

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53430; File No. SR-Amex-2005-124)

March 7, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 3 Thereto Relating to Increases in the Original Listing and Annual Fees

I. Introduction

On December 6, 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 proposal to amend Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to increase the original listing and the annual issuer fees. On December 28, 2005, Amex filed Amendment No. 1 to the proposed rule change. On January 23, 2006, Amex filed Amendment No. 2 to the proposed rule change and withdrew Amendment No. 2 on January 31, 2006. On January 27, 2006, Amex filed Amendment No. 3 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on February 8, 2006.³ The Commission received no comments regarding the proposal.⁴ This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

This proposal amends Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to increase the original listing and the annual issuer fees. Amex

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 53205 (February 1, 2006), 71 FR 6528.

⁴ The comment period expired on March 1, 2006.

proposes to implement the increased annual fees as of January 2006 and the increased original listing fees upon the Commission's approval of this proposal.

Currently the original listing fees pursuant to Section 140 of the Amex Company Guide for stock issues range from \$35,000 to \$65,000 (which includes a non-refundable application processing fee of \$5,000) depending on the number of shares to be listed.

Amex proposes that the original listing fees be increased as follows:

Number of Shares	Current Fee*	Proposed Fee*
Less than 5,000,000 shares	\$35,000	\$45,000
5,000,000 to 10,000,000 shares	\$45,000	\$55,000
10,000,001 to 15,000,000 shares	\$55,000	\$60,000
In excess of 15,000,000 shares	\$65,000	\$70,000

*Includes the non-refundable application-processing fee of \$5,000.

In addition, the original listing fee for non-U.S. companies listed on a foreign stock exchange is currently 50% of the fees charged to U.S. companies. Amex proposes that the original listing fee for non-U.S. companies be a flat fee of \$40,000, which will include the one-time, non-refundable application-processing fee of \$5,000.

The annual fees set forth in Section 141 of the Amex Company Guide currently range from \$15,000 to \$30,000 depending on the number of shares outstanding. Amex proposes that the annual fees be increased as follows:

Number of Shares	Current Fee	Proposed Fee
5,000,000 shares or less	\$15,000	\$16,500
5,000,001 to 10,000,000 shares	\$17,500	\$19,000
10,000,001 to 25,000,000 shares	\$20,000	\$21,500
25,000,001 to 50,000,000 shares	\$22,500	\$24,500
50,000,001 to 75,000,000 shares	\$30,000	\$32,500
In excess of 75,000,000 shares	\$30,000	\$34,000

Amex also proposes other minor technical changes to Sections 140 and 141 of the Amex Company Guide, which will not further alter the fees but will clarify the text of these Sections.

III. Discussion

After careful consideration, 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 exchange.⁵ In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,⁶ in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission notes that the Exchange has represented that the proposal is necessary to cover increased costs it has incurred in the enhancement and development of its trading

⁵ 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).

⁶ 15 U.S.C. 78f(b)(4).

technology and improvements in the overall level of services provided to its members and listed companies. The Commission also notes that the Exchange's original and annual listing fees have not increased since 2002, and that pursuant to the proposed rule change, companies with a fewer number of shares will continue to be charged less than companies with a greater number of shares. The new original listing fees and annual fees therefore are consistent with the Exchange's stated goals of attracting and retaining the listing of small and mid-size companies and in recognition of the greater impact of fees on small and mid-size companies. In addition, with respect to non-U.S. companies, the Exchange represents that the amended original listing fee is below the lowest rate paid by U.S. companies, but is still competitive with rates charged by other markets.

The Exchange has requested accelerated approval of the proposed rule change. The Exchange represents that its practice is to invoice its issuers the annual fee in January, and that therefore billing of the annual fee this year has been delayed until the Commission approved this proposal.⁷ The Exchange represented that issuers have contacted the Exchange regarding the delay in billing and in one instance that they noted that they need the invoice for accrual purposes.⁸ The Exchange believes that further delay in approving the proposal, as well as uncertainty in knowing when invoices will be issued, will continue to place a burden on the Exchange's issuers.⁹ The Exchange also notes that this delay in invoicing the annual fee has resulted in at least a two month delay in the Exchange collecting the increased revenue generated by the annual listing fees,

⁷ See e-mail from Claire McGrath, Senior Vice President and General Counsel, Amex, to Heather Seidel, Senior Special Counsel, Division of Market Regulation, Commission, dated March 2, 2006.

⁸ Id.

⁹ Id.

and that it had anticipated that the increase in the original listing fee would be in place in January as well.¹⁰ The Exchange believes that further delay in the implementation of the increased annual listing fee and original listing fees will negatively impact the collection of this necessary revenue.¹¹ In addition, the Commission notes that the proposed rule change was published for a full notice and comment period and no comments were received. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹² for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the Federal Register.

¹⁰ See id. The Exchange represents that based upon 2005 financial statements, the revenue generated by the annual fee accounts for 6% of the Amex's total revenues and is used to fund the operations and regulatory programs of the Exchange.

¹¹ Id.

¹² 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-Amex-2005-124) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).