

EXHIBIT 5

Part I

AMERICAN STOCK EXCHANGE LLC

Proposed Rule Change

It is proposed that the following provisions of the Exchange Constitution be amended as set forth below. The changes are made to Article II Section 4(d) and the fifth paragraph of Article II Section 4(a) of the Exchange Constitution. [Bracketing] indicates text to be deleted and underlining indicates text to be added.

CONSTITUTION OF THE AMERICAN STOCK EXCHANGE LLC

ARTICLE II

GOVERNMENT AND ADMINISTRATION

Section 4. Officers of the Exchange.

(a) Chief Executive Officer.

* * *

All salaried officers and employees of the Exchange shall be under the direction of and responsible to the Chief Executive Officer[.] or the Chief Executive Officer's designee; provided, however, that the Chief Regulatory Officer shall report only to the Regulatory Oversight Committee and that the internal auditors (as set forth in Section 6(c) of this Article II), shall also report directly to the Audit Committee.

* * *

(b) and (c) – No Change

(d) Chief Regulatory Officer. The Regulatory Oversight Committee, by resolution adopted by a majority of its members then in office, shall appoint a Chief Regulatory Officer who shall be responsible for the management and administration of the regulatory functions of the Exchange. The Chief Regulatory Officer shall report directly to the Regulatory Oversight Committee. The Board of Governors shall have the authority to remove the Chief Regulatory Officer only with the advice and consent of the Regulatory Oversight Committee.

EXHIBIT 5

Part II

EXHIBIT E

AMEX UNDERTAKINGS

The American Stock Exchange LLC (“Amex”) hereby represents to the Securities and Exchange Commission (the “SEC”) that it consents to, and makes the following undertakings, which shall be set forth in Amendment No. 6 to Amex’s rule filing (SR-Amex-2004-50) pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, as amended (the “Act”):

(1) Amex (i) shall not terminate the Regulatory Services Agreement, dated as of April 30, 2004, as amended (the “RSA”), between the National Association of Securities Dealers, Inc. (“NASD”) and Amex pursuant to Section 16.2 thereof (“Termination for Convenience”) unless on or prior to the date of such termination, Amex has entered into an alternative arrangement relating to the provision of regulatory services that has been approved by the SEC pursuant to the rule filing procedures of Rule 19b-4 under the Act and (ii) shall use its best efforts to comply in all material respects with its obligations under the RSA, including its obligations to make payments to NASD of amounts due and payable thereunder; provided that the foregoing undertaking shall not be deemed to have been breached or violated in the event Amex fails to make any such payment as a result of a bona fide dispute with NASD as to the amount due and payable under the RSA. If NASD terminates the RSA for any reason, Amex shall use its best efforts promptly to enter into an alternative arrangement relating to the provision of regulatory services that shall be subject to approval of the SEC pursuant to the rule filing procedures under Rule 19b-4 of the Act.

(2) The Chief Regulatory Officer of Amex shall, and Amex shall use its reasonable efforts to cause the staff of NASD responsible for providing services under the RSA (or of such other entity approved by the SEC in accordance with paragraph (1) hereof providing regulatory services to Amex) to, periodically confer with staff of the SEC Division of Market Regulation and the SEC Office of Compliance Inspections and Examinations regarding the status of Amex’s regulatory program. Such conferences shall occur either in person or by telephone once every two weeks or at such other intervals as may be mutually agreed to by the SEC and Amex.

(3) Amex shall provide to the Director of the Division of Market Regulation, unless otherwise directed in writing by such Director:

(i) Within 120 days after the fiscal year of Amex ending December 31, 2004 and within 75 days after the end of each fiscal year of Amex thereafter, financial statements consisting of a consolidated balance sheet of Amex and its subsidiaries as of the end of such fiscal year, and consolidated statements of operations and cash flows of Amex and its subsidiaries for such fiscal year, certified by the Chief Financial Officer of Amex and accompanied by an opinion of independent accountants of recognized national standing (“Independent Accountants”);

(ii) Within 40 days after the end of each fiscal quarter of Amex, unaudited financial statements consisting of a consolidated balance sheet of Amex and its subsidiaries as of the end of such fiscal quarter, and consolidated statements of operations and cash flows of Amex and its subsidiaries for such fiscal quarter, certified by the Chief Financial Officer of Amex and reviewed by Amex's Independent Accountants, together with evidence of such review;

(iii) Within 30 days after the end of each fiscal month of Amex:

(a) financial data of Amex for such prior month, including consolidated statements of income, capital expenditures and cash flows and consolidated balance sheet information, certified by the Chief Financial Officer of Amex, together with such projected and budget financial information concerning Amex contained in monthly reporting packages prepared by Amex management prior to the date hereof, as modified from time to time with the consent of the Director of the Division of Market Regulation;

(b) a schedule reflecting the available borrowings under each of Amex's credit facilities, together with computations of compliance with all financial covenants contained therein, certified by the Chief Financial Officer of Amex;

(c) a schedule of projected cash and working capital trends, including calculations of Amex's working capital and current ratio;

(d) a schedule of actual year-to-date and inception-to-date expenditures in connection with any material trading technology system or platform being implemented by Amex, certified by the Chief Financial Officer of Amex, together with a narrative summary of the status of such implementation;

(e) a schedule of material off-balance sheet liabilities, if any, certified by the Chief Financial Officer of Amex;

(f) a narrative summary of Amex's financial results for such month and for then year-to-date, certified by the Chief Financial Officer of Amex; and

(iv) Such other financial information regarding Amex as may be reasonably requested from time to time by the Director of the Division of Market Regulation.