

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-51681; File No. SR-Amex-2005-28)**

**May 11, 2005**

**Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto to Amend Section 1101 of the Amex Company Guide to Make Clarifying and Simplifying Changes Relating to Filing and Notice Requirements Applicable to Amex Listed Issuers**

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 February 28, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On March 18, 2005, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On April 20, 2005, the Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On May 6, 2005, the Amex filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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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 See Form 19b-4, dated March 18, 2005, which replaced and superseded the original filing in its entirety (“Amendment No. 1”). Amendment No. 1 made technical and clarifying changes to the proposed rule change.

<sup>4</sup> See Form 19b-4, dated April 20, 2005, which replaced and superseded Amendment No. 1 in its entirety (“Amendment No. 2”). Amendment No. 2 made technical and clarifying changes to the proposed rule change.

<sup>5</sup> See Form 19b-4, dated May 6, 2005, which replaced and superseded Amendment No. 2 in its entirety (“Amendment No. 3”). Amendment No. 3 made technical and clarifying changes to the proposed rule change. See note 7, infra.

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

The Amex proposes to revise Section 1101 of the Amex Company Guide (“Company Guide”) in order to make clarifying and simplifying changes relating to filing and notice requirements to the Exchange that are applicable to Amex listed issuers. The Amex is also proposing conforming changes to Section 134 (Filing Requirements) and Section 1003 (Application of Policies) of the Company Guide.<sup>6</sup>

The text of the proposed rule change, as amended, is available on the Amex’s website ([www.amex.com](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 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 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**

Section 1101 of the Company Guide sets forth the general and specific SEC filing and notice requirements applicable to Amex listed issuers, including, but not limited to, the frequency and the format of such filings. Section 1101 also provides a summary guide to the

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<sup>6</sup> See Amendment No. 3.

SEC filing requirements, as well as certain reports and notices that listed companies must file with the Exchange, including the date of such filings, the number of copies to be filed with the Exchange, and the relevant Company Guide sections that correspond with each such filing. These Amex requirements also are separately set forth in the applicable Company Guide sections. However, the summary guide contained in Section 1101, which has been in effect for many years, does not contain a complete itemization of all applicable Amex notice and filing requirements. The Amex believes that this can be confusing to Amex listed issuers. In addition, as a result of recent changes to SEC report designations and filing requirements, the summary guide requires several updating revisions.

In order to ensure that Section 1101 remains accurate without the need for continuous revisions necessitated by changes in SEC and/or Amex requirements, the Amex proposes that the operative language be revised and simplified to provide that listed issuers are required to comply with all applicable SEC filing requirements, as well as all Amex requirements, with respect to timely notice and submissions.<sup>7</sup> As noted above, these Amex requirements are set forth separately in other provisions of the Company Guide. The proposed revisions to Section 1101 set forth generally these Amex notice and submission requirements, but the detailed summary guide is proposed to be eliminated. Instead, Amex proposes to post a comparable guide itemizing these requirements on its Web site ([www.amex.com](http://www.amex.com)) as a service to Amex listed issuers and proposes to update it as necessary.

Section 1101 currently requires that Amex issuers submit reports with various numbers of duplicates to the Exchange. The quantity of duplicates ranges from zero (0) to five (5). For

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<sup>7</sup> The Commission Notes that Section 1003, concerning compliance with Exchange requirements, has also been amended to clarify that listed companies must meet all SEC requirements, as well as Exchange requirements, and can be removed from listing for failure to comply.

simplifying purposes, and to be consistent with The National Association of Securities Dealers Automated Quotation Stock Market's requirements,<sup>8</sup> the Amex is proposing to require its issuers to file three (3) copies of all reports that are required to be filed with the Exchange.

Section 1101 of the Company Guide currently requires Amex issuers to file three (3) copies of their annual reports to shareholders with the Exchange in hardcopy. The Amex proposes to amend this requirement so that electronic submission of annual reports through the SEC's Electronic Data Gathering Analysis and Retrieval ("EDGAR") system satisfies the Exchange's filing requirement. Reports that are filed via EDGAR are readily accessible to the Exchange; therefore, it is not necessary for companies that file through EDGAR to also submit hardcopies to the Amex.

The Amex is proposing to remove the requirement that issuers file with the Exchange proposed amendments to and certified copies of the Certificate of Incorporation, By-laws, or other similar organization documents because these corporate documents are required to be filed on Form 8-K or other SEC forms. Therefore, these documents no longer need to be filed in hardcopy with the Exchange if they have been submitted through EDGAR. Filing requirements pertaining to the material sent to or released to the press would be required to be submitted to the Exchange pursuant to the proposed new rule text.

To the extent that the Amex updates its Web site, it would be to reflect changes to the SEC's requirements and Amex rules. The Amex notes that any changes to Amex rules would continue to be filed with the Commission prior to implementing any change and that, subsequent to approval, the Web site would be updated to reflect those changes. The Amex represents that the information on the Web site would be readily accessible to issuers and would reflect the

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<sup>8</sup> See NASD Rule 4310(c)(14).

current rules and regulations.

The Amex is also proposing conforming changes to Section 134 (Filing Requirements) and Section 1003 (Application of Policies) of the Company Guide.<sup>9</sup>

## **2. Statutory Basis**

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act,<sup>11</sup> in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange.

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

The Exchange believes that the proposed rule change will impose no 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**

No written comments were solicited or received by the Exchange on this proposal.

## **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

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<sup>9</sup> See Amendment No. 3.

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

<sup>11</sup> 15 U.S.C. 78f(b)(1).

- (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, 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-2005-28 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-28. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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-2005-28 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>12</sup>

Jill M. Peterson  
Assistant Secretary

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