

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42110; File No. SR-Amex 99-33]

Self-Regulatory Organizations; Notice of Filings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Numbers 1 and 2 Thereto by the American Stock Exchange LLC Relating to Revising Section 107B of the Amex Company Guide

November 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 19, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on October 12, 1999,³ and Amendment No. 2 on October 21, 1999.⁴ The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change.

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

The Exchange seeks to revise Section 107B of the Amex Company Guide concerning the listing standards for equity linked notes ("ELNs"). The proposal deals with the minimum term of such securities and substitutes a one-year minimum for all ELNs for the

current requirement that the securities have a term of two to seven years (three year maximum for those linked to non-U.S. securities).

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 III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 20, 1993, the Exchange received approval to adopt Section 107B of the Amex Company Guide to provide for the listing and trading of ELNs, hybrid instruments whose values are linked to the performance of highly capitalized, actively traded common stock.⁵ ELNs are non-convertible debt of an issuer, whose value is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

Section 107B of the Amex Company Guide details the Exchange's listing standards for ELNs. Among other things, these standards require that ELNs have a term of two to seven years, but not more than three years for ELNs based on the price of a non-U.S. issuer. The limits on the terms for ELNs contrast with the Exchange's general requirements of derivative instruments. Specifically, for Currency and Index Warrants (Section 106 of the Annex Company Guide) and Other Securities (Section 107 of the Amex Company Guide), the Exchange requires that the security have either a minimum life of between one and five years or on specified minimum term.

The Exchange has in place surveillance procedures with respect to ELNs and the securities linked to ELNs for the purposes of identifying and determining manipulative trading activity.⁶ In conducting its surveillance activities, the Exchange has not found any adverse effects as a result of the trading of ELNs and the securities to which the ELNs are linked. The

Exchange notes that these findings are also consistent with the findings of the New York Stock Exchange, Inc. ("NYSE") in which it noted similar experience with these products as discussed in its proposal to revise term criteria for equity linked notes.⁷

The Exchange believes ELNs complement the trading of underlying stocks, and the continued popularity of the instrument demonstrates its appeal in the market. Thus, the Exchange proposes to apply to ELNs a one-year minimum term requirement regardless of whether the ELN is based on a domestic or non-U.S. equity. The Exchange believes that this rule change will provide issuers with more flexibility with more flexibility in developing ELNs and thus provide greater investment choices in the market. Specifically, the Exchange notes that many corporate debt instruments have terms well in excess of seven years, and that this rule change will allow the structuring of ELNs with terms to maturity comparable to such debt instruments. Furthermore, extending the term of ELNs will provide issuers with the ability to offer variations on ELNs, such as principal protection and call features that may not be as desirable on debt instruments with a shorter term. The Exchange believes that this added flexibility will encourage innovation without having an adverse effect on investor protection.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁸ of the Act in general and furthers the objectives of Section 6(b)(5)⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made technical corrections to its proposed rule language to reflect its current rule language; confirmed that it has surveillance procedures in place to identify and deter manipulative trading activity; and revised the stated purpose of its proposed rule change. See Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 8, 1999 ("Amendment No. 1").

⁴ In Amendment No. 2, the Exchange made technical corrections to its proposed rule language; requested accelerated approval of the proposed rule change; and represented that it would notify the Commission in advance if the Exchange intended to list equity linked notes of a non-U.S. company issuer and the issue has a term of more than three years. See Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Nancy Sanow, Senior Special Counsel, Division, Commission, dated October 20, 1999 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993).

⁶ See Amendment No. 1, *supra* note 3.

⁷ See Securities Exchange Act Release No. 41608 (July 8, 1999), 64 FR 38063 (July 14, 1999).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments 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, as amended, 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-99-33 and should be submitted by December 3, 1999.

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

The Commission has reviewed carefully the Amex's proposed rule change and believes, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act¹⁰ and in particular, with the requirements of Section 6(b)(5) of the Act.¹¹ Specifically, the Commission finds that providing for a minimum one-year term for all ELNs is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.¹²

The Commission notes that since the Exchange has traded ELNs, the Exchange has not discovered any adverse effects of this instrument. In addition, the Exchange has verified that

it has surveillance procedures in place for identifying and deterring manipulative trading activity of ELNs as well as the related equity securities. The Exchange has also agreed to notify the Commission in advance if the Exchange intends to list ELNs of a non-U.S. company issuer and the issue has a term of more than three years.¹³ The Exchange believes that this rule change will provide issuers with more flexibility in developing ELNs and thus provide greater investment choices in the market. The Commission believes that this added flexibility will encourage innovation without having an adverse effect on investor protection.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Amex is proposing the same rule change recently approved by the Commission for the NYSE.¹⁴ The NYSE submitted a proposed rule change that provided for a one-year minimum term for all equity-linked debt securities. Prior to the NYSE's proposed rule change, the NYSE required that equity-linked debt securities have a term of two to seven years (three year maximum for non-U.S. securities). Because Amex's proposal is consistent with the proposal recently approved by the Commission for the NYSE and because the Commission did not receive any comments on the NYSE's proposal, the Commission finds that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.¹⁵

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-Amex-99-33), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42108; File No. SR-NASD-99-40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Revising Its Fees for Additional Shares

November 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 20, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD proposes to revise the fees it charges Nasdaq National Market and Nasdaq SmallCap Market issuers for listing Additional Shares. Set forth below is the text affected by the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets.

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

No change

(b) Additional Shares

(1) The issuer of each class of security [other than the American Depositary Receipts,] *that is a domestic issue* which is listed in the Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security [set forth in subparagraph (3) below].

(2) The fee in connection with additional shares shall be \$2,000 or [\$.02] *\$.01* per additional share, whichever is higher, up to a maximum of \$17,500 per [issuance] *notification and an annual maximum of \$35,000 per issuer.*

(3) [The fee in connection with additional shares is applicable to the following issuances of securities:

(A) Acquisitions, mergers or consolidations;

(B) Public offerings;

(C) Rights and subscription offerings;

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ See Amendment No. 2, *supra* note 4.

¹⁴ See Securities Exchange Act Release No. 41992 (October 7, 1999), 64 FR 56007 (October 15, 1999).

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).