

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54442; File No. SR-Amex-2006-80)

September 14, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rule 777 Regarding Depository Eligibility

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 21, 2006, the American Stock Exchange LLC (“Amex”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to amend Amex Rule 777 by deleting the references to “domestic” and “foreign” in paragraph (a) as well as additional requirements imposed by paragraph (b) of the rule in order for a security to be depository eligible. The proposed rule also seeks to add new sections 136 and 137 to the Amex Company Guide to cross-reference Rules 776 and 777.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

(A) **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

On June 1, 1995, Amex adopted Rule 777 for the purpose of facilitating implementation of Rule 15c6-1 of the Act that established a three-day settlement period for most securities transactions.<sup>4</sup> Rule 777 requires domestic issuers' securities be depository eligible prior to listing and sets forth specific requirements for issuers' depository eligibility.

Currently, before an issue of securities can be listed, Rule 777(a) requires a domestic issuer to represent to Amex that a CUSIP number identifying the securities had been included in the file of eligible issues maintained by a securities depository registered with the Commission as a clearing agency under section 17A of the Act.<sup>5</sup> Amex proposes to delete the exception for foreign issuers in Rule 777(a). Exclusion of foreign issuers is no longer necessary because they have the capacity to comply with Rule 777 and have been doing so voluntarily for years. The proposed rule change is consistent with clarifying changes adopted by NYSE.<sup>6</sup>

Amex also proposes to delete the exception in Rule 777(a) for securities whose terms cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories. The exception was originally included in Rule 777(a) because various states and countries precluded the book-entry issuance of securities. Following implementation of Rule

<sup>3</sup> The Commission has modified the text of the summaries prepared by Amex.

<sup>4</sup> Securities Exchange Act Release No. 35798 (June 1, 1995) 60 FR 30909 (June 12, 1995) [File No. SR-Amex-95-17].

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> Securities Exchange Act Release No. 45987 (May 28, 2002), 67 FR 38538 (June 4, 2002) (SR-NYSE-2001-30).

777(a), however, states have amended their corporate statutes to allow for book-entry issuance and, as mentioned above, foreign issuers have voluntarily complied with book-entry issuance requirements. As a result, the expectation is no longer needed to accommodate such issuers. Further, in light of the direct registration eligibility requirements recently approved by the Commission<sup>7</sup> that require new and current listings on the Amex to be eligible for a direct registration system operated by a securities depository, Amex is concerned that the exception will confuse issuers.

Rule 777(b) currently sets forth additional requirements that must be met before a security will be deemed “depository eligible” within the meaning of Rule 776.<sup>8</sup> The applicability of the requirement set forth in Rule 777(b) to an issuer depended upon whether a new issue is distributed by an underwriting syndicate before or after the date an electronic securities depository system is available for monitoring repurchases of the distributed shares by syndicate members. Prior to the availability of such a system, a managing underwriter may delay the date a security is deemed depository eligible for up to three months after commencement of trading on Amex.

On May 13, 1996, approximately one year after the approval of Rule 777, the Commission approved a rule change filed by The Depository Trust Company (“DTC”)<sup>9</sup> allowing

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<sup>7</sup> Securities Exchange Act Release No. 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) (SR-Amex-2006-40).

<sup>8</sup> Rule 776 requires Amex members to use the facilities of a security depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary or institutional customer. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (June 18, 1993) [File Nos. SR-Amex-93-07; SR-BSE-93-08; SR-MSE-93-03; SR-NASD-93-11; SR-NYSE-93-13; SR-PSE-93-04; and SR-PHLX-93-09].

<sup>9</sup> DTC is a securities depository registered with the Commission under sections 17A and 19 of the Act as a clearing agency.

DTC to implement its Initial Public Offering (“IPO”) Tracking System.<sup>10</sup> The IPO Tracking System enables lead managers and syndicate members of equity underwritings to monitor repurchases of distributed shares in an automated book-entry environment.

Amex proposes deleting Rule 777(b) in its entirety as it is no longer relevant since DTC has implemented its IPO Tracking System, which is monitoring repurchases of distributed shares. The proposed rule change is consistent with clarifying changes adopted by NYSE.<sup>11</sup>

Finally, Amex proposes cross-referencing rules 776 and 777 in Part 1 of the Amex Company Guide to clarify that Rules 776 and 777 are initial and continued listing standards applicable to companies listed on Amex.

Amex believes the proposed rule change is consistent with the requirements of Sections 6(b)(5) and 17A of the Act<sup>12</sup> and the rules and regulations thereunder requiring the rules of Amex be designed to remove impediments to and perfect the mechanism of a free and open market and to perfect a national market system which provides, among other things, for the prompt and accurate clearance and settlement of securities transactions.

**(B) Self-Regulatory Organization’s Statement on Burden on Competition**

Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>10</sup> Securities Exchange Act Release No. 37208 (May 13, 1996), 61 FR 25253 (May 20, 1996) [File No. SR-DTC-95-27].

<sup>11</sup> Supra, note 5.

<sup>12</sup> 15 U.S.C. 78f(b)(5) and 78q-1.

(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 thirty-five 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 ninety 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 self-regulatory organization 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-80 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-80. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of Amex and on Amex's Web site at [www.amex.com](http://www.amex.com). 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-2006-80 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).