

submit written testimony on or before the end of the comment period for the Proposing Release, which is 75 days after publication of the Proposing Release in the **Federal Register**, for inclusion in the public comment file. Additional information regarding the September hearings will be forthcoming.

**ADDRESSES:** The July 26, 2000 hearing will be held in the William O. Douglas Room of the Commission's headquarters at 450 Fifth Street, N.W., Washington, D.C. 20549. Persons submitting requests to appear or written testimony in lieu of testifying should file three copies of the request or testimony with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Persons requesting to appear should also submit three copies of their oral statement or summary of their testimony to the same address. Requests to appear and copies of oral statements or summaries of intended testimony may be filed electronically at the following e-mail address: rule-comments@sec.gov. The words "Request to Testify" should be clearly noted on the subject line of the request. All requests and other submissions also should refer to Comment File No. S7-13-00. Copies of all requests and other submissions and transcripts of the hearings will be available for public inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted requests and other materials will be posted on the Commission's internet web site ([www.sec.gov](http://www.sec.gov)).

**FOR FURTHER INFORMATION CONTACT:** John M. Morrissey, Deputy Chief Accountant, or W. Scott Bayless, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942-4400.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Summary of Rule Proposals**

The public hearings concern the Commission's proposed rule amendments regarding auditor independence. As more fully described in the Proposing Release, the proposals modernize the Commission's requirements by providing governing principles for determining whether an auditor is independent in light of: investments by auditors or their family members in audit clients, employment relationships between auditors or their family members and audit clients, and the scope of services provided by audit firms to their audit clients. The proposals would, among other things, significantly reduce the number of audit firm employees and their family members whose investments in audit

clients are attributed to the auditor. They would also identify certain non-audit services that, if provided to an audit client, would impair an auditor's independence. The scope of services proposals would not extend to services provided to non-audit clients. The proposal also would provide a limited exception for accounting firms that have certain quality controls and satisfy other conditions. Finally, the proposals would require companies to disclose in their annual proxy statements certain information about, among other things, non-audit services provided by their auditors during the last fiscal year. The Commission will consider the hearing record in connection with its rulemaking proposals.

#### **II. Procedures for Hearing**

After July 17, 2000, the Commission will publish a schedule of appearances. Based on the number of requests received, the Commission may not be able to accommodate all requests for the July 26 hearing. It also may limit the time for formal presentations or group presentations into a series of panels. Time will be reserved for members of the Commission and Commission staff to pose questions to each witness concerning his or her testimony as well as other matters pertaining to the Proposing Release. The Commission has designated Jonathan G. Katz, Secretary of the Commission, as the hearing officer. As noted, the Commission will hold additional public hearings in September. The Commission will issue other orders designating additional hearing officers as necessary.

Dated: July 7, 2000.

By the Commission.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43013; File No. SR-Amex-00-12]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Procedures for the Review of Initial Listing Decisions**

July 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

28, 2000, the American Stock Exchange LLC (the "Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Amex proposes to adopt new Part 12 of the Amex Company Guide to establish procedures for the review of initial listing determinations. The text of the proposed rule change is available at the Amex and the Commission.

#### **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 IV 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 Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Amex proposes to establish new procedures for the review of initial listing determinations. Amex original listing criteria, set forth in Part 1 of the Amex Company Guide, provide quantitative and qualitative criteria for the original listing of securities on the Exchange. Section 101 of the Amex Company Guide currently provides that the approval of a listing application is a matter solely within the discretion of the Exchange. Thus, the Exchange currently has the discretion to list the securities of an applicant that may not satisfy each of the listing guidelines and to deny the listing of an applicant's securities that do satisfy those guidelines. Furthermore, under the Exchange's existing procedures, original listing determinations are made by different entities. The ultimate discretion to list applicants that do not satisfy each of the guidelines is vested

with the Exchange's Committee on Securities;<sup>3</sup> however, the Amex Staff generally determines whether to deny a listing or whether an applicant should be considered by the Committee on Securities at all.<sup>4</sup>

The Exchange believes that the existing process is not sufficiently transparent to applicants and also operates to create inefficiencies in the listing process. To address these concerns, the Exchange proposes to implement specific procedures governing the review of initial listing determinations. The proposed rules are modeled on the Nasdaq listing process.<sup>5</sup>

Proposed Part 12 codifies the procedures for the review of Amex Staff listing determinations by a subcommittee of the Committee on Securities (as defined in proposed Section 1204) and also sets forth the procedures with respect to appeals from the subcommittee to the Amex Adjudicatory Council (as defined in Section 1205) or the Amex Board of Governors. Under the proposed rules, Exchange determinations to limit or prohibit the initial listing of an applicant's securities will continue to be made by the Listing Qualifications Department or the Listing Investigations Department.

The Exchange will notify applicants of a decision to deny an application, citing the specific quantitative or qualitative standards in Part 1 of the Amex Company Guide that were not met. The Exchange will notify the applicant that, upon request, the applicant will be provided an opportunity for a hearing under these procedures. The applicant will be solely responsible for presenting the arguments in favor of listing to the subcommittee. Presently, such burden rests with the Exchange Staff.

An applicant may request a written or oral hearing within 7 days of the date of the Staff's determination to deny the application.<sup>6</sup> Such hearings will be scheduled, to the extent practicable, within 45 days of the date the request

is filed. The applicant will be provided at least 10 days notice of the hearing unless the applicant waives such notice. Proposed Section 1203 specifies written materials that the applicant may submit in connection with a hearing.

Proposed Section 1204 provides that all hearings will be conducted before a subcommittee of the Committee on Securities ("Subcommittee") consisting of at least two persons. Following the hearing, the Subcommittee must issue a written decision ("Subcommittee Decision") citing specific grounds for the Subcommittee's determination. The Subcommittee will promptly provide its decision to the applicant and will also provide notice that the applicant may request review by the Adjudicatory Council<sup>7</sup> within 15 days of the date of the Subcommittee Decision.<sup>8</sup> The applicant will also be notified that the Adjudicatory Council may call for review of the Subcommittee Decision within 45 days, at the request of one or more of the Council's members, as provided in proposed Section 1205. The applicant will be promptly informed of the reasons for the review. Any such review does not operate as a stay of the Subcommittee Decision, unless the Adjudicatory Council's call for review specifies to the contrary.

The Adjudicatory Council will consider the written record and can hold additional hearings. It may also recommend that the Amex Board consider the matter. The Adjudicatory Council will issue a written decision that affirms, modifies or reverses the Subcommittee Decision. The Adjudicatory Council will set forth specific grounds for the decision and provide notice that the Amex Board may call the decision for review at any time before its next meeting which is at least 15 days after the decision.

Such review by the Amex Board will be solely at the Board's discretion. Governors that serve on the Adjudicatory Council will not participate in the Board review.<sup>9</sup> If the Board conducts a discretionary review, the applicant will be provided with a written decision affirming, modifying or

reversing the Adjudicatory Council's decision. The Board may also remand the matter to the Adjudicatory Council, the Committee on Securities, or the Amex Staff, with appropriate instructions. The Board's decision constitutes final action of the Exchange and will take immediate effect unless it specifies to the contrary.<sup>10</sup>

Proposed Section 1207 describes the documents included in the written record. The Exchange will provide the applicant with a list of the documents in the written record and a copy of any documents in the record that are not in applicant's possession or control, at least 3 days in advance of the deadline for the applicant's submissions. Proposed Section 1208 states that the written record for the review, as well as any documents excluded from the written record, will be maintained until the date upon which the decision becomes final, including, if applicable, upon conclusion of any Commission or federal court review.

Time is computed within proposed Part 12 procedures based on calendar days. In computing any period of time, the day of the act event or default from which the period of time begins is not included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday or Amex holiday.<sup>11</sup>

Finally, proposed Section 1211 prohibits the Amex Staff or an applicant from making any communication relevant to the merits of a proceeding with anyone who is participating in or advising in the consideration of a matter (members of the Committee on Securities, the Adjudicatory Council, the Amex Board, and Amex Staff), unless the applicant and the appropriate Amex Staff have been provided notice and an opportunity to participate in the communication. The Amex represents that the purpose of this limitation is to prevent non-record information from being considered in rendering a decision. The Exchange currently expects that Amex Staff generally will waive their rights under this provision in the interest of providing a non-adversarial business forum for listing decisions.

## 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>12</sup> in general and furthers

<sup>3</sup> The Committee on Securities is appointed by the Amex Board and consists of six non-floor, financial professionals and six Floor members. Of the six non-floor financial professionals, not less than three must be affiliated with a member organization.

<sup>4</sup> The Committee on Securities also has the discretion to deny listing to an applicant which is recommended by the Staff

<sup>5</sup> See NASD 4800 Series Rules.

<sup>6</sup> The Amex will not charge a hearing fee to appeal the Exchange Staff's listing determination. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission, April 19, 2000.

<sup>7</sup> The Amex Adjudicatory Council, is established by the Amex Board pursuant to Article II, Section 6 of the Amex Constitution. The Council consists of six individuals, all of whom are nominated by the Amex Nominating Committee and elected by the regular and options principal members voting together as a single class. Three of the Council's members are Floor Governors and three are Public Governors.

<sup>8</sup> The Amex will not charge a hearing fee to appeal the Subcommittee's determination. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission, April 19, 2000.

<sup>9</sup> See Proposed Section 1206(a).

<sup>10</sup> The Commission notes that any applicant aggrieved by a final action of the Amex may apply for review to the Commission in accordance with Section 19 of the Act.

<sup>11</sup> See Proposed Section 1210.

<sup>12</sup> 15 U.S.C. 78f(b).

the objectives of Section 6(b)(5)<sup>13</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

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

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

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

The Exchange has neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. 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 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 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 at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-00-12 and should be submitted by August 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43014; File No. SR-BSE-00-09]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to Its Membership and Other Fees, Floor Operations Fees, and Transaction Fees Schedules**

July 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, notice is hereby given that on July 3, 2000, the Boston Stock Exchange ("BSE" or "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend the Exchange's Membership and Other Fees, Floor Operation Fees and Transaction Fees schedules. The proposed fee changes are below. Deletions are in brackets. Additions are italicized.

MEMBERSHIP AND OTHER FEES					
(1) <i>Membership</i>					
Membership Dues .....				\$[600.00] 750.00	per membership per quarter.
* .....	*	*	*	*	*
SRO Fee .....				\$100.00	per month.
* .....	*	*	*	*	*
(2) <i>Electronic File Access and Processing</i>					
[Open Order Match .....				\$200.00	per month].
* .....	*	*	*	*	*
FLOOR OPERATION FEES					
(3) <i>Specialist Trade Processing</i>					
Odd Lot Trades (Includes CSI issues) .....				\$[.00].05	per order (\$400 maximum per account).
* .....	*	*	*	*	*
TRANSACTION FEES					
1. <i>Trade Recording and Comparison Charges</i>					
• All other executions (excluding automated non-BSE executions)					
First 2,500 trades per month .....				\$ .29	per 100 shares.
Next 2,500 trades per month .....				\$ .25	per 100 shares.
Next 2,500 trades per month .....				\$ .15	per 100 shares.
Over 7,500 trades per month .....				\$ .04	per 100 shares.
Floor Brokered non-BSE executions .....				\$ .05	per 100 shares.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).