summaries and order information. Such alternative trading systems are also required to preserve records of any notices communicated to subscribers, a copy of the system's standards for granting access to trading and any documents generated in the course of complying with the capacity, integrity and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS. Rule 303 also describes how such records must be kept and how long they must be preserved.

The information contained in the records required to be preserved by the Rule will be used by examiners and other representatives of the Commission, State securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. Without the data required by the proposed Rule, the Commission would be severely limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there are currently approximately 50 respondents.

An estimated 50 respondents will spend approximately 200 hours per year (50 respondents at 4 burden hours/respondent) to comply with the record preservation requirements of Rule 303. At an average cost per burden hour of $86.54, the resultant total related cost of compliance for these respondents is $17,308.00 per year (200 burden hours multiplied by $86.54/hour).

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Financial Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: June 7, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13420 Filed 6–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49821; File No. SR–NYSE–2004–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by New York Stock Exchange Relating to NYSE Listed Company Manual Section 102.04 (Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940—Business Development Companies)

June 7, 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 March 5, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 28, 2004, the NYSE amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

The proposed amendments to NYSE Listed Company Manual Section 102.04 (Minimum Numerical Standards—Closed-end Management Investment Companies Registered Under the Investment Company Act of 1940) would enable the Exchange to list business development companies, which are closed-end management investment companies permitted by statute to not register under the Investment Company Act of 1940 (the ''Investment Company Act'').[4] The text of the proposed rule change is below. Proposed new language is *italicized*; deletions are [bracketed].

* * * * *

Listed Company Manual

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102.00 Domestic Companies

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102.04 Minimum Numerical Standards—Closed-End Management Investment Companies [Registered Under the Investment Company Act of 1940]

A. The Exchange will generally authorize the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a ''Fund'') that meets the requirements of Paras. 102.01A and 102.01B above, provided that the required market value of publicly held shares shall be $60,000,000 regardless of whether it is an IPO or an existing Fund. Para. 102.01C will not apply.

Notwithstanding the foregoing requirement for market value of publicly held shares of $60,000,000, the Exchange will generally authorize the listing of all the Funds in a group of Funds listed concurrently with a common investment adviser or investment advisers who are ''affiliated persons'', as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended, if:

Total group market value of publicly held shares equals in the aggregate at least $200,000,000;

The group market value of publicly held shares averages at least $45,000,000 per Fund; and

No one Fund in the group has market value of publicly held shares of less than $30,000,000.

B. The Exchange will generally authorize the listing of a closed-end management investment company that has filed an election to be treated as a business development company under the Investment Company Act of 1940 that meets the requirements of Paras. 102.01A and 102.01B above, provided that the required market value of publicly held shares shall be $60,000,000 regardless of whether it is an IPO or an existing business development company, and provided further that the company has a total market capitalization of listed securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Commission, dated April 27, 2004 (''Amendment No. 1''). Amendment No. 1 revised the proposed rule text and made corresponding changes to the Form 19b–4 filed by the NYSE. Amendment No. 1 is incorporated into this notice.

[4] 15 U.S.C. 80a–1 *et seq.*

of at least $75,000,000. Para. 102.01C will not apply.

* * * * *

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 NYSE 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 III 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

Open-end and closed-end funds registered under the Investment Company Act are typically utilized to invest in publicly traded business corporations, but are not typically used for private equity investment, *e.g.* non-public companies.[5] The Exchange states that open-end investment companies (mutual funds) cannot by definition invest to any meaningful extent in private equity given their fundamental need for liquidity due generally to the fact that open-end mutual funds are redeemable.[6] Registered closed-end funds are limited in other ways, with Investment Company Act restrictions on borrowing and on the ability to compensate management with equity being the principal difficulties.

To facilitate public investment in private equity, the Investment Company Act was amended to create a new category of closed-end investment company, known as a business development company (''BDCs''), subject to the Investment Company Act, but not required to register under it.[7] Companies must elect to be treated as a BDC in order to qualify for this treatment and must file a notice to that effect with the Securities and Exchange Commission.[8]

In order to be able to make the election, a company must have a class of equity securities registered under the Act.[9] The NYSE believes that for this reason a BDC will typically seek to be traded on a public market.[10] A number of special provisions of the Investment Company Act apply to BDCs and govern how they conduct their investment business. However, since BDCs are not registered under the Investment Company Act, such companies are required to file the same kind of periodic reports as other registrants under the Act (*e.g.*, Form 10–K and Form 10–Q).[11]

The Exchange has historically required operating companies to have three years of operating history in order to list. Closed-end funds, however, typically list coincident with their establishment under Section 102.04 of the Listed Company Manual, which requires that the funds simply demonstrate at least $60 million in market value of publicly held shares. Under the present language used in Section 102.04, however, the section applies to closed-end funds that are ''registered under the Investment Company Act of 1940.'' Other self-regulatory organizations (''SROs'') currently list and trade BDCs pursuant to listing standards that do not require an operating history.[12]

The Exchange proposes to amend Section 102.04 to specify that it may also be used to list BDCs that meet the $60 million threshold, provided that they also have a total market capitalization of at least $75 million. The Exchange believes that the proposed amendments would create an appropriate financial standard under which to list BDCs.

Pursuant to Rule 10A–3 of the Act,[13] and Section 3 of Sarbanes-Oxley Act of 2002,[14] the Exchange will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act[16] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market 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, as amended, 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

Written comments were neither solicited nor received.

III. 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. 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 an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–14 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–14. 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

[5] Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[6] *Id.*

[7] 15 U.S.C. 80a–53. Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[8] *Id.*

[9] 15 U.S.C. 80a–53(a).

[10] Based on conversations with Commission staff, it is the understanding of the Exchange that at that time approximately 21 BDCs have been listed on national markets. Two BDCs—Allied Capital Corporation and Equus II, Inc.—listed on the Exchange following transfer from Nasdaq had a three-year operating history that permitted them to be listed on the Exchange under existing financial standards applicable to operating companies. Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[11] 15 U.S.C. 78m, 78o(d).

[12] *See* NASD Rule 4420(c), Entry Standard 3; Amex Company Guide, § 101(c) and (d), Initial Listing Standards 3 and 4. Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[13] 17 CFR 240.10A–3.

[14] *See* Section 3 of Public Law 107–204, 116 Stat. 745 (2002).

[15] Telephone conference between James F. Duffy, Senior Vice President, Associate General Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 3, 2004.

[16] 15 U.S.C. 78f(b)(5).

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such 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–2004–14 and should be submitted on or before July 6, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the following reasons, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(f)(5) of the Act and the rules and regulations thereunder. A BDC is a closed-end management investment company that (1) is operated for the purpose of making investments of certain specified types—primarily in private equity through ''eligible portfolio companies,'' [17] (2) as part of its investment in eligible portfolio companies makes available significant managerial assistance to them, and (3) elects to be treated as a BDC. BDCs are closed-end management investment companies that are subject to, but not required to register under, the Investment Company Act.[18] Recently, a number of BDCs are seeking to become listed and traded on national markets.[19]

Under NYSE's current rules, as unregistered closed-end funds, BDCs may be listed and traded only if they satisfy the Exchange's general listing standards for operating companies, which, among other things, require a one- to three-year operating history.[20] The general listing standards for operating companies used by other national markets—and applicable to BDCs—are less restrictive than those of the NYSE, in that they do not require an operating history. Nasdaq's listing standards, for example, permit an operating company to be listed without an operating history, so long as it satisfies a $75 million market capitalization test, a $20 million public float test, and certain other requirements.[21] Amex has comparable listing standards that require either (1) $75 million in market capitalization and a $20 million public float, or (2) $50 million in market capitalization and a $15 million public float, so long as there is at least $4,000,000 in stockholder equity.[22]

In order to accommodate and compete for new BDC listings more effectively, the NYSE proposes to modify its listing standards applicable to BDCs to be more comparable to those of other markets, including Nasdaq and Amex. Specifically, the NYSE would require that all closed-end funds, including BDCs, have a public float of at least $60 million and a total market capitalization of at least $75 million. While the rule change will facilitate listing and trading of BDCs on the NYSE, the Commission believes that the proposal will result in NYSE listing standards that are comparable to, but no less restrictive than, those of competing national markets.[23]

Therefore, after careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[24] In particular, the Commission finds that, in light of the listing standards for BDCs currently used by other national markets that do not require an operating history for BDCs and the competitive need expressed by the Exchange, the proposed rule change is consistent with Section 6(b)(5) of the Act.[25] The Commission thus finds that the proposed rule change, as amended, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act [26] to approve on an accelerated basis the proposed rule change to permit listing and trading of BDCs without an operating history. In its filing, the NYSE states that it expects BDC listing candidates to come to market in the near term. Absent Commission approval of the proposed rule change, the Exchange states that it will be unable to compete for these listings because the listing standards of other SROs do not require an operating history for BDCs, while the Exchange's current listing standards contain such a requirement. For this reason, as discussed generally in this Item IV, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis prior to the thirtieth day after publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR–NYSE–2004–14), is hereby approved on an accelerated basis.[27]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–13355 Filed 6–14–04; 8:45 am]

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[17] *See* 15 U.S.C. 80a–2(a)(46). Eligible portfolio companies are U.S. firms that are not publicly owned and which meet certain other criteria.

[18] BDCs originated as part of the Small Business Investment Incentive Act of 1980. Public Law 96–477, 94 Stat. 2275 (Oct. 21, 1980).

[19] The Commission notes that, to date, 21 BDCs have been listed on national markets. The three of these that are listed on the NYSE—Allied Capital Corporation, MVC Capital, Inc., and Equus II, Inc.—satisfied the NYSE's existing listing standards requiring a one- to three-year operating history.

[20] *See* NYSE Listed Company Manual, Section 102.01C.

[21] *See* NASD Rule 4420(c), Entry Standard 3. The Nasdaq listing standards for operating companies also require that there be a distribution of at least 400 shareholders, 1,100,000 publicly-held shares, and a bid price per share of $5.00 or more.

[22] Amex Company Guide, section 101(c) and (d), Initial Listing Standards 3 and 4. All Amex listed companies are required to meet certain distribution thresholds. In general, all Amex listed companies, including registered closed-end funds, require either (1) 1,000,000 publicly-held shares and 400 shareholders, (2) 500,000 publicly-held shares and 800 shareholders, or (3) 500,000 publicly-held shares, 400 shareholders, and average daily trading volume of 2,000 shares for the preceding six months. *See* Amex Company Guide, § 101(f).

[23] The Commission notes that it is currently reviewing the listing and other regulatory standards applicable to BDCs, registered closed-end funds, and non-conventional investments to determine whether the unique characteristics and risks of these products are adequately addressed. Depending on the results of that review, the Commission, among other things, may require modifications to the listing standards of the NYSE and other markets that are applicable to BDCs.

[24] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).