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Dated at Rockville, Maryland, this 13th day of February, 2004.

For the Nuclear Regulatory Commission.

**William D. Reckley,**

*Acting Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E4-431 Filed 2-27-04; 8:45 am]

BILLING CODE 7590-01-P

## PRESIDIO TRUST

### Public Health Service Hospital, The Presidio of San Francisco (Presidio), CA; Notice of Availability of Environmental Assessment and Scheduling of Public Comment Period

**ACTION:** The Presidio Trust (Trust) announces the availability for review of the Environmental Assessment (EA) for the Public Health Service Hospital (PHSH) project and the scheduling of a review period for the public to provide comment on the PHSH EA. The EA, prepared in accordance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), evaluates the environmental impacts of rehabilitating and reusing historic buildings in the PHSH district of the Presidio. The Trust is inviting public review and comment on the PHSH EA until April 30, 2004. Public scoping comments were solicited as noticed in the **Federal Register** on September 9, 2003 (68 FR 53205-6) and again on November 12, 2003 (68 FR 64151-2).

**Materials Available to the Public:** The PHSH EA is being provided to agencies, organizations and individuals who have expressed an interest in the NEPA process for the PHSH project. The EA may be viewed at or downloaded from the Trust's Web site at <http://www.presidio.gov>, following the link

from the home page. A printed copy may be requested at no charge at 415/561-5414 or [phsh@presidiotrust.gov](mailto:phsh@presidiotrust.gov), or by writing the Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052. The EA may also be reviewed in the Trust's library on the Presidio at 34 Graham Street, San Francisco, CA.

**Public Review and Comment Period:** Before finalizing the PHSH EA, the Trust invites the interested public to review the document and provide comment. Written comments may be submitted to John Pelka, NEPA Compliance Coordinator at 415/561-2790 (fax), [phsh@presidiotrust.gov](mailto:phsh@presidiotrust.gov), or the address below, and must be transmitted or delivered no later than April 30, 2004. Please be aware that all written comments and information submitted will be made available to the public, including, without limitation, any postal address, e-mail address, phone number or other information contained in each submission.

Additional public notice in the **Federal Register**, on the Trust's Web site and/or in written newsletters to those on the Trust's public mailing list will announce the date, location and details of a hearing for the public to provide oral comment on the PHSH EA. Following the close of the public review period on April 30, 2004, the Trust will consider and respond to any written or oral comments in the final PHSH EA.

**FOR FURTHER INFORMATION CONTACT:** John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052, 415/561-5300.

Dated: February 24, 2004.

**Karen A. Cook,**

*General Counsel.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49295; File No. SR-Amex-2004-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 by the American Stock Exchange LLC Relating to Small Business Issuers

February 23, 2004.

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 January

21, 2004, the American Stock Exchange LLC (the "Amex" 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 Amex. On January 30, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 12, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Amex has filed the proposed rule change as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 Amex proposes to make technical amendments to the Exchange's recently approved enhanced corporate governance requirements to: (i) Amend sections 121A, 121B(2)(c), 802(a), and 809(b) of the Amex *Company Guide* to reference small business issuers rather than small business filers, and (ii) insert in section 809 of the Amex *Company Guide* the date of Commission approval and certain effective dates based on the date of approval. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

American Stock Exchange Company Guide

Section 121. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. Independent Director

Each listed company must have a sufficient number of independent directors on its Board of Directors (1) such that at least a majority of such directors are independent directors (subject to the exceptions set forth in section 801 and, with respect to small business [filers] *issuers*, section 121B(2)(c)), and (2) to satisfy the audit committee requirement set forth below. "Independent director" means a person other than an officer or employee of the

<sup>3</sup> See Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 29, 2004.

<sup>4</sup> See Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 11, 2004.

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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

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

company or any parent or subsidiary. No director qualifies as independent unless the Board of Directors affirmatively determines that the director does not have a material relationship with the listed company that would interfere with the exercise of independent judgment. In addition, audit committee members must also comply with the requirements set forth in paragraph B(2) below. The following is a non-exclusive list of persons who shall not be considered independent:

(a) through (g)—No change.

B. Audit Committee:

(1)—No change.

(2) Composition

(a) and (b)—No change.

(c) Small Business [Filers] *Issuers*—*Small Business* Issuers [that file reports under] (as defined in SEC Regulation S—B) are subject to all requirements specified in this Section, except that such issuers are only required to maintain a Board of Directors comprised of at least 50% independent directors, and an Audit Committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A-3 under the Securities Exchange Act of 1934.

#### Section 802. BOARD OF DIRECTORS

(a) At least a majority of the directors on the Board of Directors of each listed company must be independent directors as defined in Section 121A, except for (i) a controlled company (see Section 801(a)), and (ii) a Small Business [filer] *Issuer* (see Section 121B(2)(c)).

(b) through (e)—No change.

#### Section 809. EFFECTIVE DATES/TRANSITION

(a) In order to permit listed companies to make necessary adjustments in the course of their regular annual meeting schedule, to the extent not inconsistent with Rule 10A-3 under the Securities Exchange Act of 1934, Sections 802–805 (other than Section 802(d)), as well as the corresponding changes to Section 121, are effective as set forth below. During the transition period between *December 1, 2003* and the applicable effective date, listed companies must comply with Section 121 as in effect immediately prior to *December 1, 2003* (see Commentary .01).

- July 31, 2005 for foreign private issuers and small business issuers (as defined in Rule 12b-2 under the Securities Exchange Act of 1934); and
- For all other listed companies, by the earlier of: (1) The listed company's first annual shareholders meeting after March 15, 2004; or (2) October 31, 2004.

In the case of a company with a staggered board, to the extent not

inconsistent with Rule 10A-3 under the Securities Exchange Act of 1934, if the company would be required to change a director who would normally not stand for election in such annual meeting, the company may continue such director in office until the second annual meeting after the date specified above, but no later than December 31, 2005.

(b) Companies that have listed or will be listed in conjunction with their initial public offering shall be afforded exemptions from all board composition requirements consistent with the exemptions afforded in Rule 10A-3 under the Securities Exchange Act of 1934. That is, for each applicable committee that the company establishes (i.e., nominating and/or compensation) the company shall have one independent member at the time of listing, a majority of independent members within 90 days of listing and all independent members within one year. Such companies will be required to meet the majority independent board requirement (or 50% independent in the case of a small-business [filer] *issuer*) within one year of listing. It should be noted however, that investment companies are not afforded these exemptions under Rule 10A-3 under the Securities Exchange Act of 1934. Companies emerging from bankruptcy or which have ceased to be controlled companies will be required to meet the majority independent board requirement (or 50% independent in the case of a small-business [filer] *issuer*) within one year. Companies may choose not to establish a compensation or nomination committee and may rely instead upon a majority of independent directors to discharge responsibilities under Part 8.

(c) Companies transferring from other markets with a substantially similar requirement shall be afforded the balance of any grace period afforded by the other market. Companies transferring from other markets that do not have a substantially similar requirement shall be afforded one year from the date of listing, to the extent not inconsistent with Rule 10A-3 under the Securities Exchange Act of 1934.

(d) Section 807 is effective *June 1, 2004*.

(e) Section 808 and the amendments to Sections 110, 120, 401, 402 and 610 are effective *December 31, 2003*.

(f) The amendments to Section 1009 and the adoption of Section 802(d) are effective *December 1, 2003*.

Commentary—No change.

\* \* \* \* \*

## 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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

On December 1, 2003 the Commission approved comprehensive enhancements to the corporate governance requirements applicable to listed companies in order to promote accountability, transparency and integrity by such companies, including the changes required by Commission Rule 10A-3<sup>6</sup> with respect to listed company audit committees.<sup>7</sup> In order to provide consistency between certain provisions of Amex requirements and Rule 10A-3 with respect to small business issuers, the Exchange is proposing to revise Section 121B(2)(c) of the Amex *Company Guide* to reference small business issuers rather than small business filers. Section 121B(2)(c) of the Amex *Company Guide* provides a limited exception from certain of new requirements. Specifically, such companies are subject to the enhanced corporate governance requirements, except that they are only required to have a board of directors comprised of at least 50% independent directors, rather than a majority, and must have an audit committee of at least two, rather than three, independent directors. Small business companies are required to fully comply with Rule 10A-3.

Rule 10A-3 provides a later effective date for small business issuers than is available for other listed companies. The Amex states that the proposed change to Section 121B(2)(c) of the Amex *Company Guide* will provide consistency between these two provisions. Further, by limiting the applicability of section 121B(2)(c) of the Amex *Company Guide* to small business filers, the provision provides a

<sup>6</sup> 17 CFR 240.10A-3.

<sup>7</sup> See Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (order approving File No. SR-Amex-2003-65).

disincentive for small business companies to voluntarily provide the greater disclosure required pursuant to Regulation S-K. The limited exception for small business companies is intended to provide narrow relief for smaller companies in view of the difficulties that such issuers may face in recruiting independent directors. Companies that choose to provide enhanced disclosure should not be penalized in this regard.

The Exchange is also proposing to make conforming changes in Sections 121A, 802(a), and 809(b) and to amend Section 809 of the Amex *Company Guide* to insert the effective date of Commission approval of the new corporate governance standards and related effective dates.

## 2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> 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 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.

### 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.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Amex as a "non-controversial" rule change pursuant to

section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup>

Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

Pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The revision contained in the proposed rule change relating to small business issuers would provide consistency between the treatment afforded to such entities under Amex's enhanced corporate governance listing standards and the provisions of those standards that were adopted to comply with Rule 10A-3. Acceleration of the operative date will ease implementation of the new rules. The other revisions contained in the proposed rule change are non-substantive. For these reasons, the Commission designates the proposed rule change, as amended, to be effective and operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as amended, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Amex-2004-06. 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, 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 at 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 refer to the File No. SR-Amex-2004-06 and should be submitted by March 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on February 12, 2004, the date that the Exchange filed Amendment No. 2.

<sup>15</sup> 17 CFR 200.30-3(a)(12).