

NSCC's SMA Service on behalf of NSCC members.

Messages transmitted through the SMA Service will consist of information such as account opening data (e.g., account profile notifications, verifications of funding amounts, and authorizations to trade) and account maintenance data (e.g., funding deposit amount notifications, funding withdrawals, and account termination notifications). NSCC will not be responsible for the content of the messages transmitted through the SMA Service nor will NSCC assume any liability for the completeness or accuracy of the information transmitted.

The SMA Service will provide centralized platform for the communication of the basic account opening and maintenance data among sponsors and investment managers. Because the service does not involve money settlement or securities clearance or netting through the facilities of NSCC, it will be a nonguaranteed service of NSCC.<sup>7</sup>

Fees for the use of the SMA Service will be the subject of a separate rule filing.

Establishing the SMA Service at NSCC will facilitate the transmission of standardized information for separately managed accounts products on a centralized communications platform. Standardization and automation on these products can be expected to reduce processing errors and delays that are typically associated with manual processes or the use of multiple platforms and methods to transmit information. This fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and furthers the protections of investors and the public interest. The proposed rule change is therefore consistent with the provisions of the Act and the rules and regulations thereunder.

<sup>7</sup> NSCC offers certain guaranteed services through its CNS system, in which NSCC as a central counterparty provides settlement related guarantees regarding certain trades cleared and netted at NSCC. NSCC also offers nonguaranteed services, such as NSCC's Mutual Fund and Insurance Processing Services, in which members do not receive the protections of an NSCC guarantee. Some of NSCC's nonguaranteed services entail settlement of funds through NSCC (e.g., NSCC's FundSERVE® service); other nonguaranteed services involve the communication of information only without settlement of transactions or funds through the facilities of NSCC (e.g., NSCC's Profile service in NSCC's Mutual Fund Services). The SMA Service a nonguaranteed service limited to the communication of information only and does not involve settlement of securities transactions or funds through the facilities of NSCC.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe the proposed rule change will have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five 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 ninety 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NSCC-2003-21. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsccl.com/legal/>. All submissions should refer to the File No. SR-NSCC-2003-21 and should be submitted by December 24, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48835; File No. SR-CSE-2003-06]

**Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change and Amendment No. 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by National Stock Exchange Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities**

November 25, 2003.

**I. Introduction**

On September 12, 2003, the Cincinnati Stock Exchange, now known as National Stock Exchange ("Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Article IV of its By-Laws pertaining to its listing standards, including the addition of requirements applicable to audit committees of listed companies.<sup>3</sup> The proposed rule change would require each issuer listed on the Exchange to have an audit committee that complies with the standards for audit committees mandated by Section 10A(m) of the Act<sup>4</sup> and Rule 10A-3 thereunder.<sup>5</sup> The proposed rule change also would specify composition and member qualification requirements for

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In the proposed rule change, the Exchange also proposed to amend Article IV, Section 2 of the Exchange's By-Laws pertaining to unlisted trading privileges. The Commission is not approving this amendment at this time.

<sup>4</sup> 15 U.S.C. 78j-1(m).

<sup>5</sup> 17 CFR 240.10A-3.

audit committees of listed issuers; include a requirement that audit committees have a written charter; and set forth other standards relating to audit committees and the contents of their charters. It would also set forth the operative dates for the new requirements. The proposed rule change also would make several other changes to Article IV of the By-Laws, as more fully described in the Notice.<sup>6</sup> The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 20, 2003.<sup>7</sup> The Commission received no comments on the proposal. On November 19, 2003, the Exchange submitted an amendment to the proposed rule change.<sup>8</sup> On November 21, 2003, the Exchange submitted a second amendment to the proposed rule change.<sup>9</sup> This order approves the proposed rule change and Amendment No. 2, other than the proposed amendment to Article IV, Section 2 of the By-Laws relating to unlisted trading privileges; publishes notice of Amendment No. 1; and approves Amendment No.1 on an accelerated basis.<sup>10</sup>

## II. Discussion

After careful review, the Commission finds that the amended proposed rule change, except for the provision of the proposal relating to unlisted trading privileges, is consistent with the

<sup>6</sup> See Securities Exchange Act Release No. 48624 (October 10, 2003), 68 FR 59957 (October 20, 2003) ("Notice").

<sup>7</sup> *Id.*

<sup>8</sup> See letter from Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 18, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made minor, non-substantive changes to the text of the proposed rule and, with respect to investment companies, expanded the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

<sup>9</sup> See letter from Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated November 20, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange made minor, non-substantive changes to the text of the proposed rule by replacing references to "CSE" with "Exchange." This was a technical amendment and is not subject to notice and comment.

<sup>10</sup> Rule 10A-3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change in part, the Exchange can comply with this deadline.

requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies and the other proposed revisions to Article IV, Sections 1 and 3 of the Exchange's By-Laws are consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.<sup>13</sup> Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act<sup>14</sup> and Rule 10A-3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the Exchange intends to file an additional rule proposal relating to other corporate governance listing standards.<sup>15</sup>

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>16</sup> to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the Exchange expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A-3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."<sup>17</sup> The amended Exchange proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of

<sup>11</sup> In approving these portions of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> The Commission notes that it is not approving the proposed changes to Article IV, Section 2 of the Exchange's By-Laws pertaining to unlisted trading privileges. The Exchange intends to revise at a later date its proposal relating to unlisted trading privileges. Any such amendment would require an affirmative vote by the Exchange's membership. Telephone conversation between Jennifer M. Lamie, Assistant General Counsel and Corporate Secretary, Exchange, Nancy Sanow, Assistant Director, Division, Commission, and Ira L. Brandriss, Special Counsel, Division, Commission, on November 18, 2003.

<sup>14</sup> 15 U.S.C. 78j-1(m).

<sup>15</sup> See Notice at note .

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 240.10A-3(b)(3)(ii).

such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A-3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.<sup>18</sup> In Amendment No. 1, the Exchange also made several technical revisions to the rule text. The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,<sup>19</sup> and the amendment raises no new substantive issues.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CSE-2003-06 and should be submitted by December 24, 2003.

<sup>18</sup> See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A-3).

<sup>19</sup> See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR-NYSE-2002-33 and SR-NASD-2002-141).

**IV. Conclusion**

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act<sup>20</sup>, that Amendment No. 1 is approved on an accelerated basis, and that the portions of the proposed rule change and Amendment No. 2 (File No. SR-CSE-2003-06) relating to Sections 1 and 3 of Article IV of the Exchange's By-Laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48833; File No. SR-NYSE-2003-33]

**Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Exchange Fees for Closed-End Funds**

November 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 20, 2003, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE. On November 24, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") proposes to amend Section 902.02 of the Listed Company Manual (the "Manual") to amend the continued listing fees applicable to closed-end funds. The text

of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

Listed Company Manual

902.00 Listing Fees

\* \* \* \* \*

902.02 Schedule of Current Listing Fees

\* \* \* \* \*

C. Continuing Annual Fee

\* \* \* \* \*

The continuing annual fees for closed end funds are as follows:

[Per Share Rates—

1st and 2nd million shares .....	\$1,650
Additional shares .....	830
Minimum Fees—	
Million Shares	
1+—10 .....	\$25,000
10+—50 .....	35,000
50+—100 .....	48,410
100+—200 .....	64,580
200+ .....	80,440]

[All issued shares are included in the continuing annual fee calculation for closed end funds, except those which have been subject to a continuing annual fee for a consecutive period of 15 years. After 15 years, such shares are excluded in the calculation of fees on the per share basis.] *Closed end funds will pay at a rate of \$930 per million shares, subject to a minimum annual fee of \$25,000.* Fund families with between [5] 3 and [15] 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with [16 or] more *than* 14 listed closed-end funds will receive a discount of [10] 15%. No fund family shall pay aggregate continuing annual fees in excess of \$1 million in any one year.

\* \* \* \* \*

**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 NYSE 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 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 Exchange has recently reduced the original listing fees applicable to closed-end funds,<sup>4</sup> and has capped at \$75,000 the original listing fees applicable to two or more funds from the same fund family listing on the same date.<sup>5</sup>

The Exchange is now proposing to amend the continuing annual listing fees applicable to closed-end funds by establishing a new continuing fee structure with increased fund family discounts, and a new per million share base rate applicable to all closed-end funds.

In establishing a new base rate applicable to all closed-end funds, the Exchange will no longer apply the existing five-tiered continued listing fee structure and, instead, closed-end funds will pay at a rate of \$930 per million shares, subject to a minimum annual fee of \$25,000. To clarify the applicability of the \$25,000 minimum, that amount would actually cover funds with up to 26,881,720 shares outstanding. It is only beyond that size that the multiplication of the per share rate (\$930/million) by the shares outstanding would produce a fee in excess of the \$25,000 minimum.

The Exchange also proposes to increase and expand the availability of the discounts applicable to fund families with multiple funds listed. As proposed, fund families with between 3 and 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with more than 14 listed closed-end funds will receive a discount of 15%. Currently, fund families with between 5 and 15 closed-end funds listed receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with 16 or more listed closed-end funds receive a discount of 10%.

In a previous filing revising listing fees generally,<sup>6</sup> the Exchange eliminated the fee policy under which shares subject to continuing annual fees for a period of 15 consecutive years became exempt from further fees. At the time, the Exchange noted that it was

<sup>4</sup> See Securities Exchange Act Release No. 48360 (August 18, 2003), 68 FR 51045 (August 25, 2003) (SR-NYSE-2003-22).

<sup>5</sup> See Securities Exchange Act Release No. 48685 (October 23, 2003), 68 FR 61710 (October 29, 2003) (SR-NYSE-2003-32).

<sup>6</sup> See Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (SR-NYSE-2002-62).

<sup>20</sup> 15 U.S.C. 78s(b)(2).  
<sup>21</sup> 17 CFR 200.30-3(a)(12).  
<sup>1</sup> 15 U.S.C. 78s(b)(1).  
<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 24, 2003 ("Amendment No. 1").