

makes from Southern Funding to SEGCO. The amount of any guarantee by Georgia Power will not exceed \$150 million at any one time outstanding, and may be made by Georgia Power individually to SEGCO, or jointly and severally by Georgia Power and Alabama Power to SEGCO.

The commercial paper that may be issued by Southern Funding will be in the form of promissory notes with varying maturities not to exceed one year, which maturities may be subject to extension to a final maturity not to exceed 390 days. Actual maturities will be determined by market conditions, the effective interest costs and the anticipated cash flows of the respective Operating Companies, including the proceeds of other borrowings, at the time of issuance. The commercial paper notes will be issued in denominations of not less than \$50,000 and will not by their terms be payable prior to maturity.

The commercial paper will be sold by Southern Funding directly to or through a dealer or dealers (the "dealer"). The discount rate (or the interest rate in the case of interest-bearing notes), including any commissions, will not be in excess of the discount rate per annum (or the equivalent interest rate) prevailing at the date of issuance for commercial paper of comparable quality with the same maturity sold by other issuers to commercial paper dealers.

No commission or fee will be payable in connection with the issuance and sale of commercial paper, except for a commission not to exceed 1/8th of 1% per annum payable to the dealer in respect of commercial paper sold through the dealer as principal. The dealer will re-offer such commercial paper at a discount rate of up to 1/8th of 1% per annum less than the prevailing interest rate to Southern Funding or at an equivalent cost if sold on an interest-bearing basis.

Each Applicant (other than Southern Funding) represents that through the Authorization Period it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty percent. Southern Funding will not issue any securities on behalf of an Applicant (other than commercial paper with a maturity of one year or less) under this Declaration unless upon original issuance: (i) The securities, if rated, are rated at least investment grade, (ii) all outstanding securities of the Applicant on whose behalf the borrowing will be made that are rated as rated investment grade, and (iii) all outstanding securities of Southern that are rated as rated investment grade. For purposes of this provision, a security will be deemed to

be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended. Gulf Power requests that Southern Funding be permitted to issue a security on Gulf Power's behalf that does not satisfy the foregoing condition if the requirements of rule 52(a)(1) and rule 52(a)(3) are met and the issue and sale of the security have been expressly authorized by the Florida Public Service Commission. Applicants request that the Commission reserve jurisdiction over the issuance of any securities at any time that the conditions set forth above are not satisfied.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49775; File No. SR-Amex-2004-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Article II, Section 3 of the Exchange Constitution

May 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 12, 2004, the American Stock Exchange LLC ("Amex" 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 Exchange. 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 Proposed Rule Change

The Exchange proposes to amend Article II, section 3 of the Exchange Constitution. The text of the proposed rule change is below. Proposed new language is italicized.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Article II Government and Administration

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Section 3 Powers, Duties and Procedures

"Powers and Duties"—"Group Hospitalization Plan." No change.

Regulatory Services Agreements

The Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

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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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has 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

The proposed rule change would create a mechanism that would allow the Exchange to contract with another self-regulatory organization for the performance of certain of Amex's regulatory functions. The purpose of the proposed rule change is to enhance the

Amex's ability to carry out its regulatory obligations under the Act by providing the Amex the ability to contract with another self-regulatory organization for regulatory services. Under any agreement for regulatory services with another self-regulatory organization, the Amex would remain a self-regulatory organization registered under section 6 of the Act³ and, therefore, will continue to have statutory authority and responsibility for enforcing compliance by its members, and persons associated with its members, with the Act, the rules thereunder, and the rules of the Exchange.

This rule change would have immediate applicability with respect to a Regulatory Services Agreement ("RSA") dated as of April 30, 2004, between the National Association of Securities Dealers, Inc. ("NASD") and the Amex. The Amex has determined that, to best discharge its self-regulatory responsibilities, it will contract with the NASD, which is subject to Commission oversight pursuant sections 15A and 19 of the Act,⁴ for the NASD to provide certain regulatory services to the Amex, as set forth in the RSA. In performing services under the RSA, the NASD will be operating pursuant to the statutory self-regulatory responsibilities of the Amex under section 6 and section 19 of the Act⁵ (and applying the Amex's rules), and the proposed rule change specifically states that any action taken by another self-regulatory organization, or its employees or authorized agents, operating pursuant to a regulatory services agreement with the Exchange (e.g., NASD) will be deemed an action taken by the Exchange (without, however, affecting the Commission's oversight of such other self-regulatory organization). The Amex will, nonetheless, retain ultimate responsibility for performance of its self-regulatory duties under the RSA, and the proposed rule change states that the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act⁶ in general, and furthers the objectives of section 6(b)(1),⁷ 6(b)(6),⁸ and 6(b)(7)⁹ in particular, in that it will enhance the ability of the Exchange to enforce

compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition 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

No written comments were solicited or received with respect to 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.

Article XIII, section 1 of the Exchange Constitution provides, in part, that amendments to the Amex Constitution may be adopted only if approved by the NASD. Amex hereby consents to extension of the period of time specified in section 19(b)(2) of the Act¹⁰ until at least thirty-five days after the Exchange files an appropriate amendment to this filing setting forth the completion of all additional action required under the Exchange Constitution with respect to this proposed rule change.

IV. Solicitation of Comments

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-Amex-2004-32 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-Amex-2004-32. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2004-32 and should be submitted on or before June 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78o-3 and 15 U.S.C. 78s.

⁵ 15 U.S.C. 78f and 15 U.S.C. 78s.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(1).

⁸ 15 U.S.C. 78f(b)(6).

⁹ 15 U.S.C. 78f(b)(7).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).