

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53264; File No. SR-Amex-2005-117)

February 9, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Amex Membership Corporation's Certificate of Incorporation

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 November 23, 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 January 24, 2006, Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 1, 2006, Amex filed 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 submits for Commission approval amendments to the Amex Membership Corporation's ("AMC") Restated Certificate of Incorporation ("AMC Certificate"). In addition, the Amex proposes to amend Articles II, IV, and XIII of its Constitution to revise various references to the AMC Certificate.

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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 the original filing in its entirety.

<sup>4</sup> See Partial Amendment No. 2.

The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at the Amex's Office of the Secretary, 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, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

AMC proposes to amend the AMC Certificate to: (i) permit the transfer or lease of trading rights among AMC members and member organizations apart from the memberships in respect of which they were made available; and (ii) eliminate the existing requirement that AMC submit to a vote of its members the authorization of new forms of trading rights. As part of the sale of the Amex to AMC, the Amex submitted and the Commission approved a proposal requiring that amendments to the AMC Certificate and By-laws be submitted to the Amex Board of Governors for determination of whether the amendments constituted a "rule of an exchange" as that term is defined in the Act.<sup>5</sup> If the Amex Board determines that the amendments to the

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<sup>5</sup> See Securities Exchange Act Release No. 50927 (December 23, 2004) 69 FR 78486 (December 30, 2004) (approving SR-Amex-2004-50). Section 3(a)(27) of the Act defines the rules of an exchange to be the constitution, articles of incorporation, by-laws, and rules, or instruments corresponding to the foregoing, of an exchange, and such stated policies, practices, or interpretations of such exchange as the Commission, by rule, may

AMC Certificate or Bylaws are “rules of the exchange”, then such amendments must be filed with and approved by the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder before they may become effective. At its meeting on July 20, 2005, the Amex Board reviewed the proposed amendments to the AMC Certificate and determined that they constituted a rule of the exchange since, as more specifically described below, the amendments involved whether certain actions by Amex need the consent of the holders of AMC memberships and involve the consents necessary for the issuance of trading rights on the Amex.

Currently, Section 6 of the AMC Certificate provides that AMC make available one Regular Trading Right for each Regular Member and one Options Principal Trading Right for each Options Principal Member and that such trading rights shall not be transferred or leased apart from those memberships. In addition, Section 7(a) of the AMC Certificate provides that the following actions need the consent of the holders of its memberships: (i) the sale, issuance, transfer or other disposition of “equity securities” as that term is defined in Section 7(a); and (ii) the authorization, grant or issuance of trading rights other than regular trading rights, options principal trading rights or the Limited Trading Permits. The AMC Board at its meeting on July 11, 2005 voted to approve and recommend to its members that the AMC Certificate be amended to: (i) eliminate the reference in Section 6 to one trading right, thus allowing the issuance of more than one right to Regular Members and Options Principal Members; (ii) eliminate the prohibition in Section 6 on such trading rights being transferred or leased apart from the Regular and Options Principal Memberships; and (iii) eliminate the requirement that a vote of the membership is required for the authorization or issuance of trading rights as described in Section 7(a)(ii). Instead, the AMC membership’s consent will be required for any action

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determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange.

taken by the Amex to increase the number of memberships issued by AMC. Membership consent will still be required for the sale, issuance, transfer or other disposition of equity securities as provided in Section 7(a)(i). It should also be noted that Amex will still need to get AMC Board approval for the issuance of new trading rights. The AMC Board can, if it chooses, seek the consent of its membership for any proposal calling for the issuance of new trading rights.

The issue of transferable trading rights arose recently in regard to a proposal to allow specialists and registered options traders to enter quotes in options from remote locations.<sup>6</sup> To participate in remote quoting, specialists and registered options traders will be issued rights, which will attach to the individual eligible to receive them and will not attach to a sale of the membership. It is proposed that with the permission of the Amex these rights will be separately transferable by the specialist or registered options trader eligible to receive them. Therefore, while the rights will only be transferable to other members or member organizations, they will trade separately from the membership and will not increase the number of memberships issued by AMC. The AMC Board believes that the issuance of these types of rights is appropriate and the rights should be transferable or able to be leased apart from the membership. Additionally, the AMC Board does not believe that the issuance of these types of rights was contemplated to be included as an action requiring consent pursuant to Section 7(a) of the AMC Certificate. Therefore, the AMC Board is proposing to amend the AMC Certificate to: (i) provide that trading rights can be transferred or leased apart from the membership; and (ii) revise the requirement so that consent is not required for the issuance of trading rights that do not include an increase in the number of memberships issued by AMC. The AMC Board determined to

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<sup>6</sup> See Securities Exchange Act Release No. 53220 (February 3, 2006) (notice for SR-Amex-2005-100).

make this change to the AMC Certificate in order to give flexibility to the Amex to take prompt action to implement new forms of trading rights designed to enhance Amex's position in an increasingly competitive and fast moving marketplace. At a special meeting of the Regular and Options Principal members held on September 28, 2005, the AMC members approved the amendments to the AMC Certificate. The AMC Board also approved non-substantive changes to the text of the AMC Certificate.

In addition, management proposes to amend the following sections of the Amex Constitution: Article II, Section 8; Article IV, Section 1; and Article XIII, Sections 1 and 3 to replace references to the AMC's "Second Restated Certificate of Incorporation" with "Restated Certificate of Incorporation". Further, Amex proposes to delete the following text from Article II, Section 8 of the Amex Constitution: "as in effect on the date hereof", which is used when referring to the AMC Certificate and By-laws, since it is unnecessary and confusing. The Commission notes that Amex also proposes other non-substantive changes to the proposed rule text.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act,<sup>9</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 foster cooperation and coordination with

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<sup>7</sup> Telephone conversation between Claire McGrath, Senior Vice President & General Counsel, Amex, and David Michehl, Attorney, Division of Market Regulation, Commission, on January 31, 2006 confirming the intention of the Amex to make non-substantive changes to the introduction and Sections 3, 6, and 19 of the AMC Certificate.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

persons engaged in facilitating transactions in securities, and 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.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any 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

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

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 self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, as amended; or
- B. institute proceedings to determine whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-117 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-2005-117. 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 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-2005-117 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Nancy M. Morris  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).