

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53656; File No. SR-Amex-2006-04)

April 14, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto Relating to Procedures for Denying Initial and Continued Listing

I. Introduction

On January 23, 2006, 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 proposal to add new Section 127 and amend Sections 101, 401, 402, 710, 1002, and 1009 of the Amex Company Guide which the Exchange states will increase the transparency of the process associated with staff determinations to deny the initial or continued listing of a company’s securities on the Amex. On February 22, 2006, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the Federal Register on March 13, 2006.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to add new Section 127 and amend Sections 101 and 1002 of the Amex Company Guide to clarify the circumstances in which the Exchange can use its discretionary authority to deny initial or continued listing to a company which

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53403 (March 2, 2006), 71 FR 12736.

raises public interest or other qualitative concerns about its condition or business. The proposed rule would specify that the Exchange has authority to deny initial listing to an applicant, impose additional or more stringent criteria on initial or continued listing of a company's securities, or delist a company's securities where there has been: (i) a history of regulatory misconduct; (ii) filing for protection under any provision of the federal bankruptcy laws or comparable foreign laws; (iii) issuance of a disclaimer opinion on financial statements required to be audited; (iv) failure to provide required certification with the financial statements of the listed company or applicant; or (v) a determination that the listed company or applicant entity has violated or evaded applicable corporate governance standards.

Proposed Section 127 of the Amex Company Guide would explain the factors used by the Exchange in evaluating whether the regulatory misconduct of an individual associated with a company should be used as a basis to deny initial or continued listing; explain the remedial measures that may serve to mitigate public interest concerns; and state that Sections 101 and 1002 of the Amex Company Guide do not provide a basis for the Exchange to grant exemptions or exceptions from the enumerated initial or continued listing criteria.

The proposal also amends Sections 402 and 1009 of the Amex Company Guide to conform the Amex disclosure time frames to those mandated by the Commission for current reports filed on Form 8-K by reducing to four business days the time within which a listed company must publicly disclose that the Exchange has given it written notice that it is noncompliant with one or more of the continued listing standards. The proposed amendments would also extend the disclosure obligations applicable to a

company that receives a written delisting notice to include a company that receives a written notice of noncompliance with a continued listing requirement, which may be in the form of a Warning Letter or a Deficiency Letter.

In addition, the Amex proposes certain clarifying amendments to Section 710 of the Amex Company Guide to provide that an exception to the shareholder approval requirements may be made upon application to the Exchange when (i) the delay in securing shareholder approval would seriously jeopardize the financial viability of the enterprise; and (ii) reliance by the company on the exception is expressly approved by the audit committee of the company's board of directors or a comparable body of the board of directors. The Exchange proposes to add that the comparable body of the board of directors, which may approve a company's reliance on the financial viability exception, must be comprised solely of independent and disinterested directors. The Exchange also proposes to prohibit a company from issuing, or authorizing its transfer agent or registrar to issue or register the securities subject to the shareholder approval requirements, until it has received written notification from the Exchange that the financial viability exception has been granted, and the securities have been approved for listing. In addition, the Exchange proposes to require a company that receives the financial viability exception to issue a press release ten days before issuance of the subject securities, in addition to the notice to shareholders that is currently required by Exchange rules.

Further, the Exchange proposes to update its disclosure policies by amending Sections 402 and 1009 of the Amex Company Guide and to make minor, technical changes to Section 401 of the Amex Company Guide.

III. Discussion

After careful consideration of the amended proposal and consideration of the comment letters, 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 exchange⁴ and, in particular, the requirements of Section 6 of the Act.⁵ Specifically, as discussed in detail below, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be 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 regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, 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. Section 6(b)(5) of the Act⁷ also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

The Commission believes that the proposal to set forth the factors used by the Exchange in evaluating the regulatory conduct and corporate governance of a company clarifies the Exchange rules and provides greater transparency to listed companies and

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

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ Id.

applicants about the criteria and evaluation methods that the Exchange employs in its broad discretionary authority to deny initial or continued listing to a company.⁸

The Commission believes that the proposal to update the Exchange's disclosure policies may provide increased investor protection by conforming the disclosure time frames with existing federal securities laws and requiring increased disclosure, such as when the company relies on the financial viability exception or when it receives a Warning Letter or a Deficiency Letter. The Commission also believes that the proposal to amend shareholder approval requirements may provide increased investor protection by requiring companies, when relying on the financial viability exception, to obtain the approval of independent and disinterested directors and to prohibit the issuance or registration of the securities subject to shareholder approval until companies have received written approval confirmation from the Exchange.

⁸ The Commission notes that this proposed rule change is substantially similar to a proposal submitted by the National Association of Securities Dealers, Inc. and approved by the Commission. See Securities Exchange Act Release No. 52342 (August 26, 2005), 70 FR 52456 (September 2, 2005) (SR-NASD-2004-125).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Amex-2006-04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris
Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).