

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57393; File No. SR-Amex-2007-79)

February 27, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Relating to Independent Directors and Audit Committee Members

On September 18, 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 relating to independent directors and audit committee members. On November 8, 2007 and November 16, 2007, Amex submitted Amendments No. 1 and 2, respectively, to the proposed rule change. The proposed rule change as modified by Amendments No. 1 and 2 was published for comment in the Federal Register on December 27, 2007.³ The Commission received no comments on the proposal. On February 14, 2008, Amex submitted Amendment No. 3 to the proposed rule change.⁴

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, the requirements of Section 6(b)(5) of the Act,⁵ because it allows an issuer a reasonable period of time (“cure period”) to fill a vacancy on its audit committee when the number of members on such committee has fallen below the minimum required by the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56982 (December 18, 2007), 72 FR 73386 (December 27, 2007).

⁴ Amendment No. 3 was a technical amendment not subject to notice and comment.

⁵ 15 U.S.C. 78f(b)(5).

Exchange's rules; and to restore the proportion of independent directors on its board to the level required by the Exchange's rules in a situation when a vacancy arises or an independent director ceases to be independent due to circumstances beyond his or her reasonable control.⁶

The Commission notes that the cure period established by the proposed rule change for issuers generally is consistent with the period provided in the rule of another exchange previously approved by the Commission.⁷ Further, the Commission believes that the proposal appropriately adjusts the cure period for Small Business Issuers (as defined in Amex's rules) in view of the modified standards that Amex imposes on such issuers.⁸

⁶ The Commission notes that the proposed rule change does not affect the cure period afforded to an issuer for purposes of compliance with the Exchange's independence standards for audit committee members, including those required by Rule 10A-3 under the Act, 17 CFR 240.10A-3. The proposal rather relates to situations in which a vacancy arises on an issuer's audit committee, as, for example, in a case where a resignation or death causes the number of independent directors on the committee to fall below the minimum required by Amex's rules (two in the case of Small Business Issuers as defined in the Amex's rules and three for all other issuers). The proposal further relates to situations in which a vacancy arises on an issuer's board or an independent director on an issuer's board ceases to be independent due to circumstances beyond his or her reasonable control such that the issuer no longer meets the Amex standard requiring that a majority of directors on an issuer's board be independent (or 50% of the directors, in the case of Small Business Issuers).

⁷ See NASDAQ Manual, Rule 4350(c) and (d). See Securities Exchange Act Release No. 54421 (September 11, 2006), 71 FR 54698 (September 18, 2006).

⁸ The Commission notes that on January 25, 2008, Amex submitted File Number SR-Amex-2008-05 to further amend Amex corporate governance listing standards to conform to recent Commission amendments and forms relating to smaller reporting companies.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Amex-2007-79), as amended, be, and hereby is, approved.¹⁰

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

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Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 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).

¹¹ 17 CFR 200.30-3(a)(12).