

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter or Securities Affiliate (except by virtue of serving as Subadviser to a Portion) will be an affiliated person or a second-tier affiliate of the Adviser, any Unaffiliated Subadviser, or any principal underwriter, promoter, officer, director or employee of a Portfolio.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f-3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3-1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-16062 Filed 6-25-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46086; File No. SR-Amex-2002-39]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Revise and Clarify the Income Based Original Listing Standard

June 18, 2002.

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 April 25, 2002, 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 and II 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. For the reasons discussed below, the Commission is granting accelerated approval to the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 101 of the Amex Company Guide to revise and clarify its income-based original listing standard. The text of the proposed rule change appears below. New language is italicized.

\* \* \* \* \*

#### CRITERIA FOR ORIGINAL LISTING

##### Section 101. GENERAL

No Change.

##### (a) REGULAR LISTING CRITERIA

1. Size—Stockholders' equity of at least \$4,000,000.

2. Income—Pre-tax income *from continuing operations* of at least \$750,000 in its last fiscal year, or in two of its last three fiscal years.

Additional criteria applicable to various classes of securities and issuers are set forth below. Applicants should also consider the policies regarding conflicts of interest, independent directors and voting rights described in §§ 120-125.

\* \* \* \* \*

#### 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 Amex 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 III 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

##### I. Purpose

Section 101 of the Amex Company Guide contains a number of quantitative guidelines under which listing applicants are evaluated. Pursuant to Section 101(a)(2) of the Amex Company Guide, a listing applicant is subject to a pre-tax income guideline of at least \$750,000 in its last fiscal year, or in two of its last three fiscal years.<sup>3</sup> The Amex represents that this income guideline is intended to provide a measurement of an applicant's financial performance in evaluating its listing eligibility, but makes no provision for exclusion of discontinued operations, extraordinary items or the cumulative effect of changes in accounting principles. Because discontinued operations, extraordinary items, or the cumulative effect of changes in accounting principles are not incurred in the ordinary course of business, the Exchange does not believe such items are relevant to an evaluation of an issuer's true financial situation and performance. Accordingly, the Exchange proposes to amend Section 101(a)(2) of the Amex Company Guide to use the term "pre-tax income from continuing operations" instead of "pre-tax income." The Exchange represents that compliance with this term would be determinable in accordance with Generally Accepted Accounting Principals and, therefore, would be a transparent standard.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that the proposed change to the income-based

<sup>3</sup> An applicant can also qualify for listing based on compliance with one of the other listing standards contained in Section 101.

<sup>4</sup> 15 U.S.C. 78f(b).

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

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

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

listing standard would provide a better and transparent measure of an issuer's financial performance in evaluating its listing eligibility.

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

The Exchange believes that the proposed rule change will impose no burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **III. 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. 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-Amex-2002-39 and should be submitted by July 17, 2002.

### **IV. Commission Findings and Order Granting Accelerated Approval to Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission believes the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>7</sup> requirement that the rules of an exchange be designed to facilitate transactions in securities,

promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that by addressing the effects of discontinued operations, extraordinary items, and the cumulative effect of changes in accounting principles not incurred in the ordinary course of business, the proposal should permit the Amex to better evaluate a listing applicant's financial situation and performance. The Commission notes that the scope of the proposed rule change is limited by the requirement that compliance with the proposed changes be determinable in a manner consistent with Generally Accepted Accounting Principles. Further, the Commission notes that another self-regulatory organization recently changed its rules to establish a substantially similar standard<sup>8</sup> and no comments were received on that proposal. Therefore, the Commission believes that the proposed rule change raises no new significant regulatory issues for consideration.

The Amex has requested that the Commission expedite review of, and grant accelerated approval to, this proposal, pursuant to Section 19(b)(2) of the Act.<sup>9</sup> The Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>10</sup> to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. As discussed above, the proposal is substantially similar to another self-regulatory organization's rule and, thus, raises no new significant regulatory issues. Further, accelerated approval of this proposal should permit the Amex to apply the revised listing standard to new issuers without delay. Accordingly, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve the proposal on an accelerated basis.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2002-39) be, and hereby is, approved on an accelerated basis.

<sup>6</sup> See Securities Exchange Act Release Nos. 45431 (February 11, 2002), 67 FR 7436 (February 19, 2002) (SR-NASD-2002-16).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

[FR Doc. 02-16063 Filed 6-25-02; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46093; File No. SR-GSCC-2002-02]

### **Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Changes To Alter Trade Data Submission Requirements for Netting and Comparison-Only Members**

June 20, 2002.

#### **I. Introduction**

On February 11, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-GSCC-2002-02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on March 19, 2002.<sup>2</sup> For the reasons discussed below, the Commission is approving the proposed rule changes.

#### **II. Description**

GSCC has proposed to amend its rules to alter trade data submission requirements for both Netting<sup>3</sup> Members and Comparison-Only<sup>4</sup> Members. Based on an analysis conducted by GSCC to discover the cause of lower-than-desired buy/sell comparison rates, GSCC has determined that changes to its trade submission requirements would boost GSCC's trade

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

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

<sup>2</sup> Securities Exchange Act Release No. 45548 (March 12, 2002), 67 FR 12630.

<sup>3</sup> A Netting member is a Member of GSCC that is a member of both the Comparison System and the Netting System. The Comparison System performs trade comparison which consists of the reporting, validating, and in some cases, matching by GSCC of the long and short sides of a securities trade, including a repo transaction, to ensure that the details of such trade are in agreement between the parties. Trade detail comparison is the first step in the clearance and settlement process for securities transactions. The Netting System is a system for aggregating and matching offsetting obligations resulting from trades, including repo transactions, submitted by or on behalf of netting members.

<sup>4</sup> A Comparison-Only Member is a member of GSCC that is a member only of the Comparison System.

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).