

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55733; File No. SR-Amex-2007-34)

May 10, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Amendments to Section 107 of the Company Guide

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 5, 2007, 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 and II below, which Items have been substantially prepared by the Exchange. On May 4, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change, as amended, on an accelerated basis.

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

The Exchange proposes to amend: (1) Sections 107A(b) and 107D(a) of the Amex Company Guide to provide an exception to the minimum public distribution requirement of one million units for issuances traded in thousand dollar denominations, and (2) Sections 107A(b), 107C(a) and 107D(a) of the Amex Company Guide to provide an exception to the 400 public shareholder requirement for securities that are redeemable at the option of the holders thereof on at least a weekly basis. The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and www.amex.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 III below. The Exchange 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

Pursuant to Section 107 of the Amex Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants ("Section 107 Securities").³ The general listing criteria relating to issuers and issuances are set forth in Section 107A of the Company Guide. In connection with each potential listing of Section 107 Securities, the Exchange evaluates each security and issuance against the following criteria in Section 107A (and correspondingly in Sections 107B, 107C,⁴ 107D, and 107E): (1) a principal amount/aggregate market value of \$4 million or greater, and (2) a minimum public distribution requirement of one million trading units with a minimum of 400 public shareholders, except that, if traded in thousand dollar denominations, then no minimum number of holders. In addition, the listing criteria also requires that the issuer must

³ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29) (approving the listing guidelines under Section 107 for new securities not otherwise covered under existing sections of the Company Guide).

⁴ The minimum public distribution requirement for Index-Linked Exchangeable Notes set forth in Section 107C of the Amex Company Guide is 150,000 notes rather than one million trading units.

have assets in excess of \$100 million, stockholders' equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer who is unable to satisfy the earnings criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (a) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (b) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

Minimum Public Distribution

The first part of the proposal codifies an exception to Sections 107A(b) and 107D(a) of the Amex Company Guide so that certain issuances of Section 107 Securities may be listed even though the minimum public distribution requirement of one million units is not met. This exception, however, is conditioned on whether or not the issuance is traded in thousand dollar denominations. Sections 107A (General Criteria) and 107D (Index-Linked Securities) currently require a minimum public distribution requirement of one million trading units and a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders. Amex notes that, without the exception to the one million unit minimum public distribution requirement, the Exchange would be unable to list certain Section 107 Securities in thousand dollar denominations having a market value of less than \$1 billion. Amex believes the proposed exception to be a reasonable accommodation for those issuances in thousand dollar denominations. Accordingly, the proposal amends the rule text of Section 107A(b) and 107D(a) so that the minimum public distribution and minimum public shareholders requirements will not be applicable to an issue traded in thousand dollar denominations.

Minimum Public Shareholders

The purpose of the second part of the proposal is to provide an exception to Sections 107A(b), 107C(a), and 107D(a) of the Amex Company Guide so that Section 107 Securities may be listed even though there may be less than 400 public shareholders at the time of listing.⁵ This exception will be conditioned on whether the particular issue provides for the redemption of securities at the option of the holders on at least a weekly basis. Therefore, the revision to Sections 107A(b), 107C(a), and 107D(a) will provide that the minimum public shareholders requirement will not apply if the securities are redeemable at the option of the holders thereof on at least a weekly basis.

Over the past several years, the Exchange has added generic listing standards in Section 107 of the Company Guide for Equity Linked Term Notes, Index-Linked Exchangeable Notes, Index-Linked Securities, and Trust Certificate Securities. These requirements are set forth in

⁵ A revision to Section 107A(b) of the Amex Company Guide will also affect Sections 107B and 107E relating to equity linked term notes and trust certificate securities, respectively, because these provisions refer to Section 107A for purposes of meeting the “General Criteria.”

Sections 107B,⁶ 107C, 107D,⁷ and 107E⁸ of the Amex Company Guide, respectively. Currently, for each issuance of the foregoing Section 107 Securities, there must be a minimum of 400 public shareholders, except when the issue is traded in thousand dollar denominations. The Exchange submits that an additional exception to the 400 holder requirement is appropriate for certain securities which provide for redemption at the option of the holders on at least a weekly basis.

The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of Section 107 Securities and the performance of the underlying asset, such as a single security or basket of securities and/or securities index, as holders will be unlikely to sell their securities for less than their redemption value if they have a weekly right to redeem such securities for their full value. In addition, in the case of certain Section 107 Securities with a weekly redemption feature, the issuer may have the ability to issue new securities from time to time at market prices prevailing at the time of sale, at prices related to market prices, or at negotiated prices. The Exchange believes that this provides a ready supply of new securities, thereby reducing the potential that Section 107 Security market prices will be affected by a scarcity of available securities. In addition, the ability to issue new securities may

⁶ See Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR-Amex-92-42) (approving the listing and trading of Equity Linked Term Notes). See also Securities Exchange Act Release No. 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR-Amex-2002-110) (increasing the maximum number of equity securities permitted to be linked to an Equity Linked Term Note); Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (SR-Amex-99-42) (revising Section 107B of the Company Guide).

⁷ See Securities Exchange Act Release No. 51258 (February 25, 2005), 70 FR 10700 (March 4, 2005) (SR-Amex-2005-001) (adopting generic listing standards for Index-Linked Securities).

⁸ See Securities Exchange Act Release No. 50355 (September 13, 2004), 69 FR 56252 (September 20, 2004) (SR-Amex-2004-23) (approving generic listing standards for Trust Certificate Securities).

assist in maintaining a strong correlation between the market price and indicative value, based largely on potential arbitrage opportunities that should mitigate the effect of price differentials.

Amex believes that the ability to list certain Section 107 Securities with these characteristics without any specific requirements as to the number of holders is important to the successful listing of such securities. Issuers issuing these types of Section 107 Securities generally do not intend to do so by way of an underwritten offering, but instead, initially distribute the securities similar to the manner in which exchange-traded funds or “ETFs” are brought to market. In the case of an ETF, shares are initially launched or distributed without a significant distribution event, with the share float increasing over time as securities in creation unit size are issued from the issuer at net asset value. The Exchange states that, because of market dynamics and the purchasing behavior of investors, it is difficult for an issuer to be able to guarantee a sufficient number of public shareholders or investors on the date of listing in order to meet the 400 shareholders requirement. However, the Exchange believes that this difficulty in ensuring 400 shareholders on the listing date is not indicative of a lack of liquidity and/or adequate distribution of the securities. Accordingly, the Exchange submits that the existence of a weekly redemption option justifies this limited exception to the 400 public shareholder requirement.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is 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 facilitating transactions in securities, and to remove

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

impediments to, and perfect the mechanism of a free and open market and a national market system.

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

The Exchange 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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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 Number SR-Amex-2007-34 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-2007-34. 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 offices 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-2007-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, 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. The Commission believes that this proposal should benefit investors by providing an exception to the minimum public distribution requirements for certain Section 107 Securities issued and traded in thousand dollar

¹¹ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

denominations and providing an exception to the 400 public shareholder requirement for Section 107 Securities that are redeemable at the option of the holders thereof on at least a weekly basis. The Commission believes that these exceptions are reasonable and should allow for the listing and trading of certain Section 107 Securities that would otherwise not be able to be listed and traded on the Exchange.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. The Commission notes that it has previously approved minimum public distribution and minimum public shareholder requirements that are substantially similar to Amex's proposal and found that such requirements were consistent with the Act.¹³ The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the application of the proposed exceptions to the minimum public distribution and minimum public shareholder requirements. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such securities.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the

¹³ See Securities Exchange Act Release No. 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27).

¹⁴ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2007-34), as modified by Amendment No.1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).