

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2006-32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File No. SR-Amex-2006-32. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 changes 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Amex-2006-32 and should be submitted on or before May 15, 2006.

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

Nancy M. Morris,
Secretary.

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¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53656; File No. SR-Amex-2006-04]

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

April 14, 2006.

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 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

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.

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 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.

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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53666; File No. SR-Amex-2005-107]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 To Amend Exchange Delisting Rules To Conform to Recent Amendments to Commission Rules Regarding Removal From Listing and Withdrawal From Registration

April 17, 2006.

I. Introduction

On October 24, 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 amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. On October 27, 2005, Amex filed Amendment No. 1 to the proposed rule change.³ On February 1, 2006, 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 13, 2006.⁵ No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Section 12 of the Act⁶ and Rule 12d2-2 thereunder⁷ ("SEC Rule 12d2-2") govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2-2 ("amended SEC Rule 12d2-2") and other Commission rules require the electronic filing of revised Form 25 on the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.⁸

The Amex proposes to revise Amex Rule 18 and sections 1010, 1011, 1201, 1202, 1203, 1204, 1205 and 1206 of the Amex Company Guide with respect to delisting procedural requirements as mandated by recent amendments to SEC Rule 12d2-2.

In the case of exchange-initiated delistings, amended SEC Rule 12d2-2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original proposed rule change in its entirety.

⁴ In Amendment No. 2, Amex added footnotes to the Form 19b-4 and Exhibit 1 that reference appropriate sections of the Amex Company Guide; made grammatical corrections to the proposed rule text regarding the final effective date of the old Amex rules; and clarified the circumstances under which the Exchange is authorized to file a Form 25 for certain corporate actions.

⁵ See Securities Exchange Act Release No. 53398 (March 2, 2006), 71 FR 12738.

⁶ 15 U.S.C. 78l.

⁷ 17 CFR 240.12d2-2.

⁸ See Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

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.*

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).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).