

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53525; File No. SR-Amex-2005-117)

March 21, 2006

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

I. Introduction

On November 23, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend the Amex Membership Corporation's ("AMC")<sup>3</sup> Restated Certificate of Incorporation ("AMC Certificate") and AMC Constitution. On January 24, 2006, Amex filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On February 1, 2006, Amex filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The proposed rule change, as amended, was published for comment in the Federal Register on February 16, 2006.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description and Discussion

Currently, Section 6 of the AMC Certificate provides that AMC shall make available one

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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> AMC is the sole owner of the Exchange. Amex members (Regular and Options Principal Members) are members of AMC. See Securities Exchange Act Release No. 50927 (December 23, 2004), 69 FR 78486 (December 30, 2004).

<sup>4</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>5</sup> See Partial Amendment No. 2.

<sup>6</sup> See Securities Exchange Act Release No. 53264 (February 9, 2006), 71 FR 8320.

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)(ii) of the AMC Certificate requires the consent of the AMC members (i.e., the Amex members) to authorize, grant, or issue trading rights other than Regular Trading Rights, Options Principal Trading Rights, or Limited Trading Permits.

The proposed rule change would amend the AMC Certificate 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 Regular and Options Principal Memberships; and (iii) eliminate the requirement that a vote of the membership is required for the authorization, grant, or issuance of trading rights as described in Section 7(a)(ii).<sup>7</sup> The AMC Board determined to make these changes to give flexibility to 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. AMC membership's consent will still be required for any action taken to increase the number of memberships issued by AMC. The proposed rule change, as amended, also makes other non-substantive changes to the AMC Certificate and the Amex Constitution.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act,<sup>8</sup> and the rules and regulations thereunder applicable to a

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<sup>7</sup> Amex will still need to obtain the consent of the AMC Board to authorize, grant, or issue new trading rights. See Amex Constitution Article 11, Section 8.

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

national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with 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. The Commission notes that Amex will still need to obtain AMC Board approval for the issuance of new trading rights.<sup>11</sup> The AMC Board can, if it so chooses, seek the consent of its full membership for any proposal calling for the issuance of new trading rights. Further, any new trading rights would be subject to approval by the Commission pursuant to the rule filing process of Section 19 of the Act. The Commission also notes that the AMC membership's consent will be required for any action taken by Amex to increase the number of memberships issued by AMC.<sup>12</sup> In addition, these changes to the AMC Certificate shall provide Amex with more flexibility to take prompt action to implement new forms of trading rights.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the

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<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See Amex Constitution Article II, Section 8. The AMC Nominating Committee nominates director candidates for the AMC board of directors, and AMC members have the right to put up their own nominees by petition. The AMC board is then elected by the members of AMC. See Amended and Restated By-Laws of The Amex Membership Corporation Sections 1.10, 1.13 and 3.03.

<sup>12</sup> See AMC Certificate Section 7(a)(ii); Amex Constitution Article II, Section 8; and Amex Constitution Article IV, Section 1(a)(1) and Section 1(b)(1).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2005-117), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).