

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change creating an options principal membership seat upgrade program. The proposed rule change was published for comment in the **Federal Register** on August 7, 2000.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

## II. Description of the Proposal

The Exchange believes that the recent increase in the number of securities listed on the Exchange, especially options and Exchange-traded funds, has led to a greater demand for specialists and brokers to handle the increased volume. Specialists and brokers are required to be regular members of the Exchange. To accommodate the growing need for more specialists and brokers, the Exchange has proposed a voluntary Options Principal Membership ("OPM") Seat Upgrade Program ("Program"), with the potential for upgrading 203 options principal memberships into regular memberships.

The one-time fee to upgrade an OPM membership to a regular membership under the proposed Program will be \$30,000 or \$36,000, depending on whether the OPM owner elects to participate in the Program within 120 days of the effective date of the Program.<sup>4</sup>

The Program would be in effect for 18 months. At the end of the 18 month period, the Program would terminate unless the Exchange elects to continue it.<sup>5</sup> Fund proceeds, less administrative costs to the Exchange, would be distributed equally to regular seat owners of record at the time of distribution (excluding regular seat owners who upgraded their OPM seats).

Interest on fund deposits would accrue to the regular members.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5),<sup>7</sup> in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.<sup>8</sup> The Commission believes that the proposed rule change will enable the Exchange to respond to the growing demand for more specialists and brokers to handle increased volume on the Exchange, which should help to facilitate securities transactions and remove impediments to a free and open market. In addition, the Commission believes the Program may help to enhance the depth and liquidity of the Amex market by bringing additional capital and market participants to the trading floor. Finally, the Commission believes that the Program should assist public customers in getting better executions of their orders by providing them with additional firms through which orders to the Amex can be routed.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-00-36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43308; File No. SR-Amex-00-12]

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

September 20, 2000.

#### I. Introduction

On February 28, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change relating to procedures for the review of initial listing determinations. The proposed rule change was published for comment in the **Federal Register** on July 13, 2000.<sup>3</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

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.<sup>4</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 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

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

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

<sup>3</sup> Securities Exchange Act Release No. 42803 (July 31, 2000), 65 FR 48262.

<sup>4</sup> OPM owners that elect to upgrade to a regular membership within 240 days would be entitled to pay on a monthly basis for 12 months. Program participants who are delinquent in their installment payments by more than sixty days would forfeit all payments made to date and their seats would revert to OPM status. After 240 days from Program effectiveness, an OPM owner would be required to pay a lump sum payment of \$36,000 at the time of election.

<sup>5</sup> At that time, the Exchange could consider changing the terms of the Program, including raising the cost of upgrading an OPM seat. The Commission notes and the Exchange acknowledges that it would be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act if it decides to extend or make any changes to the Program. Telephone call between Ivonne Lugo, Assistant General Counsel, Amex, and Sonia Patton, Attorney, Division of Market Regulation ("Division"), Commission, on July 13, 2000.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 43013 (July 13, 2000), 65 FR 43386.

<sup>4</sup> The Commission believes these provisions should be invoked by the Exchange only under circumstances that would be consistent with the public interest. Since investors rightfully presume that the companies listed on the Amex meet the quantitative and qualitative guidelines, these provisions should not be used by the Exchange as a way to permit issuers to bypass the numerical requirements for listing. The Commission would be concerned to find the Amex routinely approving listing for issuers that have not met the quantitative guidelines.

Section 1202, the Exchange will notify applicants of a decision to deny a 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. 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>5</sup> Section 1203 specifies written materials that the applicant may submit in connection with a hearing.

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>6</sup> within 15 days of the date of the Subcommittee Decision.<sup>7</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 Section 1205.

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 set forth specific grounds for its 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. If the Amex Board conducts a discretionary review, the applicant will be provided with a written decision affirming, modifying,

reversing, or remanding the Adjudicatory Council's decision.<sup>8</sup> The Board's decision constitutes final action of the Exchange and will take immediate effect unless it specifies to the contrary.<sup>9</sup>

Section 1207 describes the documents included in the written record. Section 1208 provides for the maintenance of the written record of review, as well as any documents excluded from the written record.

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 unless the applicant and the appropriate Amex Staff have been provided notice and an opportunity to participate in the communication. The Exchange currently expects that Amex Staff generally will waive their rights under this provisions in the interest of providing a non-adversarial business forum for listing decisions.<sup>10</sup>

### III. Discussion

The Commission finds that the Exchange's proposal is consistent with the requirements of Section 6 of the Act,<sup>11</sup> and furthers the objectives of Section 6(b)(5)<sup>12</sup> in particular because 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.

The Commission believes that the proposed rule change, by establishing procedures for the review of initial listing determinations, will provide clarity and transparency to issuers concerning the Amex's decisionmaking process. The new rules require the Exchange to notify applicants of a decision to deny listing and set forth the specific grounds for the determination at each level of review.

<sup>8</sup> See Section 1206(c).

<sup>9</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>10</sup> Although members of the Amex Staff may waive their rights under Section 1211, the Commission expects that the record on review will include all of the information used as the basis for the Amex's decision.

<sup>11</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

The proposed rules also provide a fair and independent review for issuers, with provisions detailing the maintenance of the record on review and prohibiting communications outside of the official proceeding. The Commission further notes that the proposed rules are modeled on the Nasdaq listing process.<sup>13</sup> Similar to the rules proposed herein, the rules of the National Association of Securities Dealers, Inc. codify the procedures for the review of initial listing determinations.<sup>14</sup>

### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change, SR-Amex-00-12, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43309; File No. SR-NYSE-00-37]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Rescinding Parts of, or the Entire Text of, Exchange Rule 112A.10, Rule 321.25, Rule 392, Rule 393 and Rule 395, Which Reference Rescinded Exchange Rule 390 or Off-Board Trading Restrictions

September 20, 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 August 17, 2000, the New York Stock Exchange, Inc. ("NYSE" 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

<sup>13</sup> See NASD 4800 Series Rules.

<sup>14</sup> Securities Exchange Act Release No. 41367 (May 13, 1999), 64 FR 25942.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>5</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>6</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>7</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, Commission, April 19, 2000.