

performance objectives are established each year by the Board. The percentage of the target award that a Plan participant receives is also based upon subjective evaluations by the Compensation Committee, such as management's performance in capitalizing on unplanned opportunities and responding to unforeseen problems. Target grant awards have been established that vary based upon the grade level of each participant's position in the Unitil Companies. The actual number of shares of Common Stock received under awards can be less than or greater than the target grant depending upon actual results achieved.

Awards will fully vest over a period of four years ("Period of Restriction") at a rate of 25% each year. During the Period of Restriction, the Plan provides that the restricted shares underlying the award may not be sold, transferred, pledged, assigned or otherwise alienated or hypothecated by the recipient and no share certificates are issued. Prior to the end of the Period of Restriction, the award of restricted shares shall be subject to forfeiture if the participant ceases to be employed by the Unitil Companies other than due to the participant's death. Awards may be subject to additional restrictions as the Compensation Committee may determine to be appropriate and as set forth in the particular Award Agreement. Subject to restrictions under applicable law or as may be imposed by the Unitil Compensation Committee, restricted shares underlying each award made under the Plan shall become freely transferable by the Plan participant after the last day of the applicable Period of Restriction.

During the Period of Restriction, cash dividends paid on restricted shares underlying granted awards may be credited to the recipient's account. In the event any non-cash dividends or other distributions, whether in property, or in stock of another company, are paid on any restricted shares during the Period of Restriction, these non-cash dividends or other distributions will be retained by Unitil until the Period of Restriction has lapsed. In the event of forfeiture of the restricted shares, these non-cash dividend or other distributions will be retained by Unitil.

Awards may be grossed-up to offset the participant's tax obligation in connection with the award. This gross-up feature was intended to prevent a participant from having to sell a portion of the shares granted in the award or previous awards in order to pay the taxes on the award, which would be a direct contradiction to one of the stated objectives of the Plan, which is to

encourage stock ownership in Unitil. The Compensation Committee will take into account the value of the gross-up feature and reduce the size of the awards accordingly.

Upon the occurrence of a change in control, unless otherwise specifically prohibited under applicable laws, rules or regulations, any restrictions and transfer limitations imposed on restricted shares will lapse immediately.

The Board may at any time amend or terminate the Plan or any award granted under the Plan in whole or in part. No amendment that requires shareholder approval in order for the Plan to continue to comply with any applicable tax or securities laws or regulations or the rules of any securities exchange on which the securities of Unitil are listed shall be effective unless the amendment is approved by the requisite vote of shareholders of Unitil. No amendment or termination shall adversely affect any award previously granted under the Plan without the consent of the participant.

Unitil is authorized under its articles of incorporation to issue 8,000,000 shares of common stock, and as of December 31, 2003, 5,500,610 shares of common stock were issued and outstanding.² Unitil will file a registration statement on Form S-8 (the "Registration Statement") with the Commission in order to register this proposed offering under the Securities Act of 1933, as amended ("Securities Act").

At December 31, 2003, assuming that all of the shares of Common Stock reserved for issuance under the Plan are issued and vested under the Plan, Unitil's consolidated capitalization ratios would have been approximately as follows (in \$1,000):

Long-Term Debt	\$114,224	49.1%
Short-Term Debt	22,410	9.6%
Preferred Stock	3,269	1.4%
Common Stock	92,805	39.9%
Total	232,708	100%

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-5375 Filed 3-9-04; 8:45 am]

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² For purposes of its GAAP balance sheet, Unitil has treated the shares underlying outstanding award agreements as outstanding.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49351; File No. SR-Amex-2003-110]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Procedures Applicable to Continued Listing Evaluation and Follow-Up

March 2, 2004.

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 December 12, 2003, the American Stock Exchange LLC ("Amex" 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 February 19, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 proposes to amend Section 1009 of the Amex Company Guide ("Company Guide") to clarify the authority of the Exchange staff to establish a time period of less than 18 months for a listed company that is below the continued listing standards to return to compliance thereof.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Sec. 1009. Continued Listing Evaluation And Follow-Up

(a) The following procedures shall be applied by the Exchange staff to companies identified as being below the Exchange's continued listing policies and standards. Notwithstanding such procedures, when the Exchange staff deems it necessary for the protection of investors, trading in any security can be suspended immediately, and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 18, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex replaced the text of the proposed rule change in its entirety.

application made to the SEC to delist the security *and/or the Exchange staff may truncate the procedures specified in this Section.*

(b) Once the Exchange staff identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Sections 1001 through 1006 (and not able to otherwise qualify under an initial listing standard), the Exchange staff will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange staff with a plan (the "Plan") advising the Exchange staff of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within 18 months of receipt of the letter. *However, the Exchange staff may establish a time period of less than 18 months for a company to regain compliance with some or all of the continued listing standards if it determines that the nature and circumstances of the company's particular continued listing status warrant such shorter period of time (see Commentary .01).* Within 10 five business days after receipt of the letter, the company must contact the Exchange staff to confirm receipt of the notification, discuss any possible financial data of which the Exchange staff may be unaware, and indicate whether or not it plans to present a Plan; otherwise, delisting proceedings will commence.

(c) The company has 30 days from the receipt of the letter to submit its Plan to the Exchange staff for review[.]. *However, the Exchange staff may require submission of a company's Plan within less than 30 days (but in no event less than seven days) if the Exchange staff has established a time period of 90 days or less for the company to regain compliance with some or all of the continued listing standards pursuant to paragraph (b) of this Section.* [i]f it does not submit a Plan within [this] the specified time period, delisting procedures will commence. The Plan must include specific milestones, quarterly financial projections, and details related to any strategic initiatives the company plans to complete. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to whether the company has made reasonable demonstration in the Plan of an ability to regain compliance with the continued listing standards within the [18 month] time period described in paragraph (b)

of this Section. The Exchange staff will make such determination within 45 days of receipt of the proposed Plan (or such shorter period of time as is consistent with the time period established by the Exchange staff for the company to regain compliance pursuant to paragraph (b) of this Section), and will promptly notify the company of its determination in writing.

(d) and (e)—No change.

(f) If, prior to the end of the [18-month] extension period, the company is able to demonstrate compliance with the continued listing standards (or that it is able to qualify under an original listing standard) for a period of two consecutive quarters, the Exchange staff will deem the Plan period over. If the company does not meet continued listing standards at the end of the [18-month] extension period, the Exchange staff will promptly initiate delisting procedures.

(g) through (i)—No change.

Commentary . . .

.01 In determining whether to establish a time period of less than 18 months for a company to regain compliance with some or all of the continued listing standards, pursuant to paragraph (b), the Exchange staff will consider whether, in view of the nature and severity of the particular continued listing deficiency, including the investor protections concerns raised, 18 months would be an inappropriately long period of time to regain compliance. While it is not possible to enumerate all possible circumstances, the following is a non-exclusive list of the types of continued listing deficiencies that, based on the a particular listed company's unique situation, may result in imposition of a shorter time period: delinquencies with respect to SEC filing obligations, severe short-term liquidity and/or financial impairment, present or potential public interest concerns;⁴ deficiencies with respect to the requisite distribution requirements that make the security unsuitable for auction market trading.

* * * * *

⁴ Public interest concerns could include, for example, situations where the company, a corporate officer or affiliate is the subject of a criminal or regulatory investigation or action; or the company's auditors have resigned and withdrawn their most recent audit opinion raising concerns regarding the internal controls and financial reporting process. However, other situations not specifically enumerated could also raise public interest concerns regarding the appropriateness of a particular company's continued listing.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 1009 of the Company Guide became effective in May 2002.⁵ It specifies the procedures applicable to listed companies identified as being below the continued listing standards, and provides such companies with the opportunity to submit a business plan to the staff of the Amex Listing Qualifications Department detailing the action it has taken or proposes to take to bring it into compliance with the continued listing standards within 18 months. Any business plan submitted pursuant to this provision is subject to approval and monitoring by the staff of the Listing Qualifications Department, as well as public disclosure by the listed company.

The Exchange's experience with the procedures specified in section 1009 of the Company Guide indicates that certain clarifying amendments are necessary. Specifically, paragraphs (b) and (c) specify that a listed company identified as below the continued listing standards must submit a business plan which makes a reasonable demonstration of an ability to regain compliance with 18 months. However, paragraph (a) provides that the Exchange staff may initiate immediate delisting proceedings at any time, notwithstanding the specified procedures, if deemed necessary for the protection of investors. In view of this broad authority, the staff of Listing Qualifications Department has occasionally required a particular listed company to submit a business plan demonstrating an ability to regain compliance within less than 18 months. Such shortened time periods have been applied in circumstances in which the

⁵ See Securities Exchange Act Release No. 45898 (May 8, 2002), 67 FR 34502 (May 14, 2002) (order approving File No. SR-Amex-2001-47).

staff believed that 18 months was an inappropriately long period of time to regain compliance in view of the nature and severity of the particular continued listing deficiency. For example, companies which are delinquent with respect to SEC filing obligations, facing severe short-term liquidity and financial impairment, or present potential public interest concerns,⁶ or deficiencies with respect to the requisite distribution requirements that make the security unsuitable for auction market trading, have typically been required to return to compliance with the impacted continued listing standards within 30 to 90 days. In some cases, a particular company has been given staggered extension deadlines (*i.e.*, the company must resolve its SEC filing deficiency and short-term financial impairment issues within 30 days, but is given 18 months to increase its shareholders equity to the required level).

Although none of the listed companies that have been subject to the shortened extension periods have challenged the staff's authority to impose a shorter period, some have raised questions about it. Accordingly, the Exchange is proposing to revise section 1009 of the Company Guide to clarify that the staff may establish a time period of less than 18 months for a listed company to regain compliance with some or all of the continued listing standards, if the nature and circumstances of the company's particular continued listing status warrant such shorter time period. In addition, the Exchange proposes that corresponding revisions be made to the applicable submission and review deadlines.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁷ in general, and furthers the objectives of section 6(b)(5) of the Act,⁸ 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

⁶ Public interest concerns could include, for example, situations where the company, a corporate officer or affiliate is the subject of a criminal or regulatory investigation or action; or the company's auditors have resigned and withdrawn their most recent audit opinion raising concerns regarding the internal controls and financial reporting process. However, other situations not specifically enumerated could also raise public interest concerns regarding the appropriateness of a particular company's continued listing.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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.

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

No written comments were solicited or received with respect to 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 proposal, as amended, 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Amex-2003-110. The 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Amex. All submissions should be submitted by March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-5377 Filed 3-9-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49358; File No. SR-Amex-2004-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to a Per Trade Options Fee Cap

March 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on January 30, 2004, the American Stock Exchange LLC ("Exchange" or "Amex") 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 Amex. On March 1, 2004, Amex filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 27, 2004 ("Amendment No. 1"). In Amendment No. 1, Amex clarified that proposal is intended to apply the reduced transaction fees set forth in footnote 1 to the Options Fee Schedule to member broker-dealers and revised the proposed rule text to conform it to recent changes made to the Options Fee Schedule. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 1, 2004, the date Amex filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).