

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55675; File No. SR-Amex-2006-114)

April 26, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change as Modified by Amendment No. 1 Thereto Clarifying the Continued Listing Standards for Units

I. Introduction

On December 4, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change 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> On February 22, 2007, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on March 22, 2007 for a 21-day comment period.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Section 1003(g) of the Amex Company Guide currently provides that the Exchange will “normally consider” suspending or delisting units if any of their component parts do not meet the applicable continued listing standards. However, if one or more of the components is otherwise qualified for listing, such component may remain listed. For example, a unit comprised of both a common stock component and a debt component would face suspension or delisting procedures if either the common stock or the debt component no longer met its applicable continued listing standards. As a result, if the debt component failed to meet the continued listing standards for

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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> See Securities Exchange Act Release No. 55479 (March 15, 2007), 72 FR 13540 (“Notice”).

bonds, both the unit and such debt component would be subject to suspension or delisting procedures, but the common stock component could independently remain listed and continue to trade on the Exchange, provided such common stock component met the continued listing standards for equity securities.

The Exchange proposes to amend Section 1003(g) of the Amex Company Guide so that, in the event a component of a unit does not meet its continued listing standards, the Exchange would no longer “consider” suspending or delisting the unit, but would commence a formal continued listing evaluation of such component and unit in accordance with Section 1009 of the Amex Company Guide.<sup>4</sup>

The Exchange also proposes to add language to Section 1003(g) on the applicability of certain continued listing standards relating to components of units that have separated. Under the proposal, when units in good standing begin to separate into their component securities, the remaining units that are still intact and the components of those units which have separated may all be separately listed and continue to trade, provided that they meet the applicable continued listing standards. The proposal specifies that, in determining whether an individual component meets the continued listing distribution standards (i.e., number of shares publicly held, number of public shareholders, and aggregate market value of shares publicly held) set forth in Section 1003(b) of the Company Guide,<sup>5</sup> the units that are intact and freely separable into their

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<sup>4</sup> See Section 1009(j) of the Amex Company Guide. Section 1009 generally sets forth the suspension and delisting procedures, timelines, and requirements applicable to issuers identified as being below certain continued listing standards. For example, an issuer of particular securities that receives notification from the Exchange that it is below the continued listing criteria for such securities must publicly announce receipt of such notification and the policies and standards upon which the determination is based

<sup>5</sup> See, e.g., Section 1003(b)(i) of the Amex Company Guide (in the case of common stock, requiring the number of shares publicly held to be no less than 200,000, the total number of public shareholders to be no less than 300, and the aggregate market value of shares

component parts will be aggregated with the separately-traded components. For example, Amex stated that if 120,000 shares of common stock are publicly held after their separation from their units, and 210,000 intact and freely separable units are publicly held, the common stock would be credited with having 330,000 shares publicly held, enabling it to satisfy one of the distribution standards for common stock, which requires at least 200,000 shares of common stock to be publicly held.<sup>6</sup> If the units are no longer freely separable and/or listed on the Exchange, the separately-traded components would still be required to meet their applicable continued listing standards, but the distribution values would not be aggregated.<sup>7</sup>

Despite the fact that the aggregated distribution values satisfy the continued listing distribution standards, under the proposal, the Exchange would also consider suspending trading in, or removing from listing, an individual component or unit when the public distribution or aggregate market value of such component or unit becomes so reduced as to make continued listing inadvisable. In its review of the advisability of the continued listing of an individual component or unit under such circumstances, the Exchange proposes to take into account the trading characteristics of the component or unit and whether it would be in the public interest for trading in such component or unit to continue.

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publicly held to be no less than \$1,000,000 for more than 90 consecutive days). See also Sections 1003(b)(ii)-(v) of the Amex Company Guide (setting forth the applicable distribution and market value requirements for warrants, preferred stock, bonds, and closed-end funds, respectively).

<sup>6</sup> See Section 1003(b)(i)(A) of the Amex Company Guide.

<sup>7</sup> See proposed Section 1003(g) of the Amex Company Guide. The Commission notes that under proposed Section 1003(g), if in the above example the units are no longer freely separable into common stock, there would be no aggregation of units with the common stock for purposes of evaluating whether the units and common stock meet the continued listing standards.

The Exchange also proposes to make technical revisions to Sections 1003(a), (c), (d) and (f) to consistently use the term “issuer” as opposed to “company.”

### III. Discussion and Commission’s Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the Exchange’s rules be designed 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.

The Commission believes that the proposal strengthens the procedures applicable to units when their components fall below continued listing standards, by providing that, in such instances, the Exchange would commence a formal evaluation of the components and unit pursuant to Section 1009 of the Amex Company Guide.

In addition, the proposal sets forth the application of continued listing standards to individual components comprising units once some, but not all, of the units have separated into their component parts, by specifying that the units that are intact and freely separable into their component parts will be counted toward the total distribution numbers<sup>10</sup> required for continued listing of the component. The rule change recognizes the practical situation that as investors decide whether to separate their unit, there may be a period of time at the outset of the separation

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<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>10</sup> See supra note 5 and accompanying text.

period when there may be less components outstanding than necessary to meet the distribution requirements. However, to immediately delist these components during the separation period may be unfair to those investors who still have an opportunity to separate their components and want to trade them in a public market. The rule ensures that to be able to count the units for purposes of the distribution requirements for the component parts, the units must be freely separable into the components, so there is a reasonable basis for assuming that as more units are separated, which adds liquidity to the components, the distribution requirements for the components can, in fact, be separately met.

Under the rule however, if it appears that not enough units will be separated to allow the components to meet the public distribution and aggregate market value requirements independently or there are other concerns, the rule makes clear that Amex should consider delisting the components or unit. This recognizes the fact that although the rule allows the aggregation of units and components for purposes of distribution standards, Amex will need to ensure that there is some minimal level of liquidity in each component and unit and should consider delisting if the public distribution or the aggregate market value of the components or unit has become so reduced as to make continued listing on the Exchange inadvisable. In this regard, the Exchange will take into account the individual distribution values and the trading characteristics of the component or unit and whether it would be in the public interest for continued trading of such component or unit.<sup>11</sup>

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<sup>11</sup> The Commission notes that minimum distribution requirements are extremely important to ensure, among other things, the liquidity of a security and an active public market. The changes being approved for meeting the distribution standards applicable to units and their components recognize the unique trading characteristics and challenges that can occur in meeting the minimum standards during the separation period of the units, while containing certain protections to ensure certain minimum standards will be met.

As Amex noted in its filing, the proposal should help to promote transparency of the Exchange rules relating to the continued listing of units and their components and provide clearer guidance for members and investors trading in such units and/or components. Finally, the technical changes to Section 1003 of the Company Guide ensure that the rule's language will be consistent throughout. Based on the above, the Commission believes the proposal promotes just and equitable principles of trade in such securities and is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2006-114), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris  
Secretary

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