

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57524; File No. SR-Amex-2008-05)

March 18, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Smaller Reporting Companies

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 19b-4 thereunder,² notice is hereby given that on January 25, 2008, 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 and II below, which Items have been prepared by the Exchange. On March 13, 2008, Amex submitted Amendment No. 1 to the proposed rule change.³ This order provides notice of the proposed rule change and approves the proposed rule change, as amended, on an accelerated basis.

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

The Exchange proposes to amend Sections 801, 802, 803, 807, and 809 of the Amex Company Guide (“Company Guide”) to conform to recent Commission amendments to rules and forms under the Securities Act of 1933⁴ (“Securities Act”) and the Exchange Act relating to smaller reporting companies.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 was filed to make revisions to the rule filing and to the text of the proposed rule change to reflect recently approved changes to the Amex Company Guide. See Securities Exchange Act Release No. 57393 (February 27, 2008), 73 FR 11962 (March 5, 2008) (order approving SR-Amex-2007-79). Amendment No. 1 also made other, technical corrections.

⁴ 15 U.S.C. 77(a) et seq.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex and at the Commission's Public Reference Room.

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 Exchange 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 III below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently adopted amendments to the disclosure and reporting requirements under the Securities Act and the Exchange Act in order to simplify and provide regulatory relief for smaller companies (the "Smaller Reporting Company Amendments").⁵ The Exchange proposes to amend the provisions of the Amex Company Guide ("Company Guide") that refer to the small business issuer rules and forms under the Securities Act and the Act to make the references consistent with Smaller Reporting Company Amendments. At the same time, the Exchange proposes to amend or delete, in the relevant Company Guide sections, portions of those sections in the Company Guide that have become obsolete or otherwise need to be updated.

⁵ See Securities Exchange Act Release Nos. 33-8876; 34-56994; and 39-2451, 73 FR 934 (January 4, 2008) (File No. S7-15-07) (the "Smaller Reporting Company Regulatory Relief and Simplification Release").

As described by Amex, the intent of the Smaller Reporting Company Amendments, which became effective on February 4, 2008, is to give smaller companies faster and easier access to capital when they need it or when market conditions are favorable. Specifically, the former “small business issuer” and “non-accelerated filers” categories, to the extent feasible, were combined to create a new expanded category called “Smaller Reporting Company.” Companies that have less than \$75 million in public equity float will now qualify as Smaller Reporting Companies.⁶ Companies without a calculable public equity float will qualify if their revenues were below \$50 million in the last fiscal year.⁷ The definition of Smaller Reporting Company effectively expands the number of companies that qualify for the scaled disclosure requirements previously available to small business issuers.⁸

In addition, the Regulation S-B⁹ scaled disclosure requirements were integrated into Regulation S-K¹⁰ as of the effective date of the Smaller Reporting Company Amendments, and Forms 10-QSB and 10-KSB¹¹ are being eliminated, effective October 31, 2008 and March 15, 2009, respectively.¹²

In order to conform the Amex Company Guide to the Smaller Reporting Company Amendments, the Exchange proposes to amend the following sections in its Company Guide:

Section 801. The Exchange proposes to amend Section 801(h) of the Company Guide to replace the reference to “Small Business Issuer” with a reference to “Smaller Reporting

⁶ 17 CFR 230.405(1) and (2) and 17 CFR 240.12b-2.

⁷ 17 CFR 230.405(3) and 17 CFR 240.12b-2.

⁸ See the Smaller Reporting Company Regulatory Relief and Simplification Release.

⁹ Formerly 17 CFR 228.10 – 228.703.

¹⁰ 17 CFR 229.10 – 229.1123.

¹¹ 17 CFR 249.308b and 17 CFR 249.310b.

¹² See the Smaller Reporting Company Regulatory Relief and Simplification Release.

Company,” including a reference to the definition of Smaller Reporting Company in Item 10(f)(1) of Regulation S-K,¹³ where the term Smaller Reporting Company is defined.

Section 802. The Exchange proposes to amend Section 802(a) of the Company Guide to remove the reference to “Small Business Issuer” and replace it with a reference to “Smaller Reporting Company.” However Amex will retain the cross-reference to Section 801(h) of the Company Guide for the definition of Smaller Reporting Company.

Section 803B(2)(a)(iii): The Exchange proposes to amend Section 803B(2)(a)(iii) of the Company Guide, which sets out the requirements for independent directors and audit committees for Amex-listed issuers, to update the references to Regulation S-K and Regulation S-B. Specifically, the Exchange proposes to remove the reference to Item 401(h) of Regulation S-K¹⁴ and Item 401(e) of Regulation S-B¹⁵ and replace it with a reference to Item 407(d)(5)(ii)¹⁶ and Item 407(d)(5)(iii)¹⁷ of Regulation S-K.

Section 803B(2)(c). The Exchange proposes to amend Section 803B(2)(c) of the Company Guide to remove and replace the reference to small business issuers with a reference to the new term, “Smaller Reporting Companies,” and to include a reference to Item 10(f)(1) of Regulation S-K,¹⁸ where the term Smaller Reporting Company is defined. The independent director requirements (50% independent) and audit committee requirements (a minimum of two

¹³ 17 CFR 229.10(f)(1).

¹⁴ 17 CFR 229.401(h).

¹⁵ Formerly 17 CFR 228.401(e).

¹⁶ 17 CFR 229.407(d)(5)(ii).

¹⁷ 17 CFR 229.407(d)(5)(iii).

¹⁸ 17 CFR 229.10(f)(1).

independent directors) that applied to small business issuers would now apply to issuers that qualify as Smaller Reporting Companies.

Section 803B(6)(a) and (b) and Commentary .10. The Exchange proposes to remove the last sentence of Section 803(6)(a), which states that the text of Rule 10A-3 is reproduced in Commentary .10 to Section 803, and to delete in its entirety Commentary .01 to Section 803, which sets out Rule 10A-3 in full. The Exchange originally included Rule 10A-3 in the Company Guide for the convenience of listed issuers at the time of the adoption of the Exchange’s related rules in 2003, and the version of Rule 10A-3 now included in the Company Guide is out of date. The Exchange now believes that Rule 10A-3 has been in place for a long enough period that it is no longer necessary to include it in the Company Guide.

The Exchange proposes to amend Section 803B(6)(b) of the Company Guide to remove the references to “Small Business Issuer” and replace them with references to “Smaller Reporting Company.” As a result, the periods allowed to small business issuers set out in Section 803B(6) to cure a failure to comply with the audit committee composition requirements would now apply to issuers that qualify as Smaller Reporting Companies.

Section 807: The Exchange proposes to amend Section 807 of the Company Guide in order to remove the reference to the definition of the “code of ethics” set forth in Regulation S-B, which is no longer appropriate given the integration of the Regulation S-B¹⁹ scaled disclosure requirements into Regulation S-K.

The Exchange also proposes to amend Commentary .01 to Section 807 of the Company Guide in order to conform the Amex provision regarding code of conduct waivers with the

¹⁹ Formerly 17 CFR 228.10 – 228.703.

requirements of Section B of Form 8-K.²⁰ Accordingly, the Exchange proposes to change the time period in which a company must report a waiver of its code of conduct and ethics for directors or executive officers from five days to four days. The Exchange also proposes to make clear that if the event occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the four business-day period shall begin to run on, and include, the first business day thereafter.²¹

Section 809. Section 809 of the Company Guide relates to the effective dates and transition terms for the corporate governance provisions now set out in Part 8 of the Company Guide. The Exchange proposes to revise Section 809 to remove references to effective dates and transition dates that have passed and are, therefore, no longer relevant. Specifically, sub-Sections 809(a), (d), (e) and (f) are proposed to be deleted in their entirety, and sub-Sections 809(b) and (c) will become sub-Sections (a) and (b), respectively. Sub-Section 809(a) will be revised to replace references to “small-business issuer” with “Smaller Reporting Company.” Finally, the Exchange proposes to delete Commentary .01, which re-stated Section 121 as it was in effect immediately prior to Commission approval of Section 809, in its entirety, since the transition periods that required its inclusion have expired.

2. Statutory Basis

The Exchange states that the proposed rule change is consistent with Section 6(b) of the Exchange Act²² in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act²³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to

²⁰ 17 CFR 249.308.

²¹ The Commission notes that this language conforms to the language set forth in Paragraph B1 of Form 8-K.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

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.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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. 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 Exchange Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2008-05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2008-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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.²⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,²⁵ which requires, among other things, that the Exchange's rules 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.

²⁴ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

The Commission believes that the proposed rule change is reasonable and appropriate because it would conform the rules governing a small issuer's eligibility for relief under specified provisions of the Exchange's corporate governance listing standards with the rules governing a small issuer's eligibility for relief pursuant to the Securities Act and the Exchange Act as recently amended. In addition, the proposed rule change would remove references in Amex's Company Guide that became obsolete in light of the Smaller Reporting Company Amendments or are otherwise outdated; and conform the Exchange's rule relating to disclosure of waiver of an issuer's code of conduct with the requirement of Form 8-K.

The Commission finds good cause, consistent with Section 19(b)(2) of the Exchange Act,²⁶ for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the Federal Register. As noted by Amex, the Smaller Reporting Company Amendments became effective on February 4, 2008, and in the interest of timeliness and in order to avoid confusion, the Commission believes that accelerated approval is warranted and that no reasonable purpose would be served by delaying implementation of this and the other technical and conforming amendments made by the proposed rule change.

²⁶ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,²⁷ that the proposed rule change (SR-Amex-2008-05), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon
Deputy Secretary

²⁷

Id.

²⁸

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