

Rule 19d-1(c)(2) under the Act<sup>12</sup> that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Amex will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Amex filed Amendment No. 3 to remove certain rules from the proposal. Removal of these rules from the proposal presents no novel issues that would require further notice and comment before approving this modification. Therefore, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

In approving this proposed rule change, the Commission recognizes that certain aspects of the proposal will require additional time for implementation, while other aspects of the proposed rule change can be implemented upon Commission approval. The Commission expects that the Amex will implement as much of the proposed rule change's terms and conditions as is possible upon approval, and will implement the remaining provisions of the proposed rule change as soon as practicable thereafter.<sup>13</sup>

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3

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 Amendment No. 3 that are filed with the Commission, and all written communications relating to Amendment No. 3 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. 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 number SR-Amex-00-48 and should be submitted by January 31, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-00-48), as amended by Amendment Nos. 1 and 2, be, and it hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47119; File No. SR-Amex-2002-97]

### Self Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Initial and Continued Listing Standards

January 3, 2003.

On November 20, 2002, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("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 to amend sections 101, 102, and 1003 of the Amex *Company Guide* to modify initial and continued listing standards.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.

The proposed rule change was published for comment in the **Federal Register** on December 4, 2002.<sup>3</sup> The Commission received no comments on the proposal.

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<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>6</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange proposes to adopt a new initial listing standard (in addition to existing standards) which is designed to permit an assessment of an issuer's suitability for listing on the basis of compliance with total market capitalization or total assets and revenues in substitution of shareholders' equity. The Amex also proposes that corresponding revisions be adopted to the continued listing standards to provide that a listed company will not be subject to delisting (assuming compliance with other applicable standards) even if it has experienced net losses or losses from continuing operations, and does not satisfy existing equity requirements,<sup>7</sup> if it is in compliance with following requirements:

- Total value of market capitalization: \$50 million, or
- Total assets and revenue: \$50 million each (in most recent fiscal year or two of last three most recently completed fiscal years), and
- At least 1,100,000 shares publicly held, a market value of publicly held shares of at least \$15,000,000 and 400 round lot shareholders.

The Commission believes that the proposed rule change will allow for the evaluation of an issuer's listing

<sup>3</sup> See Securities Exchange Act Release No. 46887 (November 22, 2002), 67 FR 72239 (December 4, 2002).

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> Section 1003(a) of the Amex *Company Guide* provides that a listed company which has sustained losses in two of its three, three of its four, or five of its most recent fiscal years will be subject to delisting if its stockholders' equity is less than \$2 million, \$4 million or \$6 million, respectively.

<sup>12</sup> 17 CFR 240.19d-1(c)(2).

<sup>13</sup> For example, the Amex will require additional time to implement the new Committee structure for the Minor Floor Violation Disciplinary Committee. The Amex anticipates it will be able to implement the new structure after the April 23, 2003 meeting of the Amex Board. See January 3, 2003 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Joseph P. Morra, Special Counsel, Division, Commission (via e-mail).