



Via email to www.rule-comments@sec.gov

November 29, 2002

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

Re: Disclosure Required By Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002 (October 22, 2002); Release No. 34-46701; File No. S7-40-02

Dear Mr. Katz:

The New York Stock Exchange, Inc. ("NYSE" or the "Exchange") is pleased to comment on the proposals made by the Securities and Exchange Commission ("SEC") in the above-referenced release (the "Proposing Release") regarding the definition of "financial expert."

As noted in the Proposing Release, in 1998, the NYSE co-sponsored the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee"). The findings of the Blue Ribbon Committee led the NYSE to adopt rules requiring that every member of an audit committee of a listed company be financially literate or become financially literate within a reasonable period of time after appointment. The rules also require that at least one member of the audit committee have "accounting or related financial management expertise." They made determination of whether a member of the audit committee met the requirement of literacy or expertise the responsibility of the company's board of directors in its business judgment.

On February 13, 2002, SEC Chairman Harvey Pitt asked the NYSE to review its corporate governance listing standards. In conjunction with that request, the NYSE appointed the Corporate Accountability and Listing Standards Committee (the "CALS Committee") to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability, integrity and transparency of the NYSE's listed companies. The recommendations of the CALS Committee resulted in the NYSE filing a new set of corporate governance listing standards with the SEC on August 16, 2002 (the "NYSE Proposals").

In its deliberations, the CALS Committee specifically addressed the existing requirement that all audit committee members be financially literate, and that at least one member have accounting or related financial management expertise. In its June 6, 2002 report, the CALS Committee recommended modification of the standard to require that the chair of the audit committee have accounting or related financial management expertise, stating that, “[w]hile all members of the audit committee should play a vigorous role, it is particularly important that the chair have the background and seasoning to assure that the committee itself retains control over its agenda. Further, a chair with the requisite accounting/financial background, which includes current or former senior executive officers of corporations, is also more likely to develop direct lines of communication with key audit personnel, both from within the company and from the company’s independent accountants.”

On July 30, 2002, two days before the NYSE Board of Directors met to act on the recommendations of the CALS Committee, the Sarbanes-Oxley Act of 2002 (the “Act”) was adopted. Section 407 of the Act directed the SEC to establish a requirement that companies disclose whether or not, and if not, why not, at least one member of every audit committee qualifies as a “financial expert.” The Act directed the SEC to define “financial expert” in a manner consistent with the Act. As a consequence, in generally adopting the recommendations of the CALS Committee on August 1, our Board deferred acting on the CALS Committee’s proposal regarding the knowledge or experience requirements for audit committee service pending the SEC’s definition of “financial expert”.

As proposed by the SEC, the definition of “financial expert” requires that a person have, through experience as a public accountant or auditor, or as a principal financial officer, controller or principal accounting officer of a public company, or through “performance” of similar functions, experience with internal controls and in preparing or auditing comparable financial statements. The Proposing Release states that, in determining whether a potential financial expert has all of the requisite attributes, a company’s board of directors must evaluate the totality of an individual’s education and experience, and sets forth a number of factors that the board should consider in making that determination. The Proposing Release also solicits comments on whether the definition of “financial expert” should be modified in any way.

As the Proposing Release notes, the Blue Ribbon Committee stated in its findings on corporate governance and audit committees that “one size doesn’t fit all.” Our own CALS Committee was of the same view. The CALS Committee also felt strongly that our listed companies must have independent directors of substantial experience and reputation, who would have the knowledge and credibility to review and assess the strategy and performance of company management.

We therefore support expansion of the SEC’s proposed definition of “financial expert” to include individuals with experience “reviewing or analyzing” audited financial statements of public companies. We believe that the very prescriptive nature of the current proposal unnecessarily

limits potential candidates to a very narrow pool of persons with specific accounting and auditing experience. While the proposed definition allows a board to determine that a candidate has “similar expertise and experience” outside of the types of specific expertise enumerated in the proposed definition, many boards and their advisers will likely conclude from the narrowness and specificity of the proposed definition that any candidate without specific accounting and auditing experience should not be identified as a “financial expert”. As a result, even the chief executive officer or chief operating officer of a multi-billion dollar company could not serve as a “financial expert” if that person had never prepared an audit – even though the individual had many years experience reviewing and being ultimately responsible for the financial statements of his or her own company.

The Exchange also urges the SEC not to lose sight of the fact that the individual at issue is one who should be qualified to play an important role in the governance of the company. First and foremost, this individual will be an independent director of the company, and must be able to make a substantial contribution beyond the functioning of the audit committee.* By focusing on such a narrow set of criteria, we will exclude from consideration many individuals who are better qualified overall to hold management accountable for its stewardship of the company.

We note in this connection that the audit committee can seek additional accounting expertise to analyze or evaluate an issue. Our own proposed standards require that the audit committee charter enable the audit committee to independently obtain advice and assistance from outside legal, accounting or other advisers.

In sum, we urge the SEC to carefully weigh the cost of placing even one narrowly-defined “expert” on the board of directors by virtue of requiring such expertise on the audit committee. The Exchange is concerned that the cost in lost talent and opportunity to the board as a whole far exceeds the benefit from added expertise on the audit committee.

We are also concerned about the potential for heightened legal liability for the audit committee member designated as a “financial expert,” despite the Proposing Release’s indication that the financial expert will not be considered an expert for purposes of Section 11 of the Securities Act of 1933. It seems almost inevitable that labeling someone an “expert” will enable a plaintiff’s lawyer to succeed in a claim that otherwise would have failed. The fear of liability can only reduce the pool of candidates, exacerbating the problem of recruiting qualified directors touched on above. Finally, it is our belief that many NYSE-listed companies do not currently have a member of the audit committee who would meet the SEC’s narrow proposed definition of “financial expert.” Given the difficulties already faced by public companies in identifying and appointing board members of the highest caliber, it will be even more difficult for companies to

* Since 1978 the Exchange has required that listed companies have audit committees comprised entirely of independent directors.

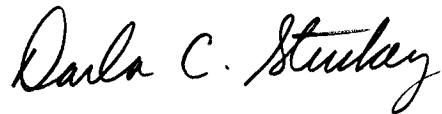
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attract at least one individual (even two, if companies consider succession issues) who meet the proposed “financial expert” definition. The result may be that a number of companies will elect to maintain their current audit committee in which they have full confidence, and instead disclose why they do not have on their audit committees a person who meets the SEC’s narrow definition of a “financial expert”.

That is not an optimal result. A better approach would be for the SEC to define “financial expert” more broadly and less prescriptively, enabling companies to satisfy the spirit of Sarbanes-Oxley by appointing individuals with valuable financial experience, even if such individuals have not been auditors.

Thank you for your consideration of these comments. We would be pleased to answer any questions or provide further information that you may find helpful.

Sincerely,

A handwritten signature in black ink that reads "Darla C. Stuckey". The signature is written in a cursive, flowing style.

Darla C. Stuckey
Corporate Secretary