

assets and revenues in substitution of shareholders' equity. As accounting requirements become increasingly complex, it is important to provide such alternative criteria so that financially sound issuers are not precluded from listing on the Exchange solely on the basis of particular accounting conventions. Specifically, the new initial listing standard would require the following:

Total value of market capitalization: \$75 million, or

Total assets and total revenue: \$75 million each (in most recent fiscal year or two of last three most recently completed fiscal years)

Price: \$3

Market value of public float: \$20 million

Public float shares/public stockholders:

500,000/800 or 1 million/400 or

500,000/400 (plus average daily volume of 2,000 shares)

The Exchange states that the proposed new standard is not materially different from standards in place at other marketplaces and is consistent with existing Amex listing standards. In this regard it should be noted that both the New York Stock Exchange ("NYSE") and Nasdaq listing standards contain a variety of alternative qualifications standards, including standards based on measures of market capitalization, revenue and assets.

It is also proposed that corresponding revisions be adopted to the continued listing standards to provide that a listed company will not be subject to delisting (assuming compliance with other applicable standards) even if it has experienced net losses or losses from continuing operations, and does not satisfy existing equity requirements<sup>4</sup> if it is in compliance with the following requirements:

- Total value of market capitalization: \$50 million, or

- Total assets and revenue: \$50 million each (in most recent fiscal year or two of last three most recently completed fiscal years), and

- At least 1,100,000 shares publicly held, a market value of publicly held shares of at least \$15,000,000 and 400 round lot shareholders.

The Exchange believes that an issuer with significant market capitalization or assets and revenue should be able to continue its listing despite several years of losses (and assuming compliance with other applicable continued listing

standards), in that these financial measures are generally an indication of a company's strength.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> 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 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. Specifically, the Exchange believes that the proposed rule change will allow for the evaluation of an issuer's listing eligibility against more meaningful and comprehensive criteria. The Exchange also believes that the proposed rule change will provide investors and potential investors in the securities that would be eligible for listing with the benefits inherent in an Amex listing. According to the Exchange, these benefits include: comprehensive regulation; transparent price discovery and trade reporting to facilitate best execution; and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

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

The Exchange does not believe that the proposed rule change will impose any 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 has neither solicited nor received written comments on the proposed rule change.

## 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-97 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46916; File No. SR-AMEX-2002-36]

### Self-Regulatory Organizations; American Stock Exchange L.L.C.; Notice of Filing of Proposed Rule Change To Establish Resolution Times for Uncompared Transactions

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>4</sup> Section 1003(a) of the Amex Company Guide provides that a listed company which has sustained losses in two of its three, three of its four, or five of its most recent fiscal years will be subject to delisting if its stockholders' equity is less than \$2 million, \$4 million or \$6 million, respectively.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

("Act"),<sup>1</sup> notice is hereby given that on April 22, 2002, American Stock Exchange LLC ("Amex") 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 primarily by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.<sup>2</sup>

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

The purpose of the proposed rule change is to amend Amex's rule 731 and to adopt Commentary .08 to rule 731 to provide flexibility in establishing resolution times for uncomparing transactions in equities, including shares of exchange traded funds and shares of trust-issued receipts.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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. Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The resolution of uncomparing trades ("DKs") has gone through substantial revision as the nature of trade comparison has changed. In 1966, standardized forms were adopted for the timely and efficient resolution of DKs. The primary responsibility for DK resolution at that time was entrusted to floor members.<sup>4</sup> In 1978, the time limit for replying to a DK notice was set at 3:45 p.m. on trade date plus three business days ("T+3") or prior to 10 a.m. on trade date plus five business days ("T+5") if a specialist or

independent member was involved. Upon a change in the opening to 9:30 a.m. in 1985, members were then required to reply to a DK notice involving a specialist or independent member prior to 9:30 a.m. on T+5.

The Commission's 1987 Market Break Report<sup>5</sup> resulted in a major initiative to shorten the comparison process, including the development in 1990 of Amex's Intra-Day Comparison system ("IDC").<sup>6</sup> In 1990, Amex also implemented rule 719, Comparison of Exchange Transactions, which required that any transactions effected on the exchange must be compared or otherwise closed out by Amex's close of business on the business day following the day of the contract.<sup>7</sup> Amex adopted further rule changes in 1991 to formalize the operational procedures for full implementation of Amex's electronic equity trade comparison facility.<sup>8</sup> Among the new rules adopted was rule 731, Resolution of Uncomparing Transactions, that expressly required that member organizations resolve uncomparing trades no later than 3 p.m. on T+1 or 3:30 p.m. on T+1 if an agent was involved.

Because of the inherent risks in the settlement process and in uncomparing trades, Amex believes it should have the flexibility to change the time periods for the resolution of DKs. For example, market conditions and systemic changes may require Amex to implement different cut-off time periods for the resolution of DKs depending on the particular product, such as stocks, bonds, ETFs, or TIRs. Accordingly Amex proposes to amend rule 731 to allow Amex to establish DK resolution time periods for equities, bond, ETFs, and TIRs as appropriate.

Specifically, the proposed rule change will amend rule 731 by providing Amex

flexibility in determining cut-off times and dates for member organizations to make any necessary additions, deletions, or changes to its DK data and in determining cut-off times for resolution and acceptance of DKs remaining uncomparing in the system. The proposed rule change also will adopt Commentary .08 to rule 731 that extends the applicability of the rule to Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts orders to buy or sell a security where the price is derivatively based upon another security or index of securities.<sup>9</sup> The proposed Commentary also provides that Amex may establish separate times to review and resolve DKs in these products.

The proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general and furthers the objectives of section 6(b) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, protect investors and the public interest.

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

The proposed rule change will impose no burden on competition.

#### *(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 with respect to the proposed rule change.

### **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 self-regulatory organization 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.

<sup>9</sup>Orders to buy or sell an option will continue to be covered by rule 950(f) and the applicable Commentary to rule 950.

<sup>10</sup>15 U.S.C. 78q-1.

<sup>5</sup>Commission, Division of Market Regulation, The October 1987 Market Break (February 1988).

<sup>6</sup>Exchange Act Release No. 28069 (May 29, 1990), 55 FR 23324 (June 7, 1990), (SR-Amex-90-01) (order approving IDC for post-trade processing of transactions in equity securities).

<sup>7</sup>Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 (April 5, 1990), (SR-Amex-89-05) (order permanently approving rule requiring regular way trades be compared or closed out by close of business on T+1). In 1994, the SEC approved trade date submission of comparison data at the Amex. Exchange Act Release No. 34298 (July 1, 1994), 59 FR 35397 (July 11, 1994), (SR-Amex-94-13) (order approving program to compare equity trades on trade date). Today Rule 719(a) requires members and member organizations to submit comparison data to their clearing firm for any transaction executed on Amex within two hours of the trade.

<sup>8</sup>Exchange Act Release No. 29157 (May 2, 1991), 56 FR 21510 (May 9, 1991), (SR-Amex-90-16) (order approving rule detailing mechanics of resolving uncomparing equity trades through IDC).

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

<sup>2</sup>Amex staff informed the Commission staff on October 23, 2002, that it had satisfactorily concluded its discussions with the National Securities Clearing Corporation regarding the filing.

<sup>3</sup>The Commission has modified the text of the summaries prepared by Amex.

<sup>4</sup>A separate rule for uncomparing options trades, rule 970, was adopted when options commenced trading at the Amex in 1975. Rule 970 sets forth the procedures for settling uncomparing options trades through the Rejected Option Transaction Notice.

#### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Amex. All submissions should refer to File No. SR-Amex-2002-36 and should be submitted by December 26, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46905; File No. SR-Amex-2002-85]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to Amendments to Sections 610 and 701 of the Exchange Company Guide

November 25, 2002.

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 October 17, 2002, 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 19, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 Sections 610 and 701 of the Amex *Company Guide* to clarify that annual reports and proxy materials may be delivered as permitted by and in compliance with applicable state and federal law. The text of the proposed rule change is below. New language is italicized; deleted language is bracketed.

#### Sec. 610. Publication of Annual Report

A listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements prepared in conformity with the requirements of the Securities and Exchange Commission. The company must disclose in its annual report to security holders, for the year covered by the report: (a) The number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options. Three copies of the report must be filed with the Exchange. *Distribution of the annual report to shareholders shall be in such format and by such means as permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, materials referenced in*

<sup>3</sup> See letter from Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 18, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to add the phrase "(including any interpretations thereof by the SEC)" to Section 610 of the Amex *Company Guide*.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

*Sec. 701, Comm. .01 of the Company Guide)*

#### Sec. 701. Filing Material [Mailed] Distributed to Shareholders

A listed company is required to file with the Exchange five copies of proxy statements, forms of proxy and other soliciting materials [mailed] *distributed* to shareholders. A listed company is also required to file with the Exchange one copy of the notice of shareholders' meetings and three copies of annual reports [mailed] *distributed* to shareholders. Copies of such materials should be sent to the Exchange when [mailed] *distributed* to shareholders, unless the material was otherwise filed electronically with the SEC.

#### Commentary .01

*Proxy statements, forms of proxy and other soliciting materials shall be distributed by such means as are permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, the following interpretations by the SEC: Release No. 34-36345, File No. S7-31-95; Release No. 34-37182, File No. S7-13-96; and Release No. 34-42728, File No. S7-11-00). Companies should also note Rule 576 applicable to member organizations regarding transmission of proxy material to customers.*

#### 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

The Commission in recent years has issued several interpretations regarding electronic delivery of materials to shareholders, including proxy materials. The Exchange has rules governing delivery of proxy materials by member organizations to shareholders (Amex Rules 574 through 585). Many of these rules are also included in the Amex *Company Guide* (Amex Sections 720 through 725). In addition, Amex Section

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.