

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58378; File No. SR-Amex-2008-67)

August 18, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Definition of “Independent Director” in the Amex Company Guide

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 15, 2008, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Section 803 of the Amex Company Guide (the “Company Guide”) to modify the definition of “independent director.” The text of the proposed rule change is available on the Amex’s website at <http://www.amex.com>, the Office of the Secretary, the 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 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

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

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

specified in Item IV below. The 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 803(A)(2)(b) of the Company Guide generally precludes a director of a listed issuer from being considered “independent” if the director (or an immediate family member of a director) received more than \$100,000 in compensation from the issuer or any parent or subsidiary of the issuer within any twelve-month period in the three years preceding the determination of the director’s independence status. The Exchange proposes to raise this amount to \$120,000 to conform its independence standard in this respect with a NASDAQ Stock Market LLC (“Nasdaq”) rule change just approved by the Commission and a similar proposal submitted and pending before the Commission by the New York Stock Exchange LLC (“NYSE”).<sup>3</sup>

In addition, the proposed change will harmonize the Exchange’s independence standards with the existing \$120,000 disclosure threshold applicable to related party transactions set by the Commission in Regulation S-K, Item 404.<sup>4</sup> Use of this consistent standard will enhance the Exchange’s ability to assess compliance with the independent director requirements because listed issuers are uniformly required under Item 404 of Regulation S-K to disclose compensation to directors in excess of \$120,000, but are not necessarily required to disclose compensation between \$100,000 and \$120,000. Further, the Exchange believes that by making its “bright line”

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<sup>3</sup> See Securities Exchange Act Release Nos. 58335 (August 8, 2008) (SR-NASDAQ-2008-053) (approving similar modifications to NASDAQ Rule 4200(a)(15)(B) and IM-4200) (Release No. 34-58335); and 58367 (August 15, 2008) (proposing similar modifications to Section 303A.02 of the NYSE Listed Company Manual).

<sup>4</sup> See 17 CFR 229.404 and 17 CFR 228.404; see also Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

standard with respect to the maximum amount of compensation a director (or an immediate family member of a director) can receive from the issuer (or any parent or subsidiary) consistent with the equivalent standard of Nasdaq and proposed by NYSE, it will provide a uniform standard for issuers to understand and apply. However, the Exchange notes that even if a director passes the “bright line” standard as proposed to be amended, an issuer’s board of directors must still make an affirmative determination that such director has no relationship with the issuer that would interfere with the director’s exercise of independent judgment in carrying out the responsibilities of a director.<sup>5</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. Specifically, the proposal will align the Exchange’s independent director standards with those of Nasdaq and NYSE, as well as with the Commission’s disclosure requirements, thereby providing a uniform standard for issuers to understand and apply.

### 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.

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<sup>5</sup> See Section 803(A)(2) of the Company Guide.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange did not receive any written comments on the proposed rule change.

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

The Amex has designated the proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b-4(f)(6)(iii),<sup>8</sup> the Amex provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal, or such shorter time as designated by the Commission.<sup>9</sup> Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Amex has further requested the Commission to waive the 30-day operative delay. The Commission hereby grants Amex's request.<sup>12</sup> Waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Amex proposal is

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<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement under Rule 19b-4(f)(6)(iii) given that the instant rule filing was originally made pursuant to Section 19(b)(2) of the Act on August 13, 2008, and Commission staff requested on August 14, 2008 that the filing be re-submitted pursuant to Section 19(b)(3)(A). The Commission grants such waiver.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

consistent with a proposal by Nasdaq that recently was approved by the Commission.<sup>13</sup> The Commission notes that no comments were received on the Nasdaq proposal. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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-2008-67 on the subject line.

##### Paper Comments:

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

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<sup>13</sup> See Release No. 34-58335, supra note 3.

All submissions should refer to File Number SR-Amex-2008-67. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2008-67 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Acting Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).