

approved collection of information discussed below.

Rule 17a-4 requires approximately 6,900 active, registered exchange members, brokers and dealers ("broker-dealers") to preserve for prescribed periods of time certain records required to be made by Rule 17a-3 and other Commission rules, and other kinds of records which firms make or receive in the ordinary course of business. Rule 17a-4 also permits broker-dealers to employ, under certain conditions, electronic storage media to maintain these required records. The records required to be maintained under Rule 17a-4 are used by examiners and other representatives of the Commission to determine whether broker-dealers are in compliance with, and to enforce their compliance with, the Commission's rules.

The staff estimates that the average number of hours necessary for each broker-dealer to comply with Rule 17a-4 is 254 hours annually. Thus, the total burden for broker-dealers is 1,752,600 hours annually. The staff believes that compliance personnel would be charged with ensuring compliance with Commission regulation, including Rule 17a-4. The staff estimates that the hourly salary of a compliance manager is \$50 per hour.<sup>1</sup> Based upon these numbers, the total cost of compliance for 6,900 respondents is approximately \$87.63 million (1,752,600 yearly hours x \$50). The total burden hour decrease of 128,661 results from the decrease in the number of respondents from 7,217 to 6,900.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, by sending an e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within thirty days of this notice.

February 4, 2005.

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>1</sup> This figure is based on the SIA Report on Office Salaries In the Securities Industry 2003 (Compliance Manager) and includes 35% for overhead charges.

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extensions: Schedule TO OMB Control No. 3235-0515; SEC File No. 270-456.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Schedule TO must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. This information is made available to the public. Information provided on Schedule TO is mandatory. Approximately 2,500 issuers annually file Schedule TO and it takes 43.5 hours to prepare for a total of 108,750 annual burden hours. It is estimated that 50% of the 108,750 total burden hours (54,375 burden hours) is prepared by the company.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments

must be submitted to OMB within 30 days of this notice.

Dated: February 4, 2005.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. E5-572 Filed 2-9-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 1-12451]

### Issuer Delisting; Notice of Application of New York Health Care, Inc. To Withdraw Its Common Stock, \$.01 Par Value, From Listing and Registration on the Boston Stock Exchange, Inc.

February 4, 2005.

On January 21, 2005, New York Health Care, Inc., a New York corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 12d2-2(d) thereunder,<sup>2</sup> to withdraw its common stock, \$.01 par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

On January 19, 2005, the Board of Directors ("Board") of the Issuer approved resolutions to withdraw the Issuer's Security from listing and registration on the BSE. In making the decision to delist the Security from the BSE, the Issuer stated various factors, including: (i) That the original listing of the Security on the Exchange was required by the underwriter of the Issuer's initial public offering—a contractual obligation that has expired; (ii) that the Security has not traded on the Exchange from at least January 2002 to the time of the application; (iii) the expense involved in responding to the Exchange's request<sup>3</sup> to make any

<sup>1</sup> 15 U.S.C. 78j(d).

<sup>2</sup> 17 CFR 240.12d2-2(d).

<sup>3</sup> By letter dated December 3, 2004, the Exchange requested that the Issuer file a listing of additional shares form with the Exchange and pay any fees associated therewith, and provide information regarding: (i) The Issuer's previously reported delisting of its common stock from Nasdaq and the investigation resulting from the resignation of a former director; (ii) the business purpose of the resignations of the Issuer's Chief Executive Officer and Chief Financial Officer, which are anticipated to occur upon the completion of the Issuer's private placement of securities; (iii) the current number of beneficial holders of the Issuer, and (iv) a potential rescission right on certain shares issued to holders of BioBalance stock. On December 20, 2004, the Issuer requested an extension of the December 22, 2004 deadline to have more time to decide whether to expend the time and resources necessary to respond to the Exchange or to voluntarily delist. On

necessary filings and paying any associated fees to continue listing the Security on the Exchange; and (iv) that the Security currently trades on the Over-the-Counter Market on the Pink Sheets.

The Issuer stated in its application that it has complied with BSE procedures for delisting by filing the required documents governing the withdrawal of securities from listing and registration on the BSE.

The Issuer's application relates solely to withdrawal of the Security from listing on the BSE and from registration under Section 12(b) of the Act,<sup>4</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>5</sup>

Any interested person may, on or before March 1, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of the BSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### *Electronic Comments*

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-12451 or;

#### *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 1-12451. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the

Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. E5-563 Filed 2-9-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51133; File No. SR-Amex-2004-101]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Dow Jones Industrial Average

February 3, 2005.

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 December 10, 2004, 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 and II 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 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 Exchange proposes to list and trade under Section 107A of the Amex Company Guide ("Company Guide"), notes linked to the performance of the Dow Jones Industrial Average ("DJIA" or "Index").

#### 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 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>3</sup> The Amex proposes to list for trading under Section 107A of the Company Guide notes issued by Citigroup, linked to the performance of the DJIA (the "DJIA Notes" or "Notes").<sup>4</sup> The DJIA is determined, calculated and maintained solely by Dow Jones.<sup>5</sup> The Notes will provide for a multiplier of 300% ("Upside Participation Rate") of any positive performance of the DJIA during such term subject to a maximum payment amount or ceiling expected to be 5.7%, which will be determined at the time of issuance ("Capped Value").<sup>6</sup>

<sup>3</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>4</sup> Citigroup Global Markets Holdings, Inc. ("Citigroup") and Dow Jones & Co. ("Dow Jones") have entered into a non-exclusive license agreement providing for the use of the DJIA by Citigroup and certain affiliates and subsidiaries in connection with certain securities including these Notes. Dow Jones is not responsible and will not participate in the issuance and creation of the Notes.

<sup>5</sup> The DJIA is a price-weighted index comprised of 30 common stocks chosen by the editors of the Wall Street Journal ("WSJ") as representative of the broad market of U.S. industry. A price-weighted index refers to an index that assigns weights to component stocks based on the price per share rather than total market capitalization of such component stock. The corporations represented in the DJIA tend to be leaders within their respective industries and their stocks are typically widely held by individuals and institutional investors. Changes in the composition of the DJIA are made solely by the editors of the WSJ. In addition, changes to the common stocks included in the DJIA tend to be made infrequently with most substitutions the result of mergers and other extraordinary corporate actions. However, over time, changes are made to more accurately represent the broad market of U.S. industry. In choosing a new corporation for the DJIA, the editors of the WSJ focus on the leading industrial companies with a successful history of growth and wide interest among investors. Dow Jones, publisher of the WSJ, is not affiliated with Citigroup and has not participated in any way in the creation of the Notes. The number of common stocks in the DJIA has remained at 30 since 1928, and, in an effort to maintain continuity, the constituent corporations represented in the DJIA have been changed on a relatively infrequent basis.

<sup>6</sup> Telephone conversation between Jeff Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), SEC, dated January 31, 2005 (as to expected amount payable at maturity under various scenarios).

December 20, 2004, the Exchange granted the request and extended the Issuer's time to either respond or voluntarily delist until January 14, 2005.

<sup>4</sup> 15 U.S.C. 78l(b).

<sup>5</sup> 15 U.S.C. 78l(g).

<sup>6</sup> 17 CFR 200.30-3(a)(1).

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

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