

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52408; File No. SR-Amex-2005-024)

September 12, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Establish a Process for the Waiver, Deferral, or Rebate of Listing Fees for Certain Closed-End Funds

I. Introduction

On February 17, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² to provide a process for the waiver, deferral, or rebate of listing fees for certain closed-end funds. On July 27, 2005, Amex amended the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on August 11, 2005.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange is proposing to amend Section 140 of the Amex Company Guide to provide that the Amex Board of Governors or its designee may, in its discretion, waive, defer, or rebate all or any part of the initial listing fee applicable to a closed-end fund that transfers to Amex from another marketplace. The Exchange currently has the authority to waive, defer, or rebate initial listing fees applicable to stocks, bonds, and warrants. To enable it to respond to specific competitive situations, the Exchange believes it is appropriate to have the authority to waive, defer, or rebate all or any part of the listing fees applicable to closed-end funds that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52216 (August 5, 2005), 70 FR 46896.

transfer to Amex from another marketplace. Such authority could be exercised only by the Amex Board of Governors or its designee. The Amex Board of Governors has delegated this authority to a staff committee, comprised of management representatives from the Office of the Chairman and the ETF Marketplace, Finance and Listing Qualifications Departments. In addition, an attorney from the Office of the General Counsel would provide legal counsel to the committee.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,⁵ which requires, among other things, that the Exchange's rules provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using its facilities. This proposal gives Amex similar authority with respect to listing fees for closed-end funds as it already possesses with respect to listing fees for stocks, bonds, and warrants.⁶ In addition, the Commission notes that it has previously approved a similar proposal by another self-regulatory organization.⁷

⁴ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(4).

⁶ See Securities Exchange Act Release No. 50270 (August 26, 2004), 69 FR 53750 (September 2, 2004) (SR-Amex-2004-70).

⁷ See Securities Exchange Act Release No. 28731 (January 2, 1991), 56 FR 906 (January 9, 1991) (SR-NASD-90-61).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Amex-2005-024) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz
Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).