently listed on the Exchange are "grandfathered" from the changed listing standards. While we understand that the Exchange always reserves the right to change standards, and indeed to impose more stringent standards even on companies that meet the numerical listing standards, the current Proposal strikes us as being a case of moving the goalposts for listed companies in our position. Companies listing their shares on the Exchange have several options at the time of listing. In 1999 when we offered our shares to the public, we chose to become a customer of the Exchange largely as a result of its reputation and with the expectation, which we feel was reasonable, that

we would be held to the listing standards in effect at the time. We have worked hard to maintain those standards, and to regain them when we fell below them. It seems to us that an increase in the standards only *prospectively*, for companies seeking an Exchange listing in the future, would accomplish the strengthening of the listing standards to what it determines are "current market conditions," while not disadvantaging those who listed under the earlier standards. If a true "grandfathering" is ultimately unacceptable to the Exchange, we would urge the Exchange to consider a grandfathering with a definitive expiration date, on the order of three to five years from the date any rule changes become effective, during which time companies would be considered to be in full compliance so long as they meet the existing standards.

Finally, the Exchange should clarify that companies which have regained compliance in the last twelve months will not be prejudiced by any rule change. As the Release notes, companies which are determined to be below minimum compliance levels within 12 months of a successful recovery from non-compliance may face truncated procedures for reestablishing compliance or immediate delisting, depending on the Exchange's view with respect to the relationship between the two incidents. The Release notes that where a company (such as ours) is within such a 12-month period, and falls out of compliance as a direct result of the adoption of the changes outlined in the Proposal (as we would be likely to do), the Exchange would "not intend" to truncate the procedures or immediately initiate delisting, and "would take into consideration all of the facts and circumstances relating to the company in determining whether to allow such company an opportunity to submit a second plan." Despite the hedging language in these statements, we hope that *any* issuer finding itself in that position would be afforded a fair opportunity to submit a second plan unless there are truly exceptional circumstances.

In summary, while we understand that the Exchange wants to strengthen the quality of its listed companies, we feel that the Proposal relating to the continuing listing standard thresholds for market capitalization and stockholders' equity (i) is unnecessary; (ii) unfairly burdens a limited number of companies who meet current standards but not the proposed standards; (iii) should be adopted, if it is adopted at all, only for prospective listings and not for companies currently listed; or (iv) as a last resort, should be adopted with a three to five year period in which it would not apply to currently listed companies.

Thank you for giving us the opportunity to comment on this Proposal. We would be pleased to speak with you directly if we can provide you with any further information or perspective about how the Proposal would affect companies on the Exchange.

Very truly yours,

Richard F. Latour
President & CEO