

August 18, 2004

Nancy J. Sanow, Esq.
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NYSE-2004-49
Proposal Relating to Listed Company Manual Section 802.01

Dear Ms. Sanow:

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, we hereby enclose for filing nine copies of the above-captioned filing, at least one of which has been manually signed, and one copy of the filing on a diskette in Word 6.0 format. The proposed rule filing reflects amendments to the Listed Company Manual to include procedures applicable to companies that fail to file their Securities Exchange Act of 1934 annual reports in a timely manner.

Sincerely,

Enclosure

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 19b-4

Proposed Rule Change

by

New York Stock Exchange, Inc.

August 19, 2004

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Consists of 15 pages

1. Text of the Proposed Rule Change

- (a) The text of proposed amendments to Listed Company Manual Section 802.01 (“Continued Listing Criteria”) is set forth in Exhibit A. The proposed rule filing reflects amendments to the Listed Company Manual to include procedures applicable to companies that fail to file their Securities Exchange Act of 1934 annual report in a timely manner.
- (b) Except as otherwise noted below, the Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

- (a) The Chief Regulatory Officer of the Exchange approved these proposed rule changes on August 18, 2004, pursuant to delegated authority. No further action by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.
- (b) The person from the Exchange staff prepared to respond to questions and comments on the proposed rule changes is:

Noreen M. Culhane
 Executive Vice President
 Global Corporate Client Group
 (212) 656-2400

Glenn W. Tyranski
 Vice President
 Financial Compliance
 (212) 656-5142

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

(a) Purpose

The Exchange is proposing to codify existing procedures followed in situations where companies fail to satisfy the Securities and Exchange Commission’s (the “SEC”) filing requirements for annual reports on Forms 10-K, 10-KSB, 20-F, 40-F, or N-CSR in a timely manner.

The Exchange closely monitors whether listed companies have filed their annual reports with the SEC as part of its continued listing program. At any given point over the past four years, no more than approximately two dozen NYSE-listed companies failed to file their annual reports with the SEC by the later of the date the filing was required to be made or, if the company filed a Form 12b-25 in a timely manner, by the extended due date. Most of these companies subsequently filed the required annual report within three to four months of the filing due date, and the vast majority of the remaining companies complied within six months of the filing due date. Cumulatively, approximately 13 companies took more than six months to make their filings over the past four years.

In all cases where a company failed to file its annual report by the filing due date, Exchange staff held regular discussions and meetings with each company's management, directors, regulators and advisors to monitor the status of the annual report filing and to determine whether to allow the company to continue to trade despite the continued failure to file an annual report with the SEC. In several of these situations, the Exchange ultimately moved to suspend the company's trading and delist its securities due to the length of time that passed without the company providing audited financial statements to the marketplace.

In order to formalize the process that the Exchange currently follows when a company has failed to file its annual report on a timely basis, the Exchange proposes to amend Section 802.01 of the Listed Company Manual to include the following.

Proposed Section 802.01E

A company that fails to file its annual report (Forms 10-K, 10-KSB, 20-F, 40-F or N-CSR) with the SEC in a timely manner will be subject to the following procedures:

Once the Exchange identifies that a company has failed to file a timely periodic annual report with the SEC by the later of (a) the date that the annual report was required to be filed with the SEC by the applicable form or (b) if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report, the Exchange will notify the company in writing of its status. For purposes of this Para. 802.01E, the later of these two dates will be referred to as the "Filing Due Date."

Within five days of receipt of this notification, the company will be required to (a) contact the Exchange to discuss the status of the annual report filing, and (b) if it has not already done so, issue a press release disclosing the status of the filing. If the company fails to issue this press release in a timely manner, the Exchange will itself issue a press release stating that the company has failed to timely file its annual report with the SEC.

During the nine-month period from the Filing Due Date, the Exchange will monitor the company and the status of the filing, including through contact with the company, until the annual report is filed. If the company fails to file the annual report within nine months from the Filing Due Date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional three-month trading period depending on the company's specific circumstances. If the Exchange determines that an additional trading period of up to three months is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Para. 804.00 of the Listed Company Manual. A company is not eligible to follow the procedures outlined in Paras. 802.02 and 802.03 with respect to this criteria.

In determining whether an additional up to three-month trading period is appropriate, the Exchange will consider the likelihood that the filing can be made during the additional period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages

companies to provide ongoing disclosure on the status of the annual report filing to the market through press releases, and will also take the frequency and detail of such information into account in determining whether an additional three-month trading period is appropriate.

If the Exchange determines that an additional up to three-month trading period is appropriate and the company fails to file its periodic annual report by the end of the additional period, suspension and delisting procedures will commence in accordance with the procedures set out in Para. 804.00.

Note that if, at any time, the Exchange deems it necessary or appropriate in the public interest or for the protection of investors, trading in any security can be suspended immediately, and, in accordance with the procedures set out in Para. 804.00, application made to the SEC to delist the security.

(b) Statutory Basis

The basis under the Securities Exchange Act of 1934 (“Exchange Act”)¹ for this proposed rule change is the requirement under Section 6(b)(5)² 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, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Written comments were neither solicited nor received.

¹ 15 U.S.C. 78a.

² 15 U.S.C. 78f(b)(5).

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)³ of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

This proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

Exhibit 1 - Form of Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit A – Text of the Proposed Rule Change

³ 15 U.S.C. 78s(b)(2).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

New York Stock Exchange, Inc.

By _____
Mary Yeager
Assistant Corporate Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- : File No. SR-NYSE-2004-49)

[Dated]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Companies that Fail to File Securities Exchange Act of 1934 Annual Reports in a Timely Manner

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Exchange Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on August 19, 2004, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, 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 text of proposed amendments to Listed Company Manual Section 802.01 (“Continued Listing Criteria”) is set forth in Exhibit A. The proposed rule filing reflects amendments to the Listed Company Manual to include procedures applicable to companies that fail to file their Exchange Act annual report in a timely manner.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240-19b-4.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange is proposing to codify existing procedures followed in situations where companies fail to satisfy the Securities and Exchange Commission's (the "SEC") filing requirements for annual reports on Forms 10-K, 10-KSB, 20-F, 40-F, or N-CSR in a timely manner.

The Exchange closely monitors whether listed companies have filed their annual reports with the SEC as part of its continued listing program. At any given point over the past four years, no more than approximately two dozen NYSE-listed companies failed to file their annual reports with the SEC by the later of the date the filing was required to be made or, if the company filed a Form 12b-25 in a timely manner, by the extended due date. Most of these companies subsequently filed the required annual report within three to four months of the filing due date, and the vast majority of the remaining companies complied within six months of the filing due date. Cumulatively, approximately 13 companies took more than six months to make their filings over the past four years.

In all cases where a company failed to file its annual report by the filing due date, Exchange staff held regular discussions and meetings with each company's management, directors, regulators and advisors to monitor the status of the annual report filing and to determine whether to allow the company to continue to trade despite the continued failure to file an annual report with the SEC. In several of these situations, the Exchange ultimately moved to suspend the company's trading and delist its securities due to the length of time that passed without the company providing audited financial statements to the marketplace.

In order to formalize the process that the Exchange currently follows when a company has failed to file its annual report on a timely basis, the Exchange proposes to amend Section 802.01 of the Listed Company Manual to include the following.

Proposed Section 802.01E

A company that fails to file its annual report (Forms 10-K, 10-KSB, 20-F, 40-F or N-CSR) with the SEC in a timely manner will be subject to the following procedures:

Once the Exchange identifies that a company has failed to file a timely periodic annual report with the SEC by the later of (a) the date that the annual report was required to be filed with the SEC by the applicable form or (b) if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report, the Exchange will notify the company in writing of its status. For purposes of this Para. 802.01E, the later of these two dates will be referred to as the "Filing Due Date."

Within five days of receipt of this notification, the company will be required to (a) contact the Exchange to discuss the status of the annual report filing, and (b) if it has not already done so, issue a press release disclosing the status of the filing. If the company

fails to issue this press release in a timely manner, the Exchange will itself issue a press release stating that the company has failed to timely file its annual report with the SEC.

During the nine-month period from the Filing Due Date, the Exchange will monitor the company and the status of the filing, including through contact with the company, until the annual report is filed. If the company fails to file the annual report within nine months from the Filing Due Date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional three-month trading period depending on the company's specific circumstances. If the Exchange determines that an additional trading period of up to three months is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Para. 804.00 of the Listed Company Manual. A company is not eligible to follow the procedures outlined in Paras. 802.02 and 802.03 with respect to this criteria.

In determining whether an additional up to three-month trading period is appropriate, the Exchange will consider the likelihood that the filing can be made during the additional period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the annual report filing to the market through press releases, and will also take the frequency and detail of such information into account in determining whether an additional three-month trading period is appropriate.

If the Exchange determines that an additional up to three-month trading period is appropriate and the company fails to file its periodic annual report by the end of the

additional period, suspension and delisting procedures will commence in accordance with the procedures set out in Para. 804.00.

Note that if, at any time, the Exchange deems it necessary or appropriate in the public interest or for the protection of investors, trading in any security can be suspended immediately, and, in accordance with the procedures set out in Para. 804.00, application made to the SEC to delist the security.

2. Statutory Basis

The basis under the Exchange 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, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Written comments were neither solicited nor received.

⁴ 15 U.S.C. 78f(b)(5).

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 the proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549.

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 in 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions

should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).

Text of the Proposed Rule Change

Additions are underscored.

Listed Company Manual

* * * *

802.00 Continued Listing

* * * *

802.01 Continued Listing Criteria

* * * *

802.01E SEC Annual Report Timely Filing Criteria

A company that fails to file its annual report (Forms 10-K, 10-KSB, 20-F, 40-F or N-CSR) with the SEC in a timely manner will be subject to the following procedures:

Once the Exchange identifies that a company has failed to file a timely periodic annual report with the SEC by the later of (a) the date that the annual report was required to be filed with the SEC by the applicable form or (b) if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report, the Exchange will notify the company in writing of its status. For purposes of this Para. 802.01E, the later of these two dates will be referred to as the "Filing Due Date."

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In determining whether an additional up to three-month trading period is appropriate, the Exchange will consider the likelihood that the filing can be made during the additional

period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the annual report filing to the market through press releases, and will also take the frequency and detail of such information into account in determining whether an additional three-month trading period is appropriate.

If the Exchange determines that an additional up to three-month trading period is appropriate and the company fails to file its periodic annual report by the end of the additional period, suspension and delisting procedures will commence in accordance with the procedures set out in Para. 804.00.

Note that if, at any time, the Exchange deems it necessary or appropriate in the public interest or for the protection of investors, trading in any security can be suspended immediately, and, in accordance with the procedures set out in Para. 804.00, application made to the SEC to delist the security.

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