

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57268; File No. SR-Amex-2006-31)

February 4, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to Annual Shareholder Meeting Requirements

I. Introduction

On April 7, 2006, 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 704 (Annual Meetings) of the Amex Company Guide.³ On December 13, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On December 20, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended by Amendment Nos. 1 and 2 thereto, was published for comment in the Federal Register on December 28, 2007.⁴ On January 4, 2008, the Exchange filed Amendment No. 3 to the proposed rule change.⁵ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1, 2 and 3 thereto.

II. Description of the Proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Section 704 of the Amex Company Guide.

⁴ See Securities Exchange Act Release No. 57016 (December 20, 2007), 72 FR 73911.

⁵ In Amendment No. 3, Amex made several minor typographical corrections to the proposed rule text of Exhibit 5 to accurately reflect the names of certain securities. Because Amendment No. 3 is technical in nature, it is not subject to notice and comment.

Amex seeks to amend its annual shareholder meeting requirement applicable to its listed issuers. Currently, Section 704 of the Amex Company Guide requires all listed companies to hold an annual meeting of their shareholders in accordance with such listed company's charter, by-laws, and applicable state or other laws. An annual meeting allows the equity owners of a company the opportunity to elect directors and meet with management to discuss company affairs. The Exchange believes, however, that this requirement is not necessary for certain issuers of specific types of securities because the holders of such securities do not directly participate as equity holders and vote in the election of directors. In addition, Amex seeks to clarify when an issuer should hold its annual meeting and remove the notice requirement for delayed annual meetings.

First, Amex proposes to amend Section 704 of its Company Guide to explicitly state that an issuer generally must hold an annual meeting within one year of the end of its fiscal year if it is subject to the annual shareholder meeting requirement. In addition, a new listing that was not previously subject to the requirement to hold an annual meeting would be required to hold its first annual shareholder meeting within one year of its fiscal year end following the date of listing. Amex proposes two exceptions to these general requirements: (1) an issuer is not required to hold an annual meeting if its fiscal year is less than twelve months long as a result of a change in its fiscal year end; and (2) an issuer does not have to hold an annual meeting in the same year in which it completes its initial public offering.

Amex also proposes to list a variety of securities, the issuers of which should not be subject to the foregoing general annual shareholder meeting requirement. For example, Amex proposes to exempt from the requirement issuers of a number of securities listed pursuant to Section 107 (Other Securities) of the Company Guide and certain other securities issued by

various passive business organizations.⁶ The Exchange states that these types of securities are typically not an issuer's primary equity security, and their holders have only limited economic interests or other rights, which do not include voting rights. Although many of these products are issued by operating companies with listed equity securities and are thus subject to an annual meeting requirement pursuant to the primary market's rules, the Exchange stated in its filing that the Company Guide should specifically exempt from such requirement those operating companies which do not issue common stock or voting preferred stock.⁷

Similarly, Amex proposes to exempt from the general annual meeting requirement portfolio depository receipts and index fund shares, which are securities issued by unit investment trusts ("UITs") and open-end management investment companies, respectively (collectively, "ETFs"), and typically organized as business trusts. ETFs, which are generally passive investment vehicles that seek to match the performance of an index, must obtain an exemptive order from the Commission before they offer securities. As a result, their operations are circumscribed by numerous representations and conditions contained in the applicable orders, and they do not typically experience the need for operational or other changes requiring a

⁶ The various types of securities which the Exchange believes should not be subject to the annual shareholder meeting requirement include: bonds and debentures; currency and index warrants; trust preferred securities; contingent value rights; equity-linked term notes; index-linked exchangeable notes; index-linked securities; commodity-linked securities; currency-linked securities; trust certificate securities; investment trusts based on securities of individual issuers, stock indexes, or debt instruments; equity derivatives; trust issued receipts; commodity-based trust shares; currency trust shares; certain partnership interests; and paired trust shares. Amex believes that the foregoing securities should be exempt because they do not entitle their respective holders to voting rights.

⁷ The Commission notes that issuers of convertible bonds and/or debentures listed pursuant to Section 104 of the Amex Company Guide are not exempt from the annual shareholder meeting requirement because such issuers must hold annual shareholder meetings with respect to the underlying common stock. See infra note 15 and accompanying text.

shareholder vote, and, by extension, a shareholder meeting.⁸ In addition, UITs do not have boards of directors, which the UITs' unitholders would need to elect.⁹ Accordingly, the Exchange submits that Section 704 of the Amex Company Guide should specifically exclude ETFs from the annual shareholder meeting requirement.

Amex further proposes to exempt from the annual meeting requirement issuers of a variety of trust issued receipts ("TIRs")¹⁰ based on securities, commodities, and currencies. Traditional TIRs (i.e., HOLDRs) are securities issued by a trust that holds, but does not manage, specific securities on behalf of investors in the trust. Other types of TIRs also include Commodity-Based Trust Shares¹¹ and Currency Trust Shares.¹² The Exchange states that these trusts typically do not hold shareholder (or unitholder) meetings because the trusts have no board of directors and essentially serve as conduits for the investors' indirect investments in the underlying securities, commodities, and/or currencies of the trusts. Similarly, the Exchange lists Partnership Units, which are securities issued by a partnership that invests in a combination of futures contracts, options on futures contracts, forward contracts, commodities, and/or

⁸ The Exchange states that ETFs are registered under, and remain subject to, the Investment Company Act of 1940, which already imposes various shareholder-voting requirements that may be applicable to the ETFs.

⁹ The Exchange states that UITs are typically operated or administered by a corporate trustee, and the portfolio of a UIT, which generally consists of a fixed pool of securities, is not actively managed.

¹⁰ A trust issued receipt is defined in Amex Rule 1200(b) as a security: (1) that is issued by a trust which holds specified securities deposited with the trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (3) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

¹¹ See Amex Rule 1200A.

¹² See Amex Rule 1200B.

securities.¹³ A holder of a Partnership Unit does not have the right of equity ownership of the partnership, but instead, obtains a beneficial interest in the partnership. Because the partnership is a conduit for the investment in the underlying assets, the operation and management of the partnership is performed by a general partner without holding annual meetings. Lastly, Paired Trust Shares (also known as MACROS) are securities designed to track either the positive or negative performance of a benchmark underlying asset.¹⁴ The shares are issued by a trust in pairs, with the trust not holding the underlying asset, but instead holding only short-term U.S. Treasuries and cash equivalents. As the market price of the underlying asset fluctuates, U.S. Treasuries and cash are moved between the trusts. As indicated above in connection with TIRs, issuers of Paired Trust Shares typically do not hold shareholder (or unitholder) meetings because the trusts have no board of directors and essentially serve as conduits for the investors' indirect investments in the performance of the underlying benchmark asset. As a result, Amex believes that Section 704 of the Amex Company Guide should specifically exempt the issuers of TIRs, Commodity-Based Trust Shares, Currency Trust Share Shares, Partnership Units, and Paired Trust Shares from the annual shareholder meeting requirement.

For these reasons, Amex states that it has not generally required issuers of these securities to hold annual shareholder meetings in the past, consistent with their respective governance and organizational documents. However, in order to provide greater certainty and transparency for listed issuers, Amex believes it is appropriate to revise Section 704 of the Company Guide to clarify that only issuers of voting and non-voting common stock and voting preferred stock, and their equivalents (e.g., callable common stock) are required to hold an

¹³ See Amex Rule 1500.

¹⁴ See Amex Rule 1400.

annual shareholder meeting. With respect to the proposed list of securities, the issuers of which would be exempt from holding an annual meeting, if such issuers also list common stock or voting preferred stock, or their equivalent, such issuers must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.¹⁵ In addition, the Exchange notes that the proposed annual meeting requirement and the listed exemptions from such requirement do not supplant any applicable state or federal securities laws concerning annual shareholder meetings.

Finally, Amex proposes to remove the provision from Section 704 of the Company Guide that requires an issuer, who is unable to hold an annual shareholder meeting in a timely manner, to notify the Exchange and the stockholders of such issuer of the reasons for the delay, and then use good faith efforts to hold the meeting as soon as reasonably practicable in light of the circumstances causing the delay. Amex believes it is more appropriate to address annual meeting delays through its “Continued Listing and Evaluation and Follow-Up” procedures which are part of the rules governing suspension and delisting under Section 1009(a)(i) of the Company Guide.¹⁶ Amex states that it currently does not rely on such notification required in Section 704 of the Company Guide to monitor compliance with the annual shareholder meeting requirement. Instead, the Exchange staff utilizes an electronic database supplemented by manual review of proxy statements and, in the case of issuers that do not file proxy statements, other Commission filings to determine compliance. The electronic database receives public filings on a real-time basis (*i.e.*, deemed to be within one business day) and generates alerts, which are investigated by

¹⁵ See proposed Commentary .01 to Section 704 of the Amex Company Guide. See also *supra* note 7.

¹⁶ See Section 1009(a) of the Amex Company Guide.

analysts.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.

The Commission believes that the Exchange's proposal relating to the annual shareholder meeting requirement for listed issuers is consistent with the Act. Specifically, the Commission believes that clarifying that the issuers of voting and non-voting common stock and voting preferred stock, and their equivalents (e.g., callable common stock) are required to hold an annual shareholder meeting, the time frame within which such issuer is required to hold its annual shareholder meeting, and the general exceptions to this proposed rule will provide additional transparency and certainty to the annual shareholder meeting requirement.

In addition, with respect to the proposed list of securities, the issuers of which would be exempt under the Exchange's rules to hold an annual shareholder meeting, the Commission believes that the proposal furthers the removal of impediments to a free and open market while continuing to ensure the protection of investors and the public interest, two principles set forth in

¹⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

Section 6(b)(5) of the Act. The Commission believes the right of shareholders to vote at an annual meeting is an essential and important one. The Commission, however, agrees with Amex that the requirement to hold an annual shareholder meeting may not be necessary for certain issuers of specific types of securities because the holders of such securities do not directly participate as equity holders and vote in the election of directors or on the affairs, operations, or policies of the company. The Commission notes that, although many of the securities proposed to be exempt from the general requirement are issued by operating companies that have also issued listed equity securities and would nevertheless be subject to the annual shareholder meeting requirement, only those issuers which do not issue common stock or voting preferred stock or their equivalent would be exempt from the annual shareholder meeting requirement. The Commission further notes that the proposed annual shareholder meeting requirement and the listed exemptions from such requirement do not supplant any applicable state or federal securities laws concerning annual shareholder meetings.¹⁹

Finally, the Commission believes that Amex's proposal to remove the provisions relating to notification of a delayed annual shareholder meeting and the use of good faith efforts to hold such meeting as soon as reasonably practicable is consistent with the Act. The Exchange states that it does not rely on the notification requirement from issuers to monitor compliance of the annual shareholder meeting requirement, but, instead, actively utilizes a real-time electronic database and manual review of proxy statements or other Commission filings to determine compliance. It appears that Amex's notification procedures provide it with timely information to enforce compliance with the annual shareholder meeting requirement. Further, in the absence of

¹⁹ The Commission submits that listed issuers that would be exempt under Section 704 of the Amex Company Guide, as proposed, would not be precluded from holding special meetings of holders of the relevant securities.

a compelling regulatory concern, the Commission believes that it is a reasonable exercise of the Exchange's self-regulatory oversight to choose the means of best addressing compliance with its proposed annual shareholder meeting requirement. The Commission also notes that the proposal to remove the provision regarding the use of good faith efforts to hold the annual shareholder meeting as soon as reasonably practicable is similar to, and conforms with, the equivalent annual shareholder meeting rules of other national securities exchanges.²⁰ The Commission further notes that under the proposed rule change, companies will be required to hold their annual shareholder meeting within the specific time periods set forth in Section 704 of the Amex Company Guide. Thus, the new rule will require stricter adherence to the annual shareholder meeting requirement, in furtherance of the public interest and investor protection. Companies that do not comply with the annual shareholder meeting time periods will be in violation of the Exchange's new rules.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the

²⁰ See, e.g., Rule IM-4350-8 (Shareholder Meetings) of The NASDAQ Stock Market LLC; Sections 302 and 401 of the Listed Company Manual of the New York Stock Exchange LLC.

²¹ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2006-31), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²² See 17 CFR 200.30-3(a)(12).