

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56193; File No. SR-Amex-2007-38)

August 2, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Amending Preferred Stock Voting Rights

I. Introduction

On April 20, 2007, 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 the minimum voting rights that must be provided to preferred shareholders in order for a preferred stock issue to list on the Amex. The proposed rule change was published for comment in the Federal Register on July 7, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Section 124 of the Amex Company Guide, “Preferred Voting Rights,” provides that the Exchange may decline to list a preferred stock issue on the Amex if the issuer does not provide certain minimum voting rights to holders of preferred stock. Specifically, under the current rule, the Exchange may decline to list a preferred stock issue unless the preferred shareholders have the right, voting as a class, to vote on: (i) any change in the rights, privileges or preferences of their preferred shares; and (ii) the creation of any additional class of preferred stock senior to or equal in preference to their preferred shares. The rule provides that any such change in the rights, privileges or preferences of preferred shares and any creation of an additional class of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

senior preferred stock must be approved by at least two-thirds of the preferred shareholders.

Any creation of an additional class of preferred stock equal in preference must be approved by at least a majority of the preferred shareholders.

The Exchange now proposes to modify the minimum preferred voting rights required for listing of a preferred stock issue on the Amex. First, the Exchange proposes to amend the provision relating to changes in the rights, privileges, or preferences of preferred shareholders, to provide that holders of at least two-thirds of the outstanding shares of a preferred stock issue should be required for the adoption of any charter or by-law amendment that would materially affect existing terms of the preferred stock. The amended rule would also provide that, if all series of a class of preferred stock are not equally affected by a proposed change to the terms of the preferred stock, two-thirds approval of both the class and the series that will have a diminished status should be required to authorize such change. The Exchange also proposes to require that an issuer's charter not hinder the preferred shareholders' right to alter the terms of their stock by limiting modification to specific items, e.g., interest rate, redemption price.

With respect to the creation of a senior issue, the amended rule would continue to provide that the creation of a senior issue should require approval of at least two-thirds of the outstanding preferred shares. However, the Exchange proposes to amend the rule to also provide that a vote by an existing series of preferred stock is not required for the board of directors of an issuer to create a senior series of preferred stock if shareholders authorized such action when the existing series was created. Further, a vote by an existing class is not required for the creation of a senior

³ See Securities Exchange Act Release No. 55963 (June 26, 2007), 72 FR 36081.

issue if the existing class received adequate notice of redemption to occur within 90 days and the existing issue is not being retired with proceeds from the sale of the new issue.

The amended rule would also provide that an increase in the authorized amount of a class of preferred stock or the creation of a pari passu issue is required to be approved by a majority of the outstanding shares of the class or classes to be affected by such change. However, a majority vote would not be required if, at the time a class of preferred stock was created, the preferred shareholders gave the board of directors the authority to increase the authorized amount of a series of preferred stock or create an additional series of preferred stock equal in preference.

III. Discussion

After careful review, 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 and, in particular, with Section 6(b)(5) of the Act,⁴ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.⁵

The Commission notes that the proposed rule change will make Amex's listing requirements relating to minimum preferred voting rights substantially similar to those of the New York Stock Exchange LLC ("NYSE").⁶ The Commission believes that the proposed rule change may provide additional flexibility to issuers of preferred stock with regard to their ability

⁴ 15 U.S.C. 78f(b)(5).

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

to raise capital, while at the same time, ensuring that preferred shareholders will retain important voting rights. The proposal also ensures that the rights and privileges of the preferred shareholders are protected and cannot be changed without prior approval of the preferred shareholders.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Amex-2007-38) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁶ See Section 313.00(C) of the NYSE Listed Company Manual.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).