

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54882; File No. SR-Amex-2006-80)

December 6, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change to Amend Rule 777 Regarding Depository Eligibility

I. Introduction

On August 21, 2006, the American Stock Exchange LLC (“Amex”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-Amex-2006-80 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the Federal Register on September 21, 2006.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change as amended.

II. Description

In general, Amex is amending its depository eligibility requirement. The rule change: (i) deletes a reference to a distinction between domestic and foreign issuers; (ii) deletes an exception for securities whose terms cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories; and (iii) deletes additional requirements imposed by the rule that are no longer necessary.

Previously, before an issue of securities could be listed, Rule 777(a) required only 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

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 54442 (September 14, 2006), 71 FR 55229.

Commission as a clearing agency under section 17A of the Act.³ The same requirement did not apply to foreign issuers. However, 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.

Amex's rule change also deletes 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, among other things, various states and countries precluded the book-entry issuance of securities. Following implementation of Rule 777(a), however, most, if not all, states have amended their corporate statutes to allow for book-entry issuance, and as a result the exception is no longer needed to accommodate such issuers.

Furthermore, Amex's rule change deletes a provision that prevented new issues distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate from becoming depository eligible because such a system has become available. Prior to the availability of such a system, a managing underwriter could delay the date a security was deemed depository eligible for up to three months after commencement of trading on Amex. Since the approval of Rule 777, The Depository Trust Company ("DTC")⁴ implemented its Initial Public Offering Tracking System⁵ that enables lead managers and syndicate members of equity underwritings to monitor repurchases of distributed shares in an automated book-entry environment. Since DTC has the

³ 15 U.S.C. 78q-1.

⁴ DTC is a securities depository registered with the Commission under sections 17A and 19 of the Act as a clearing agency.

⁵ Securities Exchange Act Release No. 37208 (May 13, 1996), 61 FR 25253 (May 20, 1996) [File No. SR-DTC-95-27].

capability to monitor repurchases of distributed shares, the requirements listed in Rule 777(b) are no longer necessary, and Amex has deleted Rule 777(b) in its entirety.

Finally, Amex has cross-referenced 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.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁶ Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system.⁷ The Commission finds that Amex's rule change is consistent with these requirements. By revising its rule regarding depository eligibility, Amex's proposed rule change fosters cooperation and coordination with persons engaged in clearing and settling transactions in securities and perfects the mechanism of a free and open market and a national market system.⁸

⁶ 15 U.S.C. 78s(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Conclusion

On the basis of the foregoing, 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 and in particular Section 6(b)(5) of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-Amex-2006-80) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

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Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).