

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53563; File No. SR-Amex-2005-125)

March 29, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Dual Listing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 5, 2005, the American Stock Exchange LLC (“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 March 21, 2006, Amex filed Amendment No. 1. 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

Amex proposes to amend (i) Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to reduce the listing fees for companies listed on another securities market that dual list on the Amex, and (ii) Amex Rule 118 to (a) include in the scope of the Rule securities listed on the Nasdaq Capital Market (formerly referred to as the Nasdaq SmallCap Market),³ (“NCM”) and (b) accommodate the dual listing of securities listed on the NCM and the Nasdaq National Market (“NNM”).⁴ NNM and NCM are tiers of The Nasdaq Stock Market,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52489 (September 21, 2005), 70 FR 56948 (September 29, 2005)(SR-NASD-2005-108).

⁴ The instant proposed rule change is similar to rules of the Nasdaq and PCX Equities, Inc. (“PCXE”)(now known as NYSE Arca Equities, Inc.), which address the dual listing of securities. Nasdaq Rules 4510 and 4520 waive Nasdaq listing fees for New York Stock

which is operated by The Nasdaq Stock Market, Inc. (NNM and NCM are collectively referred to as “Nasdaq.”) In addition, the Exchange proposes minor, technical changes to Amex Rules 7, 24, 109, 115, 126, 128A, 131, 135A, 156, 170, 190 and 205, and Sections 142 and 950 of the Company Guide to reflect the proposed changes to Amex Rule 118. The text of the proposed rule change is available on the Amex’s Web site at <http://www.amex.com>, the Office of the Secretary, Amex, and at the Commission’s Public Reference Room.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

In order to encourage the listing on Amex of companies already listed on another market, the Exchange proposes to reduce the listing fees applicable to such dual listing issuers and to make appropriate rule changes to accommodate the listing and trading on Amex of issuers whose securities are also listed on Nasdaq.

Specifically, the Exchange proposes to amend (i) Sections 140 and 141 of the Company Guide and the Fee Schedule to reduce the initial and annual listing fees for companies that dual

Exchange listed companies that dual list on Nasdaq. PCXE’s Schedule of Fees and Charges for Exchange Services sets forth reduced listing fees for dual listed securities, and PCXE Rule 1.1(aa) defines “Nasdaq Security” as any security designated as an eligible security pursuant to the UTP Plan (as defined below) that is either listed on PCXE or as to which UTP (as defined below) have been granted.

list on Amex, and (ii) Amex Rule 118 to expand the scope of the Rule to cover NCM securities and also to accommodate the dual listing of Nasdaq securities. The Exchange will make an independent determination of whether dual listing issuers satisfy all applicable listing requirements and will require such issuers to meet all applicable Amex listing standards on a continuous basis. Ultimately, the Exchange would encourage dual listed issuers to transfer their listings to Amex.

(i) Fees

The Exchange proposes to amend Section 140 (Original Listing Fees) and Section 141 (Annual Listing Fees) of the Company Guide and the Fee Schedule to provide for reduced fees for issuers listed on other markets that also list on Amex. The discounted listing fees for companies already listed on another market are proposed as an incentive to companies to compare the services and quality of Amex market without having to pay full listing fees on both markets. In addition to providing an opportunity to compare the services and quality of the Amex market with their current market, Amex believes that dual listing on Amex with its auction system should benefit investors and shareholders by increasing liquidity, reducing execution time, and narrowing spreads. Amex believes the comparison between executions on Amex and on the other markets will enable companies to assess the benefit of an Amex listing.

Amex believes that charging reduced fees to dual listed issuers is warranted for a number of reasons. Listed companies are already familiar with the regulatory and compliance requirements of a listing regime. The Exchange will conduct a full and independent review of each dual listed issuer's compliance with Amex listing standards, however, the probability that an application from an issuer seeking to dually list will raise regulatory and other compliance issues is lower than for issuers not already listed elsewhere. The Exchange believes that the

review of listing applications of dually listed companies will in most cases be less time-consuming and present fewer issues than the review of an application from an issuer not already listed on another market despite the fact that both reviews will be subject to the same degree of regulatory scrutiny. Also, companies listed on another market will already have paid initial listing fees and will be subject to continued listing fees; Amex believes that a reduction in the fees the Exchange charges will encourage these companies to apply for a listing on Amex, which will, in turn, promote competition among markets consistent with Section 11A(a)(1)(C)(ii) of the Act.⁵

Currently, initial listing fees range from \$40,000 to \$65,000 depending on the issuer's aggregate total shares outstanding. In addition, there is a one-time, non-refundable application processing fee, which is \$5,000, for companies that do not have a stock or warrant issue listed on the Amex. For companies that dually list on Amex, the Exchange proposes to charge 50% of the applicable initial listing fee and application processing fee.⁶ As a result, for dual listed companies, the maximum initial listing fee, including the application processing fee, would be \$35,000 instead of \$70,000. As noted above, the Exchange believes that applications from issuers already listed on another U.S. market are likely to present fewer regulatory and compliance issues based on their prior experience as a listed company and therefore a lower fee is warranted.

Dual listed companies will be required to meet all applicable Amex listing standards on a continuing basis. Annual fees currently range from \$16,500 to \$34,000, depending on the issuer's aggregate total shares outstanding. The Exchange proposes to charge 50% of the annual

⁵ 15 U.S.C. 78k-1(a)(1)(C)(ii).

fee for a period of five years from the date of initial listing for companies that dually list on Amex. If, during the five-year period, a dual listing issue subsequently lists exclusively on Amex, the Exchange will assess the standard annual fee starting in the first full calendar year following the change to an exclusive listing. At the end of the five-year period, Amex will assess, on a pro-rated basis, the standard annual fee for the balance of the then current calendar year. Thereafter, Amex will assess the standard annual fee.

The Exchange believes that it is appropriate to charge dually listed issuers an annual fee to cover the cost of issuer services, including regulatory oversight, but that reduced annual fees for dual listed issuers are appropriate as it would be inequitable to charge dually listed issuers the full annual fee as they are also paying these fees to another market. The Exchange believes that such a reduction serves as an incentive to issuers, which by listing on a second market are taking on another set of regulations, to compare listing markets. It also reflects the fact that dually listed issuers are already subject to regulation by another market and, the Exchange believes, are likely to raise fewer regulatory issues and therefore require less staff time on an ongoing basis.

(ii) Amex Rules and Trading Operations

While Amex rules do not specifically contemplate dual listings, with respect to companies listed on another registered national securities exchange, no changes to the rules, or to trading operations, are required. Securities listed on national securities exchanges (other than Nasdaq) are designated as national market system securities under the Consolidated Quotation Service (“CQ”) and Consolidated Tape Association (“CTA”) national market system plans, just as are other Amex-listed securities, so the dual listing on Amex of securities listed on such

⁶ The \$40,000 initial listing fee, including the application processing fee, currently applicable to non-U.S. companies listed on foreign stock exchanges, will not be affected by the proposed rule change.

exchanges does not conflict with existing Amex trading rules or operations. Nasdaq securities, on the other hand, are subject to a different set of trading rules from those designated as national market system securities under the CQ and CTA plans.⁷ Amex proposes changes to certain of its rules to clarify how trading and reporting of transactions in Nasdaq securities would be accomplished.

Amex Rule 118 (Trading in Nasdaq National Market Securities) currently provides for the trading of NNM securities pursuant to unlisted trading privileges (“UTP”), in accordance with provisions of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan”); however, Amex Rule 118 does not currently include NCM securities. Amex proposes to amend the definition of NNM securities in Amex Rule 118 so that it will now include (i) NCM securities and (ii) NNM and NCM securities that are listed on the Amex. As a result, the same provisions applicable to NNM securities traded on a UTP basis on Amex will cover NCM securities traded on a UTP basis on Amex and NNM and NCM securities with dual listings on Amex including Amex Rules 1, 3, 7, 24, 115, 118, 126, 170, 190 and 205, and Sections 142 and 950 of the Company Guide. For example, Amex Rule 7 governing short sales will not apply to dually listed NNM or NCM securities.

The Exchange also proposes minor, technical changes to Amex Rules 7, 24, 109, 115, 126, 128A, 131, 135A, 156, 170, 190 and 205, and Sections 142 and 950 of the Company Guide

⁷ Based on the January 13, 2006 Commission release regarding Nasdaq’s registration as a national securities exchange, Nasdaq anticipates commencing operations as an exchange on April 1, 2006. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006)(10-131). Nasdaq has indicated that the trading rules regarding its quotation and trading systems will remain essentially the same following such registration as a national securities exchange.

to reflect the revised definition of NNM securities and changes to Rule 11Ac1-1 under the Act.⁸ For example, the Exchange proposes to amend Commentary .02 to Amex Rule 115 to remove the reproduced text of Rule 11Ac1-1 under the Act.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4)¹⁰ and 6(b)(5) of the Act,¹¹ in particular, in that it is designed to provide an equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using the Exchange's facilities, and 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, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change will enhance competition by allowing issuers

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005); 70 FR 37496 (June 29, 2005)(S7-10-04). 17 CFR 242.602.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

listed on other markets to add a listing on Amex without being required to pay fees that are duplicative of the fees already paid to the other market.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 No. SR-Amex-2005-125 on the subject line.

Paper comments:

¹¹ 15 U.S.C. 78f(b)(5).

- 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 Number SR-Amex-2005-125. 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 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 in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 Number SR-Amex-2005-125 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).