

the surviving separate account as a result of the Merger.

14. Except for the change in the depositor and the separate account funding the variable annuity contracts, all the rights and benefits of the Northbrook contract owners will remain unchanged after the Merger. Further, the fees and charges under the Northbrook contracts will not change as a result of the Merger.

15. Allstate and Northbrook assert that the Merger will have no tax consequences for Northbrook contract owners. In addition, no payments will be required or charges imposed under the Northbrook contracts in connection with, or by virtue of, the Merger that would not otherwise be required or imposed.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides generally that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal to knowingly purchase or to sell any security or other property from or to such registered company.

2. Section 17(b) of the Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by Section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. The Merger may be subject to the provisions of Section 17(a) of the Act because it could be viewed as involving an investment company (Northbrook VA or Northbrook VA II) selling its assets to another investment company (Allstate Separate Account I) that is affiliated by reason of having sponsoring insurance companies that are under common control, or by reason of having common directors.

4. Applicants request an order of the Commission pursuant to Section 17(b) of the Act to the extent necessary to exempt the Merger from the provisions of Section 17(a) of the Act.

5. Applicants assert that the terms of the Merger are fair and reasonable. The transfer of assets held by Northbrook VA and Northbrook VA II, respectively, will be made at the relative net asset values of the sub-accounts. Consequently, the interests of Allstate Separate Account I owners will not be diluted by the

Merger, and each Northbrook VA and Northbrook VA II contract will be credited, immediately after the Merger, with units of Allstate Separate Account I having the same aggregate value as the aggregate value of the units of Northbrook VA and Northbrook VA II credited to such contract immediately prior to the Merger. The Merger will not result in any change in charges, costs, fees or expenses borne by any Contract owner. No direct or indirect costs will be incurred by any Separate Account concerned as a result of the Merger. Therefore, the proposed transactions will not result in dilution of the economic interests of any Contract owners. In addition, the Merger will result in no change in the investment options available to Northbrook contract owners. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Merger.

6. Applicants assert that the Merger does not involve overreaching on the part of any party involved and is consistent with the general purposes of the Act. The purpose of the Merger is to consolidate three separate accounts, each of which issues variable annuity contracts, into a single separate account. The Merger will allow for administrative efficiencies and cost savings by Allstate because it can consolidate its separate account operations. The Merger will not dilute or otherwise adversely affect the economic interests of the owners of the Northbrook contracts, nor will the Merger affect the values determined under the Northbrook contracts. The Merger will not affect any current Allstate contract owners. Allstate, or an affiliate, will pay all expenses incurred in connection with the Merger.

7. Applicants represent that the Merger is consistent with the policy of each Separate Account as set forth in its registration statement. The policy of each Separate Account is to invest in the Funds. As noted above, the Merger will result in no change to any Fund underlying the Northbrook Separate Accounts. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Merger. Accordingly, the assets underlying the Contracts will continue to be invested in accordance with the policies recited in the Separate Accounts' respective registration statements.

Conclusion

For the reasons summarized above, Applicants assert that the terms of the Merger, including the consideration to be paid or received, are reasonable and

fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of Allstate Separate Account I and the Northbrook Separate Accounts as recited in their registration statements, are consistent with the general purposes of the Act, and therefore meet the conditions for exemptive relief established by Section 17(b).

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

Margaret H. McFarland,
Deputy Secretary.

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BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46887; File No. SR-Amex-2002-97]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Initial and Continued Listing Standards

November 22, 2002.

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 November 20, 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, 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 the Proposed Rule Change

The Amex proposes to amend Sections 101, 102, and 1003 of the *Amex Company Guide* to modify initial and continued listing standards. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

American Stock Exchange LLC
Company Guide
Section 101

(a) through (c)—No Change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(d) Initial Listing Standard 4

(1) Total Value of Market Capitalization—\$75,000,000; or Total assets and total revenue—\$75,000,000 each in its last fiscal year, or in two of its last three fiscal years.

(2) Aggregate Market Value of Publicly Held Shares—\$20,000,000. (3) Distribution “ See Section 102(a).

[(d)e] Alternative Listing Standards

The securities of certain issuers which do not satisfy any of the Initial Listing Standards set forth in paragraphs (a)–[(c)d] of this Section may be eligible for initial listing pursuant to the appeal procedures and the Alternative Listing Standards specified in Section 1203(c).

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.

Commentary .01—No Change.

Section 102

(a)—No Change.

(b) Stock Price/Market Value of Shares Publicly Held—The Exchange requires a minimum market price of \$3 per share for applicants seeking to qualify for listing pursuant to Section 101 (a), [or] (b) or (d), and \$3,000,000 aggregate market value of publicly held shares for applicants seeking to qualify for listing pursuant to Section 101(a). In certain instances, however, the Exchange may favorably consider listing an issue selling for less than \$3 per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above \$3 per share, the applicant’s capitalization and the number of outstanding and publicly-held shares of the issue.

(c)—No change.

*The terms “public distribution” and “public shareholders” as used in the Company Guide include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (i.e. 10% or greater), affiliated or family holdings.

* * * * *

Section 1003

* * * * *

(a) Financial Condition and/or Operating Results—The Exchange will normally consider suspending dealings in, or removing from the list, securities of a company which:

(i) has stockholders’ equity of less than \$2,000,000 if such company has

sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

(ii) has stockholders’ equity of less than \$4,000,000 if such company has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years; or

(iii) has stockholders’ equity of less than \$6,000,000 if such company has sustained losses from continuing operations and/or net losses in its five most recent fiscal years; or

(iv) has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the Exchange, as to whether such company will be able to continue operations and/ or meet its obligations as they mature.

However, the Exchange will not normally consider suspending dealings in, or removing from the list, the securities of a company which is below any of standards (i) through (iii) above if the company is in compliance with the following:

(1) Total value of market capitalization* of at least \$50,000,000; or total assets and revenue of \$50,000,000 each in its last fiscal year, or in two of its last three fiscal years; and

(2) The company has at least 1,100,000 shares publicly held, a market value of publicly held shares of at least \$15,000,000 and 400 round lot shareholders.

Companies falling below one of the above standards and considering a combination with an unlisted company should see Section 341 for the discussion of the Exchange’s listing policies contained therein.

* Market capitalization for purposes of Section 1003 includes the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security, if such other security is a “substantial equivalent” of common stock. Generally, the security must be (1) publicly traded or quoted, or (2) convertible into a publicly traded or quoted security. A convertible security will be considered the “substantial equivalent” of common stock if the convertible security is presently convertible, and the conversion price is equal to or less than the current market price of the common stock. For partnerships, the current capital structure will be analyzed to determine whether it is appropriate to include

other publicly traded or quoted securities in the calculation.

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

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

Based upon an evaluation of trends and developments within the Amex listed company community, as well as public issuers generally, the Exchange is proposing to modify initial and continued listing standards to enable it to evaluate listing eligibility against broader and more in-depth measures of financial condition. Specifically, some financially sound issuers may be unable to satisfy the shareholders’ equity requirement contained in existing listing standards as a result of certain accounting conventions. An issuer may be forced to write-off goodwill associated with merger and acquisition activity or take significant depreciation charges which are customary in a particular industry (e.g., telecommunications) which could have the effect of reducing the issuer’s shareholders’ equity and income.³

Accordingly, the Exchange is proposing to adopt a new initial listing standard (in addition to existing standards) which is designed to permit an assessment of an issuer’s suitability for listing on the basis of compliance with total market capitalization or total

³ A number of large telecommunications issuers report significant deficit equity. For example, Cablevisions Systems Corporation (NYSE:CVG) reported a deficit of \$1.8 billion; Nextel Communications, Inc. (Nasdaq NMS: NXTL) reported a deficit of \$479 million; and Level 3 Communications Inc. (Nasdaq NMS: LVL3) reported a deficit of \$78 million as of each issuer’s most recent periodic SEC filing. Similarly, Amazon.com, Inc. (Nasdaq NMS: AMZN) reported a deficit of \$1.5 billion.

assets and revenues in substitution of shareholders' equity. As accounting requirements become increasingly complex, it is important to provide such alternative criteria so that financially sound issuers are not precluded from listing on the Exchange solely on the basis of particular accounting conventions. Specifically, the new initial listing standard would require the following:

Total value of market capitalization: \$75 million, or

Total assets and total revenue: \$75 million each (in most recent fiscal year or two of last three most recently completed fiscal years)

Price: \$3

Market value of public float: \$20 million

Public float shares/public stockholders: 500,000/800 or 1 million/400 or 500,000/400 (plus average daily volume of 2,000 shares)

The Exchange states that the proposed new standard is not materially different from standards in place at other marketplaces and is consistent with existing Amex listing standards. In this regard it should be noted that both the New York Stock Exchange ("NYSE") and Nasdaq listing standards contain a variety of alternative qualifications standards, including standards based on measures of market capitalization, revenue and assets.

It is also proposed that corresponding revisions be adopted to the continued listing standards to provide that a listed company will not be subject to delisting (assuming compliance with other applicable standards) even if it has experienced net losses or losses from continuing operations, and does not satisfy existing equity requirements⁴ if it is in compliance with the following requirements:

- Total value of market capitalization: \$50 million, or
- Total assets and revenue: \$50 million each (in most recent fiscal year or two of last three most recently completed fiscal years), and
- At least 1,100,000 shares publicly held, a market value of publicly held shares of at least \$15,000,000 and 400 round lot shareholders.

The Exchange believes that an issuer with significant market capitalization or assets and revenue should be able to continue its listing despite several years of losses (and assuming compliance with other applicable continued listing

standards), in that these financial measures are generally an indication of a company's strength.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5)⁶ 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. Specifically, the Exchange believes that the proposed rule change will allow for the evaluation of an issuer's listing eligibility against more meaningful and comprehensive criteria. The Exchange also believes that the proposed rule change will provide investors and potential investors in the securities that would be eligible for listing with the benefits inherent in an Amex listing. According to the Exchange, these benefits include: comprehensive regulation; transparent price discovery and trade reporting to facilitate best execution; and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

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 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 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 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 filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-97 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-30667 Filed 12-3-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46916; File No. SR-AMEX-2002-36]

Self-Regulatory Organizations; American Stock Exchange L.L.C.; Notice of Filing of Proposed Rule Change To Establish Resolution Times for Uncompared Transactions

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

⁴ Section 1003(a) of the Amex Company Guide provides that a listed company which has sustained losses in two of its three, three of its four, or five of its most recent fiscal years will be subject to delisting if its stockholders' equity is less than \$2 million, \$4 million or \$6 million, respectively.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).