

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55096; File No. SR-Amex-2007-03)

January 12, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying Listing Fees for Transferring and Dual Listing Issuers and Reverse Mergers

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 January 8, 2007, 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 and II below, which Items have been substantially prepared by Amex. The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend (A) Section 140 of the Amex Company Guide to waive the initial listing fee and listing application fee for any issuer listed on another national securities exchange that transfers its listing to or dual lists on the Exchange, (B) Section 141 of the Amex Company Guide to assess the standard annual listing fee for any issuer listed on another national securities exchange that dual lists on the Exchange, (C) Section 142 of the Amex Company Guide

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

to waive additional listing fees for a one-year period from the date of initial listing for any issuer listed on another national securities exchange that dual lists on the Exchange, and (D) Section 341 of the Amex Company Guide to impose a flat \$5,000 fee and no listing of additional shares fees for Reverse Mergers (as defined below) that occur within 24 months of initial listing.

The text of the proposed rule change is available on the Amex's website at [http://www.amex.com/atamex/ruleFilings/2007/SR\\_Amex\\_2007\\_03\\_imm.pdf](http://www.amex.com/atamex/ruleFilings/2007/SR_Amex_2007_03_imm.pdf), at the 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, the Exchange 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. The Exchange 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

(a) Transfers and Dual Listings

Currently, an issuer listed on another national securities exchange that transfers its listing to Amex (i.e., the issuer becomes listed on Amex and ceases to be listed on the other exchange) is subject to an initial listing fee as set forth in Section 140 (Original Listing Fees) of the Amex Company Guide and a one-time listing application fee of \$5,000 upon initial listing. The Exchange proposes to amend Section 140 to eliminate initial listing fees and the \$5,000 listing application fee for issuers that transfer their listing to the Exchange. A transferring

issuer will still be required to pay annual listing fees as set forth in Section 141 (Annual Fees) of the Amex Company Guide, pro-rated to reflect only the portion of the year during which the issuer is listed on Amex, and fees for the listing of additional shares as set forth in Section 142 (Additional Listing Fees) of the Amex Company Guide.

With regards to dual listings, an issuer already listed on a national securities exchange that dual lists on Amex currently pays 50% of the initial listing fees, 50% of the one-time listing application fee of \$5,000, 50% of the annual listing fees for a five-year period following initial listing, and standard listing of additional shares fees. The Exchange proposes to amend Section 140 to eliminate initial listing fees and the \$5,000 listing application fee for issuers that dual list on the Exchange. The Exchange also proposes to amend Section 141 to remove the five-year, 50% annual listing fee reduction. As a result, an issuer that dual lists on the Exchange will be subject to standard annual listing fees, pro-rated to reflect only the portion of the year during which the issuer is listed on Amex. Finally, the Exchange proposes to amend Section 142 to exempt an issuer that dual lists on the Exchange from paying fees for the listing of additional shares for a one-year period following its initial listing on Amex.

The Exchange believes that the proposed initial listing fee waivers for transfers and dual listings are warranted for a number of reasons. An issuer transferring to Amex from another national securities exchange will already have paid annual listing fees to that exchange for the calendar year in which it transfers, as well as the initial listing fees payable at the time of initial listing on such exchange. Additionally, an issuer that dual lists on the Amex will already have paid initial and annual listing fees to its primary exchange and will be subject to the primary exchange's fees for the listing of additional shares. The Exchange believes that such an issuer will be reluctant to pay duplicative listing fees to another listing venue, even if it concludes that a change in listing or an additional listing would be beneficial.

Thus, the Exchange is of the opinion that assessing the initial listing, listing application and, in the case of a dually listed issuer, listing of additional shares fees (for the first year) against an issuer that has already paid fees and/or have a continuing obligation to pay fees to list on another exchange imposes an undue burden on competition. This is particularly true in light of the fact that the Commission has approved the waiver of initial listing fees by The NASDAQ Stock Market LLC (“Nasdaq”)<sup>5</sup> and the New York Stock Exchange LLC (“NYSE”)<sup>6</sup> with respect to issuers transferring from other national securities exchanges. Furthermore, issuers listed on NYSE that dual list on Nasdaq do not have to pay Nasdaq initial listing, listing application or listing of additional shares fees and are only subject to a \$15,000 annual listing fee after their first year of listing on Nasdaq.<sup>7</sup> By enabling issuers to determine more easily the benefits of switching to and/or dual listing on Amex, the Exchange believes that the proposed rule change will promote competition among markets.

Besides enhancing the appeal of Amex as a listing market, the waived listing fees are proposed as an incentive to issuers to compare the services and quality of the Amex market without having to pay full listing fees on two markets. The Exchange believes that the comparison between executions on Amex and on other markets will enable issuers to assess the benefits of an Amex listing. Ultimately, the Exchange would encourage dual listed issuers to transfer their listings exclusively to Amex, once they have experienced first-hand the benefits of an Amex listing.

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<sup>5</sup> See Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR-NASD-2004-140).

<sup>6</sup> See Securities Exchange Release No. 54849 (November 30, 2006), 71 FR 71219 (December 8, 2006) (SR-NYSE-2006-104).

<sup>7</sup> See Nasdaq Rules 4510 and 4520.

The Exchange believes that the waiver of initial listing and listing application fees, in particular, is justified from the standpoint of Amex's experience with regard to the time and effort generally required to process listing applications of transferring and dual listing issuers. Issuers listed on other national securities exchanges are already familiar with the regulatory and compliance requirements of a listing regime. The Exchange will conduct a full and independent review of each issuer's compliance with Amex listing standards; however, listed applicants generally raise fewer regulatory and other compliance issues than unlisted applicants because they are already subject to the full panoply of continued listing requirements of their current exchanges. Accordingly, the Exchange believes that the review of a listing application of such an issuer will in most cases be less time-consuming than the review of an application from an issuer not already listed on another market despite the fact that both reviews will be subject to the same degree of regulatory scrutiny.

The Exchange understands that the effect of this proposed rule change will be to impose initially a lower level of listing fees on transferring and dual listing issuers than on some other issuers. Since the Exchange will collect the same level of annual fees and listing of additional shares fees, with the exception of the one-year exemption period for dual listings, from such issuers, however, the Exchange believes that the difference does not constitute an inequitable allocation of fees. In light of a transferring or dual listing issuer's prior payment to another market, the Exchange believes that eliminating initial fees for such issuers is entirely consistent with an equitable allocation of listing fees.

With regards to the imposition of standard annual listing fees to dual listed issuers, the Exchange believes that it is no longer necessary to assess reduced annual listing fees given the proposed initial listing and listing application fee waivers. An issuer currently seeking to dual list on the Exchange can expect to pay \$25,000 to \$35,000 in initial listing fees, inclusive of the

listing application fee,<sup>8</sup> and annual listing fees at a rate of \$8,250 to \$17,000 for five years.<sup>9</sup> When the dual listing program was approved by the Commission,<sup>10</sup> the Exchange thought that a 50% reduction in both initial and annual listing fees would generate new listings. The Exchange has discovered, however, that issuers generally weigh the benefits of a dual listing against the cost of an initial Amex listing, as opposed to the continuing costs of an Amex listing. Since it will be more cost effective for issuers to dual list on Amex if there are zero initial listing fees, the Exchange believes that such issuers will not be dissuaded from dual listing if they are charged standard annual listing fees.

(b) Reverse Mergers

The Exchange also proposes to amend Section 341 of the Amex Company Guide to reduce the fees applicable to the listing of additional shares in connection with Reverse Mergers that occur within 24 months of initial listing on Amex. Section 341 provides that, if an issuer listed on Amex engages in any plan of acquisition, merger, or consolidation, the net effect of which is that it is acquired by an unlisted entity; even if the listed issuer is the nominal survivor, the surviving entity is required to satisfy the initial listing standards. Such transactions are typically referred to as “Reverse Mergers.”

For listings of additional securities in connection with a Reverse Merger, an issuer is currently required to pay a one-time fee of \$10,000 and the applicable listing of additional shares fees set forth in Section 142. In lieu of the \$10,000 fee plus listing of additional shares fees, the Exchange proposes to charge an issuer that completes a Reverse Merger within 24 months of initial listing a one-time fee of \$5,000 and no listing of additional shares fees. The

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<sup>8</sup> See Section 140 of the Amex Company Guide.

<sup>9</sup> See Section 141 of the Amex Company Guide.

Exchange believes that the proposed fee reduction is equitable because such issuers will have recently paid initial and annual listing fees to Amex. Additionally, the Exchange hopes the fee reduction will encourage issuers to maintain their Amex listing following a Reverse Merger.

In conclusion, the Exchange does not expect the financial impact of the fee changes to be material, either in terms of increased levels of annual fees from transferring and/or dual listing issuers or in terms of diminished initial listing and listing of additional shares fees. Even with the proposed rule change in place, the Exchange understands that a change in listing venue is a major step for an issuer, and therefore the Exchange does not expect that the number of transferring and/or dual listing issuers in a given time frame will be sufficient to have a material effect on financial resources. Accordingly, the proposed rule change will not affect Amex's commitment of resources to its regulatory oversight of the listing process or its regulatory program. The Exchange represents that transferring and dual listing issuers and issuers deemed to be engaged in Reverse Mergers will be subject to the same rigorous regulatory review as any other applicant listing on the Amex and will be required to meet all applicable Amex listing standards on a continuing basis.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4)<sup>12</sup> and 6(b)(5)<sup>13</sup> of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Amex's members and issuers and other persons using Amex's facilities, is designed to remove

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<sup>10</sup> See Securities Exchange Release No. 53778 (May 9, 2006), 71 FR 28057 (May 15, 2006) (SR-Amex-2005-125).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between issuers.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will enhance competition by allowing issuers that are listed on another exchange to move their listing to or dual list on Amex without being required to pay fees that are duplicative of fees already paid to that exchange.

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

The Exchange has designated the foregoing rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder<sup>15</sup> because the rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the day on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>16</sup>

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Amex satisfied this requirement.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that granting Amex's request is consistent with the protection of investors and the public interest. The pre-operative delay generally gives parties affected by a rule change a reasonable period to come into compliance. In this case, however, the rule change relates to fee waivers and fee reductions where no adjustment period is necessary. Waiving the pre-operative delay will allow eligible parties to obtain the benefit of the fee waivers and fee reductions immediately. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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-2007-03 on the subject line.

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<sup>17</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2007-03. 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-2007-03 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>18</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).