

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52308; File No. SR-NYSE-2004-73]

### Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend NYSE Rule 440A Relating to Telephone Solicitation

August 19, 2005.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 30, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 1, 2005, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On August 11, 2005, the NYSE filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to amend NYSE Rule 440A ("Telephone Solicitation") to incorporate the national Do-Not-Call Registry and applicable FCC regulations. The text of current Rule 440A would be deleted. The text of the proposed rule change is set forth below. *Italics* indicate new text.

\* \* \* \* \*

#### Rule 440A

##### Telephone Solicitation

###### (a) General Telephone Solicitation Requirements

*No member, allied member or employee of a member or member organization shall initiate any telephone solicitation, as defined in paragraph (j)(2) of this rule, to:*

###### (1) Time of Day Restriction

*Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless*

*(A) the member or member organization has an established business relationship with the called party pursuant to paragraph (j)(1)(A),*

*(B) the member or member organization has received the called party's prior express invitation or permission, or*

*(C) the called party is a broker or dealer;*

###### (2) Firm-Specific Do-Not-Call List

*Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member or member organization; or*

###### (3) National Do-Not-Call List

*Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.*

###### (b) Procedures

*Prior to engaging in telephone solicitation or telemarketing, a member or member organization must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:*

*(1) Written policy. Members and member organizations must have a written policy available upon demand for maintaining a do-not-call list.*

*(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list, including the policies and procedures of the firm regarding communications with the public.*

*(3) Recording, honoring of do-not-call requests. If a member or member organization making a call for telemarketing purposes receives a request from a person not to receive calls from that member or member organization, the member or member organization must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Members and member organizations must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the member or member organization on whose behalf the telemarketing call is made, the member or member organization on*

*whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request.*

*(4) Identification of sellers and telemarketers. A member, allied member or employee of a member or member organization making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the member or member organization, an address or telephone number at which the member or member organization may be contacted, and that the purpose of the call is to solicit the purchase or sale of securities or a related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.*

*(5) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member or member organization making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product or service being advertised.*

*(6) Maintenance of do-not-call lists. A member or member organization making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for five years from the time the request is made.*

###### (c) National Do-Not-Call List Exceptions

*Paragraph (a)(3) national do-not-call list restrictions shall not apply, if:*

###### (1) Established Business Relationship Exception

*The member or member organization has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member or member organization even if the person continues to do business with the member or member organization;*

###### (2) Prior Express Written Consent Exception

*The member or member organization has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and member or member organization which states that the person agrees to be contacted by the member or member organization and*

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

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Amendment No. 1, the NYSE proposed to partially amend the text of proposed amended Rule 440A and made conforming and technical changes to the original filing.

<sup>5</sup> In Amendment No. 2, the NYSE proposed additional changes to the text of proposed amended Rule 440A and made additional changes to the original filing.

includes the telephone number to which the calls may be placed; or

(3) *Personal Relationship Exception*

The member, allied member or employee of a member or member organization making the call has a personal relationship with the recipient of the call.

(d) *Safe Harbor Provision*

Paragraph (a)(3) general telephone solicitation restrictions shall not apply to a member or employee of a member or member organization making telephone solicitations, if the member or employee of a member or member organization demonstrates that the violation is the result of an error and that as part of the member or member organization's routine business practice, it meets the following standards:

(1) *Written procedures.* The member or member organization has established and implemented written procedures to comply with the national do-not-call rules;

(2) *Training of personnel.* The member or member organization has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) *Recording.* The member or member organization has maintained and recorded a list of telephone numbers that it may not contact; and

(4) *Accessing the national do-not-call database.* The member or member organization uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

(e) *Pre-Recorded Messages*

(1) A member or member organization may not initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message, without the prior express consent of the called person, unless the call:

(i) is not made for a commercial purpose;

(ii) is made for a commercial purpose, but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation; or

(iii) is made to any person with whom the member or member organization has an established business relationship at the time the call is made.

(2) All artificial or prerecorded telephone messages shall:

(i) At the beginning of the message, state clearly the identity of the member or member organization that is responsible for initiating the call. The member or member organization responsible for initiating the call must state the name under which the member or member organization is registered to conduct business with the applicable State Corporation Commission (or comparable regulatory authority); and

(ii) During or after the message, must state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such member or member organization. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(iii) For telemarketing messages to a residence, such telephone number, mentioned in paragraph (e)(2)(ii) above, must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(f) *Wireless Communications*

(1) Members and member organizations are prohibited from using an automatic telephone dialing system or an artificial or prerecorded voice when initiating a telephone call to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(2) The requirements of this rule are applicable to members and member organizations telemarketing or making telephone solicitation calls to wireless telephone numbers.

(g) *Telephone Facsimile or Computer Advertisements*

No member or member organization may use a telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device.

(1) For purposes of paragraph (g) of this rule, a facsimile advertisement is not "unsolicited" if the recipient has granted the member or member organization prior express invitation or permission to deliver the advertisement. Such express invitation or permission must be evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the member or member organization.

(2) Members and member organizations must clearly mark, in a margin at the top or bottom of each page of the transmission, the date and time it is sent and an identification of the member or member organization sending the message and the telephone number of the sending machine or of the member or employee of the member or member organization sending the transmission.

(h) *Caller Identification Information*

(1) Any member or member organization that engages in telemarketing, as defined in paragraph (j)(2) of this rule, must transmit caller identification information. Such caller identification information must include either the Calling Party Number ("CPN") or the calling party's billing number, also known as the Charge Number ("ANI"), and, when available from the telephone carrier, the name of the member or member organization. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. Whenever possible, CPN is the preferred number and should be transmitted.

(2) Any member or member organization that engages in telemarketing, as defined in paragraph (j)(2) of this rule, is prohibited from blocking the transmission of caller identification information.

(3) Provision of caller identification information does not obviate the requirement for a caller to verbally supply identification information during a call.

(i) *Outsourcing Telemarketing*

If a member or member organization uses another entity to perform telemarketing services on its behalf, the member or member organization remains responsible for ensuring compliance with all provisions contained in this rule.

(j) *Definitions*

(1) *Established Business Relationship*

(A) An established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a member or member organization and a person, with or without an exchange of consideration, if:

(i) the person has made a financial transaction or has a securities position, a money balance, or account activity with the member or member organization, or at a clearing firm that provides clearing services to such member or member organization, within the previous 18 months immediately preceding the date of the telephone call;

(ii) the member or member organization is the broker-dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telephone call; or

(iii) the person has contacted the member or member organization to inquire about, or make an application regarding a product or service offered by the member or member organization within the previous three months immediately preceding the date of the telephone call, which relationship has not been previously terminated by either party.

(B) A person's specific do-not-call request, as set forth in paragraph (a)(2) of this rule, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the person continues to do business with the member or member organization.

(C) A person's established business relationship with a member or member organization does not extend to the member or member organization's affiliated entities unless the person would reasonably expect them to be included, given the nature and type of products or services offered by the affiliate and the identity of the affiliate. Similarly, a person's established business relationship with an affiliate of a member or member organization does not extend to the member or member organization unless the person would reasonably expect them to be included, given the nature and type of products or services offered, and the identity of, the member or member organization.

(2) The terms "telemarketing" and "telephone solicitation" mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(3) The term "telephone facsimile machine" means equipment which has the capacity to transcribe text or images (or both) from paper, into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(4) The term "personal relationship" means any family member, friend, or acquaintance of the person making the call.

(5) The term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal

entries relating to securities or funds in the possession or control of the member.

(6) The terms "automatic telephone dialing system" and "autodialer" mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(7) The term "broker-dealer of record" refers to the broker-dealer identified on a customer's account application or accounts held directly at a mutual fund or variable insurance product issuer.

(8) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any products or services which is transmitted to any person without that person's prior express invitation or permission.

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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

Rule 440A currently states, in relevant part, that no member, allied member or employee of a member or member organization shall make an outbound telephone call to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location without the prior consent of the person; or make an outbound telephone call to any person for the purpose of soliciting the purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information: (1) The identity of the caller and the member or member organization; (2) the telephone number or address at which the caller may be contacted; and (3) that the purpose of the call is to solicit the

purchase of securities or related services.

Amendments to Rule 440A are being proposed to incorporate regulations issued by the Federal Communications Commission ("FCC") and the Federal Trade Commission ("FTC") relating to the implementation of the national do-not-call registry and the amendments to the Telephone Consumer Protection Act of 1991 ("TCPA").<sup>6</sup> The Exchange proposes to delete current Rule 440A and adopt new language that incorporates the requirements of the FCC regulation, which is applicable to broker-dealers, and those sections of current Rule 440A that remain relevant.

### Background

Both the FTC and FCC have established requirements for sellers and telemarketers to participate in a national do-not-call registry. Beginning in June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry.

In 1992 and 1995, the FCC and FTC developed requirements for firms to maintain do-not-call lists and to limit the hours of telephone solicitations.<sup>7</sup> The NYSE adopted substantially similar rules in 1995 and 1997.<sup>8</sup> On July 2, 2003, the SEC requested that the NYSE amend its telemarketing rules to include a requirement for its members and member organizations to participate in the national do-not-call registry.

The NYSE is proposing to amend Rule 440A to incorporate the national do-not-

<sup>6</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, FCC 03-153, adopted June 26, 2003, 68 FR 44144 (July 25, 2003) ("Adopting Release"). The FCC rules address such diverse topics as abandoned calls and calls made on behalf of tax exempt non-profit organizations. The NYSE's proposed amendment does not contain these provisions as such matters generally fall outside the purview of the investor protection concerns underlying the proposed rule change. Nevertheless, members and member organizations are subject to the FCC national do-not-call rules and must therefore, comply with those provisions or risk action by the FCC.

<sup>7</sup> The TCPA required the SEC to promulgate telemarketing rules substantially similar to those of the FTC or direct self-regulatory organizations to do so, unless the SEC determined that such rules were not in the interest of investor protection. See 47 U.S.C. 6102(d) (2003).

<sup>8</sup> See SEC Rel. No. 34-35821 (June 7, 1995), 60 FR 31527 (June 14, 1995) (Order approving NYSE rule requiring members to maintain firm-specific do-not-call lists), and SEC Rel. No. 34-38638 (May 14, 1997), 62 FR 27823 (May 21, 1997) (Order approving NYSE rule and interpretation creating telemarketing time-of-day restrictions and disclosure provisions).

call registry. Because broker-dealers are subject to the FCC's telemarketing rules, the NYSE modeled its rule after the FCC's rules, with minor modifications tailored to its members and member organizations and the securities industry.<sup>9</sup> A similar rule was filed by NASD with the SEC on August 18, 2003 and approved on January 20, 2004.<sup>10</sup>

#### *Proposed Rule*

Congress enacted the TCPA in an effort to address a growing number of telephone marketing practices thought to be an invasion of consumer privacy and even a risk to public safety. The statute restricts the use of automatic telephone dialing systems, artificial and prerecorded messages, and telephone facsimile machines to send unsolicited advertisements.

#### *"Telephone Solicitation" and "Telemarketing"*

The proposed rule defines both "telemarketing" and "telephone solicitation" to include the initiation of a telephone call or message transmitted to any person for the purpose of encouraging the purchase of, or investment in, property, goods, or services.

#### *Time/Date and Other Requirements*

Telephone solicitations and telemarketing calls would only be permitted between the hours of 8 a.m. and 9 p.m. local time at the called party's location subject to certain exceptions. The time-of-day restriction is similar to the one currently set out in Rule 440A. Telemarketing calls are prohibited to numbers in the national do-not-call registry and on firm-specific do-not-call lists. Furthermore, members and member organizations that take part in telemarketing activities would be required to maintain policies, train personnel, record and maintain do-not-call requests and identify the person making the call, the name of the member or member organization employer, an address or telephone number at which the firm may be contacted, and inform the called party

<sup>9</sup>Substantively, the Rules of the FCC and FTC are very similar. Indeed, Congress has asked the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. See The Do-Not-Call Implementation Act, 108 P.L. 10, 117 Stat. 557 (March 11, 2003).

<sup>10</sup>SEC Rel. No. 34-49055 (January 12, 2004), 69 FR 2801 (January 20, 2004) (Order approving proposed rule change, and notice of filing and order granting accelerated approval to Amendment No. 1 relating to NASD's telemarketing rules to require members to participate in the national do-not-call registry). See also SR-NASD-2004-174 (November 24, 2004) (Proposed amendment to NASD Rule 2212 (Telemarketing) regarding the frequency of updates from the national do-not-call registry).

of the purpose of the call. The telephone number may not be a 900 or similar number. Members and member organizations would be required to honor a request to be placed on a firm-specific do-not-call list within 30 days or sooner if they are able to do so. A firm-specific do-not-call request applies only to the member or member organization making the call, and not to any affiliated entity unless the customer reasonably would expect the affiliated entity to be included, given the identification of the caller and the product being advertised.

#### *Exceptions From National Do-Not-Call List Restriction*

The proposed rule provides exceptions from the rule's national do-not-call list restriction for (1) calls made to persons with whom the member or member organization has an "established business relationship," (2) calls made to persons from whom a member or member organization has obtained prior express invitation or permission evidenced by a written agreement, and (3) calls to persons with which a member, allied member, or employee of a member or member organization has a personal relationship. A "personal relationship" is a relationship between the person making the call and a family member, friend, or acquaintance. Members and member organizations should be aware that the personal relationship exception applies solely to the rule's national do-not-call registry restriction. Thus, if a person with whom an employee of a member has a personal relationship has requested to be placed on a member's do-not-call list, the employee may not make a telephone solicitation to the person on behalf of the member.

#### *"Established Business Relationship"*

An "established business relationship"<sup>11</sup> means a prior or existing relationship formed by a voluntary two-way communication between a member or member organization and a person, with or without an exchange of consideration, if: the person has made a financial transaction or has a position in their account within the previous 18 months immediately preceding the call; the member or member organization is the broker of record for the person's account within the preceding 18 months; or the person has contacted the member or member organization to inquire about or make an application regarding a product

or service within the preceding three months.

#### *Safe Harbor*

The proposed rule provides that a member or employee of a member or member organization will not be liable for a violation of the rule's national do-not-call registry restriction if the member or employee of a member or member organization demonstrates that the violation is the result of an error and the member or member organization meets certain standards as part of its routine business practice. These standards involve: Written procedures to comply with national do-not-call rules; training of personnel to comply with national do-not-call rules; recording and maintaining a list of telephone numbers that the member or member organization may not contact; and using a documented process, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules.

#### *Wireless Telephone Numbers*

Members and member organizations are prohibited from making telephone solicitations and telemarketing calls to wireless telephone numbers. In addition, automatic telephone dialing systems and artificial or prerecorded voices used to contact wireless telephone numbers are also prohibited.

#### *Artificial/Prerecorded Messages*

Members and member organizations are prohibited from using artificial or prerecorded voice messages for commercial purposes unless: They have permission, the message does not include an unsolicited advertisement or constitute a telephone solicitation, or the message is transmitted to a person with whom the member or member organization has an established business relationship. All artificial or prerecorded messages must state clearly the identity and telephone number of the member or member organization and the name it is registered to conduct business with the applicable State Corporation Commission. The telephone number for the member or member organization may not be a 900 or similar number.

#### *Telephone Facsimile Machines or Computer Advertisements*

Members and member organizations are prohibited from using a telephone facsimile machine, computer or other

<sup>11</sup> See Adopting Release, *supra* note 6, at 44178.

device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device, without the express permission of the recipient. Members and member organizations must clearly mark, in a margin at the top or bottom of each page of the transmission, the date and time it is sent and the identification of the member or member organization sending the message and the telephone number of the sending machine.

#### Caller Identification Information

Members and member organizations that engage in telemarketing must transmit caller identification information and are explicitly prohibited from blocking caller identification information. Caller identification information must include either the Calling Party Number ("CPN") or the calling party's billing number, also known as the Charge Number ("ANI"), and when available from the telephone carrier, the name of the member or member organization. The telephone number provided must permit any person to make a do-not-call request during normal business hours. Provision of caller identification information does not eliminate the requirement for a caller to verbally supply identification information during a call. These provisions are intended to promote appropriate caller identification practices that comport with the FCC's caller identification rules<sup>12</sup> and related guidance.<sup>13</sup>

#### Outsourcing

The proposed rule provides that if a member or member organization uses another entity to perform telemarketing services on its behalf, the member or member organization remains responsible for ensuring compliance with all provisions of the rule.

#### (2) Statutory Basis

The proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5)<sup>14</sup> of the Exchange Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the

public interest. The Exchange believes the proposed rule change will enhance investor protection by enabling persons who do not want to receive telephone solicitations from members or member organizations to receive the protections of the national do-not-call registry.

#### 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 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

The Exchange has neither solicited nor received written comments on 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 Exchange 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.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-73 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2004-73. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2004-73 and should be submitted on or before September 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-4653 Filed 8-24-05; 8:45 am]

BILLING CODE 8010-01-P

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## SMALL BUSINESS ADMINISTRATION

### Audit and Financial Management Advisory (AFMAC) Committee Meeting

The U.S. Small Business Administration's Audit and Financial Management Advisory Committee (AFMAC) will meet on September 12, 2005 at 11 a.m. in the Administrator's conference room. The AFMAC was established by the Administrator of the SBA to provide recommendation and advice regarding the Agency's financial management including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations.

Anyone wishing to attend must contact Thomas Dumaresq in writing or by fax. Thomas Dumaresq, Chief Financial Officer, 409 3rd Street SW., Washington, DC 20416, phone (202)

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>12</sup> See 47 CFR 64.1601(e).

<sup>13</sup> See Adopting Release, *supra* note 6, at 44167.

<sup>14</sup> 15 U.S.C. 78f(b)(5).