

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49574; File No. SR-Amex-2003-110)

April 16, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Procedures Applicable to Continued Listing Evaluation and Follow-Up

On December 12, 2003, 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 clarifying the procedures applicable to listed companies with regard to continued listing evaluation and follow-up. On February 19, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the Federal Register on March 10, 2004.⁴ The Commission received no comments on the proposal.

The Exchange proposes to revise Section 1009 of the Amex Company Guide ("Company Guide") to clarify that Exchange staff may establish a time period of less than 18 months for a listed company to regain compliance with some or all of the continued listing standards, if the nature and circumstances of the company's particular continued listing status warrant such shorter time period. In determining whether to establish a time period of less than 18 months for a company to regain compliance with

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 18, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex replaced the text of the proposed rule change in its entirety.

⁴ See Securities Exchange Act Release No. 49351 (March 2, 2004), 69 FR 11467.

some or all of the continued listing standards, the Exchange staff would consider whether, in view of the nature and severity of the particular continued listing deficiency, including the investor protection concerns raised, 18 months would be an inappropriately long period of time to regain compliance. While it is not possible to enumerate all possible circumstances, the following is a non-exclusive list of the types of continued listing deficiencies that, based on the a particular listed company's unique situation, may result in imposition of a shorter time period: delinquencies with respect to Commission filing obligations; severe short-term liquidity and/or financial impairment; present or potential public interest concerns;⁵ and/or deficiencies with respect to the requisite distribution requirements that make the security unsuitable for auction market trading.

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 exchange⁶ and, in particular, the requirements of Section 6(b) of the Act⁷ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5)⁸ of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to

⁵ Public interest concerns could include, for example, situations where the company, a corporate officer or affiliate is the subject of a criminal or regulatory investigation or action; or the company's auditors have resigned and withdrawn their most recent audit opinion raising concerns regarding the internal controls and financial reporting process. However, other situations not specifically enumerated could also raise public interest concerns regarding the appropriateness of a particular company's continued listing.

⁶ 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).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change clarifies the Amex's existing authority to establish a time period of less than 18 months for a company to regain compliance with some or all of the Amex continued listing standards. In addition, Section 1009 of the Company Guide sets forth several factors that the Exchange would consider in its determination. Such criteria should provide transparency to the process of continued listing evaluation and follow-up, thereby benefiting listed companies and investors.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁹, that the proposed rule change (File No. SR-Amex-2003-110), as amended, be, and hereby is, approved.

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

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).