

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52630; File No. SR-Amex-2005-097)

October 18, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Amex Listing Agreement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 2005, 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, II, and III below, which Items have been prepared by the Exchange. 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 adopt a modified Amex Listing Agreement for the purpose of (i) combining the two forms of Amex Listing Agreements presently available into one form of Amex Listing Agreement to be submitted to the Exchange by all issuers in connection with a listing application; (ii) eliminating a representation by issuers of structured products, exchange-traded funds, trust issued receipts and other novel securities products regarding third party claims; and (iii) making certain minor, non-substantive changes to the Amex Listing Agreement.

The text of the proposed rule change is available on the Amex’s Web site, <http://www.amex.com>, at the Amex’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposal. 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

To list on the Exchange, an issuer must execute an Amex Listing Agreement in connection with its listing application. The Exchange currently has two forms of Amex Listing Agreements: (i) a listing agreement for securities listed pursuant to Sections 106 (Currency and Index Warrants) and 107 (Other Securities) of the Amex Company Guide and pursuant to Amex Rules 1000 (Portfolio Depository Receipts), 1000A (Index Fund Shares) and 1200 (Trust Issued Receipts) (the "Other Securities Listing Agreement") and (ii) a listing agreement for all other securities (the "Basic Securities Listing Agreement"). The Exchange proposes to consolidate the two forms of Amex Listing Agreements into one form for issuers of all types of securities.

The Other Securities Listing Agreement and Basic Securities Listing Agreement differ in only one respect: in paragraph (4) of the Other Securities Listing Agreement ("Paragraph (4)"), issuers represent that they will not implead, cross-claim against or sue the Exchange or its affiliates as a result of third party claims against the issuer. The Exchange created the Other Securities Listing Agreement in 2002³ to address concerns about the Exchange's potential legal

³ See Securities Exchange Act Release No. 46451 (September 10, 2002), 67 FR 57468 (September 3, 2002) (SR-Amex-2002-46).

exposure, particularly in the area of intellectual property rights associated with exchange-traded funds, HOLDRs and other structured products. The adoption of Paragraph (4) reflected the position that, even though the Exchange's sole involvement with any particular product is that it approved the product for listing and that the securities trade on the Exchange, it was foreseeable that litigation relating to the products could include the Exchange as a defendant and that the inclusion of Paragraph (4) in the listing agreement might reduce the Exchange's legal exposure and litigation in some circumstances.

The Exchange now proposes to delete Paragraph (4) from the Amex Listing Agreement. The Exchange believes that none of the listing agreement forms provided by other exchanges contain a provision similar to Paragraph (4). The Exchange believes that modification of the Amex Listing Agreement to more closely resemble the listing agreements provided by other exchanges will promote fair competition between exchange markets and benefit issuers of exchange-traded funds and other structured products by simplifying their responsibilities and obligations in connection with the listing process.

The Exchange is also proposing other minor changes to the Amex Listing Agreement, to clarify existing provisions about which issuers have raised questions.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

securities, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

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

The Amex believes that the proposed rule change would 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

The Exchange did not solicit or receive any written comments with respect to the 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
- 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 rule-comments@sec.gov. Please include File Number SR-Amex-2005-097 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-097. 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 Exchange. 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-2005-097 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.⁶

Jonathan G. Katz
Secretary

⁶ 17 CFR 200.30-3(a)(12).