

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55477; File No. SR-Amex-2006-99)

March 15, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto Relating to Reverse Mergers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 5, 2006, the American Stock Exchange LLC (the “Amex” or the “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 the Exchange. On February 14, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 proposes to amend (i) Section 341 of the Amex Company Guide to clarify the circumstances under which a listed issuer will be deemed to have engaged in a reverse merger thereby requiring the post-transaction entity to satisfy the initial listing standards and the process a listed issuer must follow when applying for initial listing in connection with a reverse

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 makes revisions to the proposed rule text, including revisions conforming the proposed rule text to a filing submitted by The NASDAQ Stock Market LLC (“Nasdaq”) and approved by the Commission in the period following submission of the original filing (Securities Exchange Act Release No. 55052 (January 5, 2007), 72 FR 1569 (January 12, 2007) (SR-NASDAQ-2006-047)) and revisions incorporating an immediately effective filing submitted by Amex in the same period (Securities Exchange Act Release No. 55096 (January 12, 2007), 72 FR 2563 (January 19, 2007) (SR-Amex-2007-03)). Amendment No. 1 replaces and supersedes the original filing in its entirety.

merger and (ii) Section 713 of the Amex Company Guide to require shareholder approval in connection with the issuance or potential issuance of additional listed securities that will result in a change of control of a listed issuer.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 341 of the Amex Company Guide currently provides that if an issuer listed on the Amex engages in any plan of acquisition, merger or consolidation, the net effect of which is that the listed issuer is acquired by an unlisted entity, even if the listed issuer is the nominal survivor, the post-transaction entity is required to satisfy the initial listing standards. Such transactions are typically referred to as "Reverse Mergers." Because the issuer resulting from a Reverse Merger is essentially a different entity from the listed issuer, Section 341 does not permit the post-transaction entity to remain listed on the Amex unless it qualifies as a new listing. This prohibition is intended to prevent "back door listings" whereby an unqualified entity attempts to

obtain an Amex listing. Both the New York Stock Exchange LLC (“NYSE”)⁴ and Nasdaq⁵ have comparable provisions.

Many Reverse Mergers are entered into for bona fide business reasons, however, in some cases listed issuers that are not in compliance with the continued listing standards, and face potential delisting, attempt to enter into Reverse Mergers with private entities in order to retain their Amex listing. In other situations, a listed issuer may be in compliance with the continued listing standards but the post-transaction entity would not satisfy the initial listing standards. In both of these cases, a change of control occurs but the listed issuer attempts to structure the transaction so that it will not be deemed a Reverse Merger under the current rule.

The Exchange proposes amending Section 341 to provide greater clarity and transparency as to (i) what constitutes a Reverse Merger, (ii) the factors the Exchange will consider in determining whether a transaction or series of transactions constitute(s) a Reverse Merger, (iii) the consequences of entering into a Reverse Merger and (iv) the process a listed issuer must follow in connection with a Reverse Merger. The proposed rule change will provide that, in addition to meeting the initial listing standards, a listed company entering into a Reverse Merger will need to obtain shareholder approval in accordance with Section 713 in order to issue additional listed securities in connection with such Reverse Merger. In addition, while the determination of whether a Reverse Merger has occurred or will occur is to some degree subjective, the Exchange proposes to amend Section 341 to more clearly delineate the factors that will be considered by the Exchange in its analysis of a transaction.⁶

⁴ Section 703.08(E) of the NYSE Listed Company Manual.

⁵ Nasdaq Rule 4340(a).

⁶ The Exchange’s proposed Section 341 states that a “Reverse Merger” is: “any plan of acquisition, merger or consolidation whereby a listed company combines with, or into, a company not listed on the Exchange, resulting in a change of control of the listed

With regards to the process to be followed by listed issuers in connection with Reverse Mergers, Section 341 currently recommends that listed issuers submit any proposed plan which could constitute a Reverse Merger to the Exchange for an informal opinion prior to the plan's promulgation. The intent of such provision is to permit Exchange staff to review the proposed transaction in order to determine if it constitutes a Reverse Merger and, in the case of a Reverse Merger, to review the post-transaction entity in order to confirm that it will meet initial listing standards. The Exchange proposes to make such process more transparent by requiring a listed issuer to submit an initial listing application with sufficient time to permit the Exchange to complete its review of the post-transaction entity and providing that delisting proceedings will be commenced if such initial listing application has not been approved prior to consummation of the Reverse Merger. The Commission approved a similar rule change filed by Nasdaq.⁷

In association with the proposed changes to Section 341, the Exchange also proposes to amend Section 713. Section 713 currently requires shareholder approval as a prerequisite to Exchange approval of applications to list additional shares issued in connection with a transaction (other than a public offering) which would involve the application of the initial listing standards as described in Section 341. The Exchange proposes revising Section 713 to require shareholder approval as a prerequisite to Exchange approval of additional listing applications when the issuance or potential issuance of additional securities will result in a change of control of a listed issuer, regardless of whether such change of control also constitutes a Reverse Merger.

company and potentially allowing such unlisted company to obtain an Exchange listing. In determining whether a change of control constitutes a Reverse Merger, the Exchange will consider all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the listed company. The Exchange will also consider the nature of the businesses and the relative size of both the listed and the unlisted companies.” See proposed Section 341 of the Amex Company Guide.

⁷ See supra note 3.

Additionally, the Exchange proposes changes to Sections 341 and 713 to clarify the relationship between their respective requirements. Both NYSE⁸ and Nasdaq⁹ require shareholder approval under such circumstances and the Exchange believes it is necessary and appropriate to require listed issuers to obtain shareholder approval of any issuance or potential issuance of additional listed securities that will result in a change of control. The proposed rule change will provide investors of listed issuers with more input and participation with respect to such decisions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change will promote greater uniformity with the listing standards of other markets.

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.

⁸ Section 312.03(d) of the NYSE Listed Company Manual.

⁹ Nasdaq Rule 4350(i)(1)(B).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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 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 rulecomments@sec.gov. Please include File Number SR-Amex-2006-99 on the subject line.

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-2006-99. 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 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-2006-99 and should be submitted on or before [insert date 21 days from date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).