

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-53050; File No. SR-Amex-2005-114)

January 3, 2006

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

I. Introduction

On November 2, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 102(b) of the Amex Company Guide (“Company 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) of the Company Guide). On November 10, 2005, the Exchange filed Amendment No. 1 (“Amendment No. 1”) to the proposed rule change to amend Section 101 of the Company Guide to include a reference to Section 102(b) of the Company Guide in each of the four initial Amex listings standards to clarify that Section 102(b) of the Company Guide applies to each standard.³ The proposed rule change and Amendment No. 1 were published for comment in the Federal Register on November

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Amendment No. 1 clarified the purpose section of the filing and made proposed changes to Section 101 of the Company Guide to reference Section 102(b) of the Company Guide in the listing provisions.

28, 2005.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description

In its filing, the Amex stated 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 represented 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 (Company 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. The Amex noted that although Listing Standard 3 currently requires an applicant to meet minimum specified numerical standards, it does not require the applicant to meet a minimum market price per share.

The Exchange proposed 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 Company Guide to have a minimum market price of \$2 per share. In order to do so, the Exchange proposed to amend Section 102(b) to incorporate this requirement. The Exchange also proposed to amend Section 101 of the Company Guide to include a reference to Section 102(b) of the Company Guide in each of the four initial listing standards to clarify that Section 102(b) of the Company Guide applies to each of the four listing standards.⁵

4 Securities Exchange Act Release No. 52804 (November 18, 2005), 70 FR 71342 (November 28, 2005) (SR-Amex-2005-114).

5 See Amendment No. 1, supra note 3.

In addition, the Exchange proposed to delete the last sentence of Section 102(b) of the Company Guide. The Exchange noted 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 represented 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 stated that it believes that this provision is no longer necessary or appropriate.⁶

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁹

6 Id.

7 15 U.S.C. 78f(b).

8 15 U.S.C. 78f(b)(5).

9 In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

The Commission believes that the proposed rule change will allow for the evaluation of an issuer's initial listing eligibility against more comprehensive criteria and strengthen the listing standards of the Amex. The Commission notes that the three other listing standards (i.e., Listing Standards 1, 2, and 4) of the Amex already contain a \$3 market price requirement.¹⁰ The adoption of a \$2 minimum market price for listing under Section 101(c) of the Company Guide will help to ensure that all companies initially listing on Amex under Section 101 must meet a minimum price requirement. The Commission notes that under Section 101 of the Company Guide, the fact that an applicant may meet the Amex's numerical standards does not necessarily mean its application will be approved, and Section 101 of the Company Guide sets forth other factors the Exchange may consider for listing, including the nature of the applicant's business and the reputation of management, among others. The Commission expects Amex to continue to review companies for listing under all the relevant factors. The new standard being adopted, as well as the elimination of the discretionary provision in Section 102(b) of the Company Guide, will nevertheless ensure that a minimum price must be met at the outset to be considered for initial listing under Section 101 of the Company Guide.¹¹

Finally, the Commission notes that the rule proposal does not discriminate among different issuers because the new minimum price standard for listing under Section 101(c) of the Company Guide will apply equally to all potential issuers for listing. Based on the above, the Commission believes that the proposal will help investors and the public interest by ensuring that

¹⁰ See Sections 101 and 102 of the Company Guide.

¹¹ The Commission believes the adoption of the \$2 minimum market price standard under Section 101(c) of the Company Guide is a good, first step in strengthening Amex's listing standards and continues to encourage the Exchange to consider adopting a minimum market price continued listing standard.

securities that are listed on the Exchange, pursuant to Initial Listing Standard 3 of Section 101(c) of the Company Guide, are traded initially at least with a \$2 minimum market share requirement and must meet a minimum price listing standard at all times.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Amex-2005-114), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris

Secretary

12 15 U.S.C. 78f(b).

13 17 CFR 200.30-3(a)(12).