

Further, Applicants request authority for the Intermediate Companies, through the Authorization Period, to enter into currency derivatives with National Grid and the FUCO Subsidiaries. National Grid represents that these transactions will meet the criteria established by the Financial Accounting Standards Board in order to qualify for hedge-accounting treatment, or will so qualify under generally accepted accounting principles in the United Kingdom ("U.K. GAAP"). If these proposed transactions qualify for hedge accounting treatment under U.K. GAAP, but not under generally accepted accounting principles in the United States ("U.S. GAAP"), National Grid's financial statements filed in accordance with Form 20-F will contain a reconciliation of the difference between the two methods of accounting treatment. National Grid further states that no gain or loss on a hedging transaction attributable to a company outside the National Grid USA Group will be allocated to any company in the National Grid USA Group, regardless of the accounting treatment accorded to the transaction. These proposed derivative transactions are designed to facilitate the equity financing of the Intermediate Companies and accommodate foreign exchange hedging. Applicants state that losses incurred by any Intermediate Company in connection with these swaps, and the associated tax effects, would not be transferred down the Intermediate Company chain to National Grid USA, and consequently would not adversely affect National Grid USA or any of its subsidiaries.

The Commission's equity capitalization standard and all other terms of the Prior Order, with the exception of the proposed increase in the aggregate amount of convertible bonds to be issued, would continue to apply.

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. 34-44256; File No. SR-Amex-2001-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to Independent Director and Audit Committee Requirements

May 3, 2001.

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 18, 2001, 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 Amex. 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 Amex proposes to amend Section 121 of the *Amex Company Guide* to clarify that domestic listed companies are required to have a sufficient number of independent directors on their board of directors to satisfy the Exchange's audit committee. The text of the proposed rule change is set forth below. New text is in italics.

\* \* \* \* \*

#### Section 121. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

##### A. Independent Directors

The Exchange requires that domestic listed companies have a sufficient number of independent directors *on the company's board of directors* to satisfy the audit committee requirements set forth below. Independent directors are not officers of the company and are, in the view of the company's board of directors, free of any relationship that would interfere with the exercise of independent judgment. The following persons shall not be considered independent:

(a)-(e) No change

\* \* \* \* \*

#### 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 IV below. The Amex 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 Exchange is proposing to amend Section 121A of the *Amex Company Guide* to clarify that each domestic listed company is required to have a sufficient number of independent directors on its board of directors to satisfy the audit committee requirements specified in part B of Section 121. Section 121 was amended in December 1999 to implement the recommendations contained in the February 1999 report of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees<sup>3</sup> which were aimed at strengthening the independence of the audit committee, making the audit committee more effective, and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.<sup>4</sup> Section 121, particularly when analyzed in conjunction with Section 120 of the *Amex Company Guide*, currently requires the independent directors referenced therein to be members of the company's board of directors.<sup>5</sup> However, inquiries from several listed companies have led the Exchange to conclude that there may be some confusion among the listed company community with respect to the requirement. Accordingly, to avoid further confusion, the Exchange is proposing to amend Section 121 to clarify that the independent directors must be members of the company's board of directors.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>3</sup> The Committee's Report is available online at [www.amex.com](http://www.amex.com).

<sup>4</sup> The audit committee requirements are being phased-in over an 18 month period for issuers that were listed on the Amex at the time the changes were adopted.

<sup>5</sup> Section 120 of the *Amex Company Guide* specifies that "each company shall utilize [its] Audit Committee or a comparable body of the Board of Directors for the review of potential conflict of interest situations where appropriate" (emphasis added).

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

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

Section 6(b)(5)<sup>6</sup> of the Act, which requires, among other things, the Exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is 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*

The Exchange did not solicit or receive written comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>7</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder<sup>8</sup> because it constitutes as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the Act.

### **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. 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 office of the Amex. All submissions should refer to the File No. SR-Amex-2001-24 and should be submitted by May 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-44260; File No. SR-DTC-2001-03]**

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Make Foreign Securities Eligible for Depository Services**

May 4, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on, February 23, 2001, The Depository Trust Company ("DTC") 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would allow DTC to make eligible for depository services foreign securities that are presently eligible for the National Securities Clearing Corporation's ("NSCC") foreign security comparison and netting service.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to provide DTC and NSCC participants who are presently using NSCC's foreign securities clearing services the use, if applicable, of depository services at DTC for these securities. These securities are generally foreign ordinary equities that have been assigned security numbers (CINS) and NASD symbols to automate the comparison process. Most trades in foreign ordinary shares that are executed between two U.S. broker-dealers are forwarded to NASD's Automated Confirmation Transaction system and submitted as locked-in trades to NSCC.

Today, through NSCC's Foreign Securities Comparison and Netting system, foreign securities are compared and netted on a bilateral basis in a standardized and automated fashion through NSCC's over-the-counter system. Receive and deliver instructions are automatically generated by NSCC and are distributed to participants on the morning after comparison, which expedites the settlement process for non-U.S. equity transactions. Trades are netted on a bilateral participant-to-participant basis thereby reducing the number of deliveries for settlement in the local market. NSCC does not currently and will not under the proposed rule change guarantee the ultimate settlement of these transactions or the clearance cash adjustment.

Given the increase in activity over the last few years, U.S. broker-dealers have become concerned about the number of potential risk and operational issues associated with the current process, such as the lack of straight through processing ("STP") from the point of trade to settlement. It is DTC's plan to enhance the settlement part of the process and to deliver an automated approach to complete the STP process from trade to settlement. In doing so, many operational issues will be minimized or eliminated.

Today, there is a separation between the physical movement of these foreign securities and the money settlement of the trades (*i.e.*, there is no delivery versus payment ("DVP")) as there is true for U.S. trades. The delivery of the

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

<sup>9</sup> 17 CFR 200.30-3(a)(12)

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