

rules, if the PCAOB is unable to determine that a public accounting firm has met the standard for approval of an application, the PCAOB may provide the firm with a notice of a hearing, which the firm may elect to treat as a written notice of disapproval for purposes of making an appeal to the Commission under Section 107(c) of the Act. If the firm chooses to request a hearing, the PCAOB would, in appropriate circumstances, afford the firm a hearing pursuant to its proposed rules relating to investigations and adjudications.

At the time the PCAOB approved the rules relating to investigations and adjudications, it separately approved, and submitted for Commission approval on an accelerated basis, a subset of those rules that were intended to serve as temporary hearing rules in the event the PCAOB decided to disapprove an application for registration while the Commission was still considering action on the rules relating to investigations and adjudications. The Commission approved the PCAOB's temporary hearing rules on an accelerated basis on November 10, 2003, with the expectation that if it approved the proposed rules relating to investigations and adjudications, those permanent rules would supersede and replace the temporary hearing rules.²

III. Discussion

The PCAOB rules relating to investigations and adjudications generally establish a basic procedural framework for conducting investigations and disciplinary proceedings. Several of the comments the Commission received on the proposed rules reflected concern about the rules' lack of specificity with respect to certain matters left to the discretion of the PCAOB and its staff. These matters include, for example, the determination as to which persons will be permitted to be present during an investigatory examination. The Commission recognizes that the rules are broad in scope and that they contemplate the exercise of discretion by the PCAOB and its staff in a number of important areas. We fully expect the PCAOB and its staff to exercise this discretion in a balanced and fair-minded fashion with due regard for both the purposes of Section 105 of the Act and the legitimate concerns of the firms and individuals affected by the rules. The Commission also recognizes that the rules are new and undoubtedly will be revised and improved over time, as the PCAOB gains experience with their implementation. As this process

continues, we would encourage the PCAOB to consider carefully the concerns expressed by commenters and others affected by the rules.

The Commission previously indicated its concern with the operation of proposed Rule 5424(b), which would permit the PCAOB to request issuance of Commission subpoenas in connection with PCAOB disciplinary proceedings, either on the PCAOB's own behalf or for the benefit of the party that is the subject of the proceeding. The Commission notes, in connection with proposed Rule 5424(b), that the issuance of Commission subpoenas in connection with PCAOB disciplinary proceedings would be a novel and potentially complex arrangement, and the Commission staff has discussed with the PCAOB staff the need to develop and implement additional rules and procedures regarding the handling of subpoena requests. The two comment letters that addressed this issue supported the idea that respondents in a PCAOB hearing could ask the PCAOB to request a Commission subpoena to compel appearance by non-parties to the hearing. They agreed, however, that this procedure raised novel issues, and that the Commission and the PCAOB should adopt additional, carefully crafted rules to implement Rule 5424(b). The additional rules and procedures being developed by the PCAOB and Commission staffs would address, among other things, the steps that the parties to PCAOB proceedings would need to follow prior to applying for Commission subpoenas, as well as the Commission's processes for handling such requests once they are received. It is our understanding and expectation, which we have discussed with the PCAOB staff, that Rule 5424(b) will not be available for use in PCAOB proceedings until these additional rules and procedures have been developed and implemented to our satisfaction.

We are satisfied that the rules proposed by the PCAOB create a reasonable operating framework for investigating and disciplining registered public accounting firms and their associated persons.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rules are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rules on investigations and

adjudications (File No. PCAOB-2003-07) be and hereby are approved (with the understanding that Rule 5424(b) will not be available for use in PCAOB proceedings until the appropriate implementation framework is in place), and that such rules, as of the date of this approval, supersede and replace the temporary hearing rules (File No. PCAOB-2003-06) in their entirety.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-11377 Filed 5-19-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49700; File No. SR-Amex-2004-12]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Audit Committee Meeting Requirements Applicable to Registered Closed-End Management Investment Companies

May 13, 2004.

I. Introduction

On February 13, 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 Section 121 of the Amex *Company Guide* to modify the audit committee meeting requirements applicable to registered closed-end management investment companies ("closed-end funds"). On March 12, 2004, the Commission published the proposed rule change for comment in the **Federal Register**.³ The Commission received one comment letter on the proposal.⁴ This Order approves the proposed rule change.

II. Description of the Proposed Rule Change

In December 2003, the Commission approved a broad array of enhancements to the corporate governance requirements applicable to companies

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49371 (March 5, 2004), 69 FR 11919 (March 12, 2004).

⁴ Letter from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated March 31, 2004 ("ICI Letter").

² Release No. 34-48765 (November 10, 2003).

listed on the Amex.⁵ Included within those changes was a revision to Section 121 of the Amex *Company Guide* to explicitly require listed company audit committees to meet on at least a quarterly basis. The Amex states that the quarterly meeting requirement was intended to codify the existing practice of virtually all operating companies. The Amex proposes to modify this requirement with respect to closed-end funds to specify that the audit committee of a closed-end fund must meet on a regular basis as often as necessary to fulfill its responsibilities, including at least annually in connection with the issuance of the fund's audited financial statements. The Amex believes that its proposal would align more closely the requirement for closed-end funds with the customary practices of most of these entities.

The one comment letter received by the Commission with respect to the proposal supported the proposed rule change.⁶

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ in that it is designed, among other things, 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 remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the Commission's view, Amex's proposal to require the audit committee

of a closed-end fund to meet on a regular basis as often as necessary to fulfill its responsibilities, including at least annually in connection with issuance of the fund's audited financial statements, is designed to help ensure the effective operation of a closed-end fund's audit committee. Under the Investment Company Act of 1940,⁹ a closed-end fund is not required to file quarterly reports, and thus the Amex proposal does not mandate quarterly meetings of the audit committee. Nevertheless, as recognized by the Exchange, the proposed rule change would require closed-end fund audit committees to meet as often as necessary, even if more frequently than quarterly, if the unique circumstances facing a particular fund so require.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹⁰, that the proposed rule change (File No. SR-Amex-2004-12) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-11376 Filed 5-19-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49698; File No. SR-CBOE-2004-09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Options on Certain CBOE Volatility Indexes

May 13, 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 February 17, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The CBOE hereby proposes to amend certain of its rules to provide for the listing and trading of options on three separate volatility indexes; specifically: the CBOE Increased-Value Volatility Index ("Increased-Value VIX"); the CBOE Increased-Value Nasdaq 100® Volatility Index ("Increased-Value VXN"); and the CBOE Increased-Value Dow Jones Industrial Average® Volatility Index ("Increased-Value VXD") (collectively, "Increased-Value Volatility Indexes"). Options on each index would be cash-settled and would have European-style expiration. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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CHAPTER XXIV—Index Options

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Rule 24.1 Definitions

(a)–(x) No change.

* * * Interpretations and Policies:

.01 The reporting authorities designated by the Exchange in respect of each index underlying an index option contract traded on the Exchange are as follows:

[Add the following to the current list:]

CBOE Increased-Value Volatility Index® Chicago Board Options Exchange

CBOE Increased-Value Nasdaq 100® Volatility Index Chicago Board Options

Exchange

CBOE Increased-Value Dow Jones Industrial Average® Chicago Board Options Exchange
Volatility Index.

⁵ See Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (order approving File No. SR-Amex-2003-65).

⁶ Specifically, the commenter maintained that because Commission rules do not require closed-end funds to file quarterly financial statements, it

is not necessary or appropriate to impose a quarterly audit committee meeting requirement on them. See ICI Letter.

⁷ 15 U.S.C. 78(b). In approving the proposed rule change, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78(b)(5).

⁹ 15 U.S.C. 80a-1 *et seq.*

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.