

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53205; File No. SR-Amex-2005-124)

February 1, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto Relating to Increases in the Original Listing and Annual Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 6, 2005, 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 Amex. On December 28, 2005, Amex filed Amendment No. 1 to the proposed rule change.³ On January 23, 2006, Amex filed Amendment No. 2 to the proposed rule change.⁴ On January 27, 2006, Amex filed Amendment No. 3 to the proposed rule change.⁵ 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

Amex proposes to amend Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to increase the original listing and the annual issuer fees. The text of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 explains the differences in the percentage increases in the original listing and annual fees for smaller and larger companies and also makes technical corrections to the rule text in Exhibit 5.

⁴ Amendment No. 2 was withdrawn on January 31, 2006.

⁵ Amendment No. 3 discusses the reasons why the original listing and annual issuer fees vary depending on the size of the company and corrects non-substantive typographical errors in the text of the Amex Fee Schedule submitted as Exhibit 5.

proposed rule change is available on Amex's Web site (www.amex.com), at the principal office of 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, Amex included statements concerning the purpose of and basis for 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

Amex proposes to amend Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to increase the original listing and the annual issuer fees. The Exchange believes these fee increases are necessary to cover increased costs it has incurred in the enhancement and development of its trading technology and improvements in the overall level of services provided to its members and listed companies. The Exchange's original and annual listing fees have not increased since 2002. Should the Commission approve the proposed rule change, the Exchange proposes to implement the increased annual fees retroactively to January 2006 and the increased original listing fees prospectively upon the Commission's approval of this proposal.⁶

Currently the original listing fees pursuant to Section 140 of the Amex Company Guide for stock issues range from \$35,000 to \$65,000 (which includes a non-refundable application

⁶ Amex clarified that the annual fees will be applied retroactively to January 2006 and the original listing fees will be applied prospectively. Telephone conversation between Claire McGrath, Senior Vice President and General Counsel, Amex and Jan Woo, Attorney, Division of Market Regulation, Commission, on February 1, 2006.

processing fee of \$5,000) depending on the number of shares to be listed. Amex proposes that the original listing fees be increased as follows:

Number of Shares	Current Fee*	Proposed Fee*	Percentage Increase
Less than 5,000,000 shares	\$35,000	\$45,000	28%
5,000,000 to 10,000,000 shares	\$45,000	\$55,000	22%
10,000,001 to 15,000,000 shares	\$55,000	\$60,000	9%
In excess of 15,000,000 shares	\$65,000	\$70,000	8%

*Includes the non-refundable application-processing fee of \$5,000.

As indicated in the chart above, the percentage increase in the original listing fees varies depending upon the number of shares to be listed. Rather than increase each level the same percentage, the Exchange chose to vary the percentage increases in order to remain competitive with the original listing fees charged by other market places. Based upon original listing fees in place at its competitors, the Exchange determined to increase the fees by a larger percentage for smaller companies than for larger companies. The proposed increases in the original listing fees will not change the manner in which these fees are applied — companies with a fewer number of shares will be charged less than companies with a greater number of shares. The Exchange’s purpose for differentiating its original listing fees is based on the Amex’s business objective of attracting small to mid-size companies and the recognition that the costs associated with listing can be significant to a small or mid-size company. In addition, as a general matter, companies with fewer shares tend to have less complex structures, which may result in less staff time spent reviewing the company’s listing application.

In addition, the original listing fee for non-U.S. companies listed on a foreign stock exchange is currently 50% of the fees charged to U.S. companies. Amex proposes that the

original listing fee for non-U.S. companies be a flat fee of \$40,000, which will include the one-time, non-refundable application-processing fee of \$5,000. The original listing fees currently paid by non-U.S. companies are significantly lower than the rates paid by U.S. companies due to the additional costs non-U.S. companies incur when listing in the United States. In order to continue to recognize the costs faced by non-U.S. companies, the Exchange chose to set a single rate that is below the lowest rate it charges to U.S. companies, but is still competitive with rates charged by other markets. Finally, the original listing fees for issues listed pursuant to Sections 106 (currency and index warrants) and 107 (other securities) of the Amex Company Guide will remain at the current rates.

The annual fees set forth in Section 141 of the Amex Company Guide currently range from \$15,000 to \$30,000 depending on the number of shares outstanding. Amex proposes that the annual fees be increased as follows:

Number of Shares	Current Fee	Proposed Fee	Percentage Increase
5,000,000 shares or less	\$15,000	\$16,500	10%
5,000,001 to 10,000,000 shares	\$17,500	\$19,000	9%
10,000,001 to 25,000,000 shares	\$20,000	\$21,500	8%
25,000,001 to 50,000,000 shares	\$22,500	\$24,500	9%
50,000,001 to 75,000,000 shares	\$30,000	\$32,500	8%
In excess of 75,000,000 shares	\$30,000	\$34,000	13%

As indicated in the chart above, the percentage increase in the annual fees varies depending upon the number of shares outstanding. Rather than increase each level the same percentage, the Exchange chose to vary the percentage increases in order to remain competitive

with the annual fees charged by other market places. Based upon annual fees in place at its competitors, the Exchange determined to increase the fees by a larger percentage for its largest companies. The Exchange's purpose for having lower annual fees for companies with fewer shares outstanding is similarly based on its objective to retain the listings of small to mid-size companies and a recognition that the on-going costs associated with being a listed company have a greater impact on the small to mid-size company. It should be noted that the Amex's competitors also use a sliding scale when applying original listing and annual issuer fees.

In addition, the annual fees for issues listed pursuant to Sections 106 (currency and index warrants) and 107 (other securities) of the Amex Company Guide will remain at their current rates.

Finally, the Exchange is also proposing other minor technical changes to Sections 140 and 141 of the Amex Company Guide, which will not further alter the fees but will clarify the text of these Sections.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In addition, increasing original listing and annual fees will provide the Exchange with the ability to cover increased expenses related to enhancements in its trading technology, business services, and regulatory programs.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

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

Amex does not believe that the proposed rule change will impose any burden on competition.

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 with respect to the proposed rule change.

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 the Exchange 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, as amended, 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 No. SR-Amex-2005-124 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Amex-2005-124. 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 office of 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-2005-124 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris
Secretary

⁹ 17 CFR 200.30-3(a)(12).