

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56982; File No. SR-Amex-2007-79)

December 18, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendments No. 1 and 2 Relating to Independent Directors and Audit Committee Members

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 September 18, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. On November 8, 2007, Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 16, 2007, Amex submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> 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

The Exchange proposes to amend Sections 802 and 803 of the Amex Company Guide (“Company Guide”) in order to modify the cure period available to a listed issuer that loses an independent director or audit committee member. In addition, the Exchange proposes to reorganize Sections 121, 126, 801, 802, 803, 804 and 805 of the Company Guide to consolidate the provisions related to independent director and audit committee requirements.

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

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

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

The text of the proposed rule change is available at Amex's Office of the Secretary, at the Commission's Public Reference Room, and on Amex's Web site at [www.amex.com](http://www.amex.com).

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. 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

Most listed issuers are required to maintain a majority independent board and an audit committee comprised of at least three independent directors who meet the general Amex independence criteria specified in Section 121 of the Company Guide, as well as the audit committee independence requirements mandated by Rule 10A-3 under the Act<sup>5</sup> and Section 803 of the Company Guide. Section 121B(2)(c) of the Company Guide provides an exemption for small business issuers ("Small Business Issuers")<sup>6</sup> which states that Small Business Issuers are only required to maintain a board of directors comprised of at least 50% independent directors and an audit committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A-3 under the Act.<sup>7</sup>

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<sup>5</sup> 17 CFR 240.10A-3.

<sup>6</sup> A "small business issuer" is generally defined as a company whose annual revenue is less than \$25 million and whose "public float" is less than \$25 million. See Item 10(a)(1) of SEC Regulation S-B (17 CFR 228.10(a)(1)).

<sup>7</sup> 17 CFR 240.10A-3.

Issuers that lose an independent audit committee member because the director ceases to be “independent” pursuant to Rule 10A-3 of the Act<sup>8</sup> or Section 121A of the Company Guide for reasons outside his or her reasonable control are afforded a cure period to replace the director.<sup>9</sup> The cure period lasts until the earlier of the company’s next annual shareholders’ meeting or one year from the date of the event that caused the noncompliance and is based on Rule 10A-3(a)(3) under the Act,<sup>10</sup> which permits an exchange to provide such a cure period.

Currently, the Company Guide does not provide an explicit cure period for a listed issuer that fails to comply with the audit committee requirements due to a vacancy on its audit committee. Further, the Company Guide does not provide an explicit cure period for a listed issuer that fails to comply with the majority independent board requirements due to a vacancy or if a director ceases to be independent due to circumstances beyond his or her reasonable control. The Exchange proposes to provide a cure period to apply to situations in which an issuer becomes non-compliant with the audit committee requirements due to a vacancy<sup>11</sup> or the majority independent board requirements as a result of either (i) a vacancy or (ii) if a director ceases to be independent due to circumstances beyond his or her reasonable control.<sup>12</sup> The proposed rule change would provide that if the annual shareholders’ meeting occurs no later than 180 days following the event that caused the issuer’s failure to comply with the majority independent board requirement or the audit committee composition requirement, the listed issuer (other than a Small Business Issuer) will instead have 180 days from the event to regain

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<sup>8</sup> Id.

<sup>9</sup> See Section 803(a) of the Company Guide.

<sup>10</sup> 17 CFR 240.10A-3(a)(3).

<sup>11</sup> See proposed Section 803B(6)(b) of the Company Guide.

<sup>12</sup> See proposed Section 802(b) of the Company Guide.

compliance.<sup>13</sup> The 180-day minimum cure period will help assure adequate time for companies to conduct an appropriate search process for a qualified replacement for an independent director or audit committee member.

Currently, the Nasdaq Stock Market, Inc. (“Nasdaq”) provides a similar cure period for its listed issuers with a vacancy on the board or audit committee,<sup>14</sup> though Nasdaq does not provide an exemption for Small Business Issuers. Section 121B(2)(c) of the Company Guide provides an exemption for Small Business Issuers in that they are only required to maintain a board of directors comprised of at least 50% independent directors, and an audit committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A-3 under the Act.<sup>15</sup> In the event that a Small Business Issuer elects to have more than two members on its audit committee, a vacancy of one of the audit committee members will not trigger a violation of the audit committee requirements under Section 121B(2)(c) of the Company Guide. If, on the other hand, a Small Business Issuer decides to have only two members on its audit committee, it becomes imperative that a vacancy on the audit committee be filled as quickly and efficiently as possible. Thus, in light of the exemption provided to Small Business Issuers, Amex proposes that if the annual shareholders’ meeting of a Small Business Issuer occurs no later than 75 days following the event that caused the failure to comply with the audit committee composition requirement, that such Small Business Issuer have 75 days from the event to regain compliance.<sup>16</sup>

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<sup>13</sup> See proposed Sections 803B(6)(b) and 802(b) of the Company Guide

<sup>14</sup> See Nasdaq Rule 4350(d)(4)(B). See also Securities Exchange Act Release No. 54421(September 11, 2006), 71 FR 54698 (September 18, 2006) (SR-NASDAQ-2006-011).

<sup>15</sup> 17 CFR 240.10A-3.

<sup>16</sup> See proposed Section 803B(6)(b).

Amex also proposes to reorganize Sections 121, 126, 801, 802, 803, 804, and 805 of the Company Guide to consolidate the provisions related to independent director and audit committee requirements.

The Exchange believes that the proposed changes strike an appropriate balance between the shareholder protections provided by an independent board and audit committee and the time that is generally needed to replace an independent director and/or audit committee member. Moreover, the Exchange expects the use of the explicit cure period to provide greater transparency and clarity to the process, as well as greater uniformity with the corporate governance standards of other national securities exchanges.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

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

The proposed rule change will impose no 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

No written comments were solicited or received by the Exchange on this proposal.

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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 Amex 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-2007-79 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-2007-79. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-2007-79 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>19</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).