

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52804; File No. SR-Amex-2005-114)

November 18, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Amex Initial Listing Standards

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 November 2, 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. On November 10, 2005, the Amex submitted 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 Amex proposes to amend Section 102(b) of the Amex Company Guide (“Guide”) to require a minimum market price of \$2 per share for issuers seeking to qualify for initial listing pursuant to Initial Listing Standard 3 (Section 101(c)). The Amex also proposes to amend Section 101 of the Guide to include a reference to Section 102(b) in each of the four initial listing standards to clarify that Section 102(b) applies to each initial listing standard listed in Section 101 of the Guide.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 (“Amendment No. 1”) makes a clarification to the purpose section of the filing and makes changes to Section 101 of the Guide, to reference Section 102(b) of the Guide in the listing provisions.

⁴ See Amendment No. 1, Id.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in [brackets].

AMERICAN STOCK EXCHANGE COMPANY GUIDE

CRITERIA FOR ORIGINAL LISTING

Sec. 101. GENERAL

The approval of an application for the listing of securities is a matter solely within the discretion of the Exchange. The Exchange has established certain minimum numerical standards, set forth below. The fact that an applicant may meet the Exchange's numerical standards does not necessarily mean that its application will be approved. Other factors which will also be considered include the nature of a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, its financial integrity, its demonstrated earning power and its future outlook.

See §110 for special criteria relating to foreign issuers and Rules 1000, 1000A, and 1200 for rules relating to Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts.

(a) INITIAL LISTING STANDARD 1

(1) - (3) No change.

(4) Stock Price/Market Value of Shares Publicly Held — See Section 102(b).

(b) INITIAL LISTING STANDARD 2

(1) - (4) No change.

(5) Stock Price/Market Value of Shares Publicly Held — See Section 102(b).

(c) INITIAL LISTING STANDARD 3

(1) - (4) No change.

(5) Stock Price/Market Value of Shares Publicly Held — See Section 102(b).

(d) INITIAL LISTING STANDARD 4

(1) - (3) No change.

(4) Stock Price/Market Value of Shares Publicly Held — See Section 102(b).

(e) - (g) No change.

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Sec. 102. EQUITY ISSUES

(a) No change.

(b) Stock Price/Market Value of Shares Publicly Held—The Exchange requires a minimum market price of \$3 per share for applicants seeking to qualify for listing pursuant to Section 101

(a), (b) or (d), a minimum market price of \$2 per share for applicants seeking to qualify for listing pursuant to Section 101(c), and \$3,000,000 aggregate market value of publicly held shares for applicants seeking to qualify for listing pursuant to Section 101(a). [In certain instances, however, the Exchange may favorably consider listing an issue selling for less than \$3 per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above \$3 per share, the applicant's capitalization and the number of outstanding and publicly-held shares of the issue.]

(c) No change.

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, as amended. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex states that an approval of an application for the listing of securities on the Exchange is based on an applicant's ability to satisfy a series of quantitative and qualitative listing standards as evaluated by the Listing Qualifications Department. The Amex represents that the quantitative standards currently provide four alternative approaches for a company to satisfy the Amex's initial listing standards.

For applicants to meet Initial Listing Standards 1, 2 and 4 (Guide Section 101 (a), (b), and (d), respectively), in addition to specified minimum numerical standards, the Exchange requires a minimum market price of \$3 per share. Listing Standard 3 currently requires an applicant to meet minimum specified numerical standards but does not require the applicant to meet a minimum market price per share.

The Exchange is proposing to enhance its initial listing quantitative standards to require applicants seeking to qualify under Initial Listing Standard 3 pursuant to Section 101(c) of the Guide to have a minimum market price of \$2 per share. Accordingly, the Exchange is proposing to amend Section 102(b) to incorporate this requirement. The Exchange also proposes to amend Section 101 of the Guide to include a reference to Section 102(b) in each of the four initial listing standards to clarify that Section 102(b) applies to each standard listed in Section 101 of the Guide.⁵

⁵ See Amendment No. 1, supra note 3.

In addition, the Exchange proposes to delete the last sentence of Section 102(b) of the Guide. The Exchange states that this provision, which has been in place for many years, gives the Exchange the discretion under certain circumstances to consider listing an issue that qualified under Initial Listing Standards 1, 2 or 4 even if the issue's share price is less than \$3. The Exchange represents that this provision was meant to cover the situation in which an applicant issuer meets all of the initial listing standards but experiences a decline in share price to below \$3 per share just before listing. In light of the current and proposed configuration of the initial listing standards, the Exchange believes that this provision is no longer necessary or appropriate.⁶

2. Statutory Basis

The Exchange believes the proposal, as amended, is consistent with Section 6(b) of the Act⁷, in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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 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 the proposal 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.

⁶ Id.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

The Exchange believes the proposed rule change, as amended, 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, as amended.

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 the proposed rule change, as amended, 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, 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. Please include File Number SR-Amex-2005-114 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-2005-114. 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 the 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-2005-114 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.⁹

Jonathan G. Katz
Secretary

⁹ 17 CFR 200.30-3(a)(12).