

the outstanding voting securities of PNM Resources, which will be held by SW Acquisition in a purely custodial role pending imminent distribution to its constituent partners. Pursuant to the SW Acquisition limited partnership agreement, the consideration for the sale, including the common stock received, will be divided proportionally in accordance with each partners' economic interest. The largest interests, those of Continental Casualty Company and CIBC WG Argosy Merchant Fund 2, L.L.C., account for 35% and 21.93% of the PNM Resources shares received as consideration, respectively. As a result, following the closing of the Transaction, no partner in SW Acquisition will own, with power to vote, 5% or more of the voting securities of PNM Resources.

In order to finance a portion of the acquisition cost, PNM Resources will issue and sell 4,000,000 units of its 6.625% Hybrid Income Term Security Units (the "Units") to Cascade Investment, L.L.C. ("Cascade"), a limited liability company formed under the laws of the State of Washington, in consideration for \$100,000,000. Each Unit will have a stated amount of \$25.00. The proceeds of the sale of the Units will be used by PNM Resources to finance a portion of the cash consideration paid in the Transaction and for refinancing the debt and preferred securities of TNP Enterprises. The Units will be sold pursuant to the terms of a Unit Purchase Agreement, dated August 13, 2004, between PNM Resources and Cascade (the "UPA").

B. Post-Transaction Operations

In the December Order, the Commission authorized PNM Resources to issue various types of equity and debt securities, including equity-linked securities in the form of stock purchase units. The financing plan that provided the basis for the authority extended by the Commission in the December Order included the acquisition of TNP Enterprises and no new financing authorizations are required.

PNM Resources plans to retain TNP Enterprises; however, TNP Enterprises will exist only as a conduit, with no active operations or financial obligations, and will retain no personnel or operational authority. PNM Resources also proposes to include TNP Enterprises, TNMP and First Choice as client companies of PNMR Services, a subsidiary service company that provides the following support services: Accounting, Audit, Business Ethics and Compliance, Business Excellence (including Business Process Improvement), Corporate Communications, Community Affairs,

Corporate Governance, Economic Development, Environmental Management, Environmental Policy, Executive Management, General Services, Governmental Regulations, Health and Safety, Human Resources, Information Technology, Investor Relations, Legal, Organization Development, Purchasing, Regulatory Affairs, Risk Management, and Treasury.

PNM Resources will integrate the support services functions that currently exist at TNMP into Services. Applicants state that the consolidation of the support services functions into Services is expected to result in reduced costs for the affiliate companies through reductions in corporate and headquarters staffing, reduced corporate and administrative programs, and purchasing savings through economies of scale. Services will also establish common processes and systems and centralized expertise.

Under the program of restructuring implemented by the State of Texas pertaining to the ERCOT System of TNP Enterprises, affiliates of TNMP are able to access certain shared services, such as billing, accounting, and payroll systems. Applicants propose to maintain these arrangements in place where such is consistent with economical operations and to comply with both state and Federal Energy Regulatory Commission affiliate transaction regulation and the applicable rules of the Commission, including rules 90 and 91.

First Choice is a firm engaged in domestic energy marketing and Avistar is a firm engaged in the domestic marketing of energy technologies. Applicants maintain that First Choice qualifies as an energy-related company under rule 58 under the Act. PNM Resources proposes to retain FirstChoice. PNM Resources also proposes to retain the nonutility subsidiaries of TNP Enterprises which are currently inactive. PNM Resources also proposes to retain a limited partnership interest in National Corporate Tax Credit Fund XII, an investment qualifying for low income housing tax credits.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51503; File No. SR-Amex-2004-65]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to Revisions to Amex Rule 21, Appointment of Floor Officials

On August 10, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rule 21, Appointment of Floor Officials. On December 22, 2004, the Amex filed Amendment No. 1 to the proposed rule change.³ On February 3, 2005, the Amex filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 8, 2005.⁵ The Commission received no comments on the proposal.

The Exchange proposed the following amendments to Amex Rule 21: (1) Eliminate the requirement that an Exchange Official who is appointed as a senior Floor Official must have previously served as a member of the Exchange's Board of Governors ("Board");⁶ (2) provide that an Exchange Official who has been appointed as a Senior Floor Official shall have the same authority and responsibilities as a Floor Governor with respect to matters that arise on the trading floor and require review or action by a Floor Governor or Senior Floor Official;⁷ and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1 the Amex revised the text of the proposed rule.

⁴ In Amendment No. 2 the Amex further revised the text of the proposed rule.

⁵ See Securities Exchange Act Release No. 51279 (March 1, 2005), 70 FR 11279.

⁶ The proposal would retain the requirement that any such Exchange Official must spend a substantial part of his or her time on the Exchange's floor.

⁷ The Exchange has represented that an Exchange Official who makes a ruling on the floor would not be permitted to review such ruling while later acting as a Senior Floor Official or in place of a Floor Governor. Telephone conversation among William Floyd-Jones, Assistant General Counsel, Amex, Susie Cho, Special Counsel, Division of Market Regulation ("Division"), Commission, and Geraldine Idrizi, Attorney, Division, Commission, on January 31, 2005.

A number of Amex rules provide for Floor Governor or Senior Floor Official action or review with respect to matters that arise on the trading floor. The Amex noted that these rules may change

(3) clarify that an Exchange Official who is appointed as a Senior Floor Official may not participate in meetings of the Board unless the Board invites such person to attend its meetings.⁸

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, the requirements of Section 6(b) of the Act¹⁰ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,¹¹ in 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 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.

The Commission notes that the proposed rule change, as amended, is designed to facilitate the supervision of trading activity on the Exchange's trading floor. The proposal would expand the pool of Exchange Officials who could be appointed to serve as Senior Floor Officials by eliminating the requirement that such Exchange

Officials previously must have served as an Exchange Governor. Further, the proposal specifies that Exchange Officials who are appointed as Senior Floor Officials would have the same authority and responsibilities as a Floor Governor with respect to matters that arise on the floor and require review or action by a Floor Governor or Senior Floor Official. The Commission also notes that the proposed rule change would clarify the status of Exchange Officials who are appointed as Senior Floor Officials by specifying that these officials may not participate in Board meetings except to the extent that they are invited to attend such meetings. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b) of the Act.¹²

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-Amex-2004-65), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51502; File No. SR-Amex-2005-009]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC To Require Members To Complete Systems Training and To Include Violations of This Requirement in Its Minor Rule Violation Plan

April 7, 2005.

On February 1, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new Amex Rule 51 to require its members to complete training in such systems as the Exchange may require and to amend its Minor Rule Violation Plan ("Plan") to allow the Exchange to issue minor fines for non-compliance with this rule. The proposed rule

change was published for comment in the **Federal Register** on March 8, 2005.³ The Commission received no comments regarding the proposal.

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.⁴ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁵ because a rule that is reasonably designed to require Exchange members to complete necessary systems training should protect investors and the public interest. The Commission also believes that handling violations of Amex Rule 51 pursuant to the Exchange's Plan is consistent with Sections 6(b)(1) and 6(b)(6) of the Act⁶ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because existing Amex Rule 590 provides procedural rights to a person fined under the Plan to contest the fine and permits a hearing on the matter, the Commission believes the Plan, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.⁷

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act⁸ which governs minor rule violation plans. The Commission believes that the change to Amex's Plan will strengthen its ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Amex rules and all other rules subject to the imposition of fines under the Exchange's Plan. The Commission believes that the violation of any self-regulatory organization's

with future Amex rule changes. Under the amendment to Amex Rule 21, Exchange Officials appointed as Senior Floor Officials would be able to act in place of Floor Governors with respect to these responsibilities. The following is a list of Amex rules that call for action or review by Floor Governors or Senior Floor Officials: Rule 1 (Hours of Business), Rule 22 (Authority of Floor Officials), Rule 25 (Cabinet Trading of Equity and Derivative Securities), Rule 26 (Performance Committee), Rule 27 (Allocations Committee), Rule 118 (Trading in Nasdaq National Market Securities), Rule 119 (Indications, Openings and Reopenings), Rule 128A (Automatic Execution), Rule 170 (Registration and Functions of Specialists), Rule 590 (Minor Rule Violation Fine System), Rule 904 (Position Limits), Rule 918 (Trading Rotations, Halts and Suspensions), Rule 933 (Automatic Execution of Option Orders), Rule 959 (Accommodation Transactions), Rule 918C (Trading Rotations, Halts and Suspensions), Rule 933-ANTE (Automatic Matching and Execution of Options Orders).

⁸ Article II, Section 3 of the Amex Constitution (The Board of Governors—Powers, Duties and Procedures) currently allows the Board to invite persons who are not members of the Board to participate in meetings of the Board. In relevant part, Article II, Section 3 provides: "The Board may invite a person, not a member thereof, to attend its meetings and to participate in its deliberations, but such person shall not have the right to vote."

⁹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51294 (March 2, 2005), 70 FR 11282.

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

⁷ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

⁸ 17 CFR 240.19d-1(c)(2).