

the Act also provides that any such initial or transitional standards shall be separately approved by the Commission at the time it makes the determination required by section 101(d) of the Act, without regard to the procedures that otherwise would apply to Commission approval of PCAOB rules.

The PCAOB has determined that it is necessary in the public interest and for the protection of investors to adopt initial or transitional professional standards (which it refers to as "interim" standards) as permitted by section 103(a)(3)(B) of the Act. In this connection, the PCAOB has advised the Commission that it has adopted the following rules setting forth interim standards that the PCAOB finds satisfy the requirements of section 103(a)(3)(A)(i) of the Act.

#### **Rule 3200T. Interim Auditing Standards**

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with generally accepted auditing standards, as described in the AICPA Auditing Standards Board's Statement of Auditing Standards No. 95, as in existence on April 16, 2003 (Codification of Statements on Auditing Standards, AU § 150 (AICPA 2002)).

**Note:** Under section 102(a) of the Act, public accounting firms are not required to be registered with the Board until 180 days after the date of the determination of the Commission under section 101(d) that the Board has the capacity to carry out the requirements of Title I of the Act (the "mandatory registration date"). The Board intends that, during the period preceding the mandatory registration date, the Interim Auditing Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

#### **Rule 3300T. Interim Attestation Standards**

In connection with an engagement (i) described in the AICPA's Auditing Standards Board's Statement on Standards for Attestation Engagements No. 10 (Codification of Statements on Auditing Standards, AT § 101.01 (AICPA 2002)) and (ii) related to the preparation or issuance of audit reports for issuers, a registered public accounting firm, and its associated persons, shall comply with the AICPA Auditing Standards Board's Statements on Standards for Attestation Engagements, and related interpretations and Statements of Position, as in existence on April 16, 2003.

**Note:** The Board intends that, during the period preceding the mandatory registration date, the Interim Attestation Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

#### **Rule 3400T. Interim Quality Control Standards**

A registered public accounting firm, and its associated persons, shall comply with quality control standards, as described in—

(a) the AICPA's Auditing Standards Board's Statements on Quality Control Standards, as in existence on April 16, 2003 (AICPA Professional Standards, QC §§ 20–40 (AICPA 2002)); and

(b) the AICPA SEC Practice Section's Requirements of Membership (d), (f)(first sentence), (l), (m), (n)(1) and (o), as in existence on April 16, 2003 (AICPA SEC Practice Section Manual § 1000.08(d), (f), (j), (m), (n)(1) and (o)).

**Note:** The second sentence of requirement (f) of the AICPA SEC Practice Section's Requirements of Membership provided for the AICPA's peer review committee to "authorize alternative procedures" when the requirement for a concurring review could not be met because of the size of the firm. This provision is not adopted as part of the Board's Interim Quality Control Standards. After the effective date of the Interim Quality Control Standards, requests for authorization of alternative procedures to a concurring review may, however, be directed to the Board.

**Note:** The Board intends that, during the period preceding the mandatory registration date, the Interim Quality Control Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

#### **Rule 3500T. Interim Ethics Standards**

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with ethics standards, as described in the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 102 and 191 (AICPA 2002)).

**Note:** The Board intends that, during the period preceding the mandatory registration date, the Interim Ethics Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

#### **Rule 3600T. Interim Independence Standards**

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with independence standards—

(1) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)); and

(2) Standards Nos. 1, 2, and 3, and Interpretations 99–1, 00–1, and 00–2, of the Independence Standards Board.

**Note:** The Board's Interim Independence Standards do not supercede the Commission's auditor independence rules. See Rule 2–01 of Reg. S–X, 17 CFR 240.2–01. Therefore, to the extent that a provision of the Commission's rule is more restrictive—or less restrictive—than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.

**Note:** The Board intends that, during the period preceding the mandatory registration date, the Interim Independence Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.

Each of the interim standards set forth above would remain in effect until modified or superceded, either by PCAOB action approved by the Commission as provided in the Act, or by Commission action pursuant to its independent authority under the federal securities laws and the rules and regulations thereunder. The Commission finds that the adoption of interim professional standards is consistent with the requirements of the Act and the federal securities laws and is necessary or appropriate in the public interest or for the protection of investors. Accordingly,

*It is Ordered* that PCAOB Rules 3200T through 3600T, setting forth interim professional standards for use in connection with the audits of public companies, are hereby approved.

By the Commission.

**Jonathan G. Katz,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**Securities Act of 1933, Release No. 8223/April 25, 2003, Securities Exchange Act of 1934, Release No. 47746/April 25, 2003; Order Regarding Section 101(d) of the Sarbanes-Oxley Act of 2002**

The Sarbanes-Oxley Act of 2002 ("Act") established the Public Company Accounting Oversight Board ("PCAOB") and charged it with the responsibility of overseeing the audits of public companies that are subject to the U.S. Federal securities laws. Under the Act, the PCAOB's duties include registering public accounting firms; establishing auditing, quality control, ethics, independence and other standards relating to public company audits; conducting inspections, investigations and disciplinary proceedings of

registered accounting firms; and enforcing compliance with the Act. The Commission has authority to oversee the operations of the PCAOB, including but not limited to the authority to appoint or remove members of the PCAOB, to approve its budget and rules, and to entertain appeals of adverse PCAOB inspection reports and disciplinary actions.

Section 101(d) of the Act provides that, no later than 270 days after the establishment of the PCAOB, the members of the PCAOB "shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine \* \* \* that the Board is so organized and has the capacity to carry out the requirements of [the Act], and to enforce compliance with [the Act] by registered public accounting firms and associated persons thereof." The purpose of the provision was to assure that the PCAOB is prepared to undertake promptly its statutory responsibilities.

Since the appointment of its board members, the PCAOB has undertaken many actions to demonstrate its readiness to carry out the requirements of the Act. For example, it has hired or substantially completed the hiring process to fill, on a permanent or acting basis, a majority of its key positions, including the Director of Registration and Inspections and the Chief Auditor. The PCAOB has adopted by-laws and proposed for public comment a code of conduct and ethical standards for PCAOB members and staff.

The PCAOB has adopted its budget for the calendar year 2003. It also has determined and submitted to the Commission a proposed formula for the computation of an Annual Accounting Support Fee for calendar year 2003. The PCAOB has adopted, and submitted to the Commission for approval, a plan for assessment, billing and collection of registration fees, annual fees and Annual Accounting Support Fees.

The PCAOB has begun to adopt rules for the profession. For example, it has proposed rules relating to the registration of public accounting firms and has supplemented its comment process on that proposal by holding a public roundtable meeting to solicit views on issues relating to the registration of non-U.S. public accounting firms. The PCAOB has adopted interim professional standards relating to auditing, attestation, independence, quality control, and ethical conduct of auditors. These standards are the subject of a separate

Commission Order. After the date of that Order, no professional standards in these areas, as they relate to the audit of public companies, will take effect unless approved by the PCAOB under its statutory rulemaking process and published for comment and approved by the Commission. The PCAOB also has issued a policy statement setting forth a blueprint for its future standard-setting procedures, including a planned review of the interim standards.

Finally, the PCAOB has developed a plan for inspecting accounting firms. It has also prepared a plan to develop procedures and standards governing disciplinary proceedings and the imposition of sanctions against accounting firms and their associates.

As a result of these actions, but without this Order constituting approval of any specific PCAOB action, the Commission determines that the PCAOB is so organized and has the capacity to carry out the requirements of the Act and to enforce compliance with the Act by registered public accounting firms and associated persons thereof, as required by section 101(d) of the Act. Accordingly,

*It is Ordered* that the Commission hereby determines that the PCAOB has satisfied the requirements of section 101(d) of the Act.

By the Commission.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47725; File No. SR-Amex-2003-17]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Market at 4 p.m. Orders for ETFs

April 23, 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 March 17, 2003, 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. On April 17,

2003 the Amex amended the proposal.<sup>3</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 Amex proposes to add Commentary .02 to Amex Rule 131 ("Types of Orders") to provide that an order in Exchange Traded Funds ("ETFs") that trade until 4:15 p.m. may be designated as "market at 4 p.m."; and Commentary .06 to Amex Rule 155 ("Precedence Accorded to Orders Entrusted to Specialists") to provide that "market at 4 p.m." orders, shall be executed at one price at 4 p.m. or as close as practicable to 4:00 p.m. and shall have priority over limit orders priced at the execution price.

#### 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, as amended. 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.

The text of the proposed rule change is below. Proposed new language is *italicized*.

\* \* \* \* \*

#### Types of Orders

##### Rule 131

\* \* \* \* \*

##### Commentary .02

*"Market at 4 p.m." orders. An order in Portfolio Depositary Receipts or Index Fund Shares that trade on the Exchange until 4:15 p.m. may be designated as "market at 4 p.m." to denote that it is a market order which is to be executed at or as close as practicable to the close of the regular equity trading session on the exchange (normally 4 p.m. Eastern Time).*

*(b) Where a member is holding simultaneously both buy and sell*

<sup>3</sup> See letter from Geraldine Brindisi, Vice-President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 ("Amendment No. 1"). In Amendment No. 1, the Amex replaced in its entirety the original proposed rule change.

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

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