

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: October 14, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03-26344 Filed 10-14-03; 3:57 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48610; File No. SR-Amex-2003-42]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to Shareholder Approval of Stock Option Plans and Other Equity Compensation Arrangements

October 9, 2003.

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 May 6, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 24, 2003, the Amex filed Amendment No. 1 to the proposed rule change.³ On September 10, 2003, the Amex filed Amendment No. 2 to the proposed rule change.⁴ On October 1, 2003, the Amex filed Amendment No. 3 to the proposed rule change.⁵ The Commission is publishing this notice to solicit

comments on the proposed rule change, as amended, from interested persons and is approving the proposal, 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 Section 711 of the Amex *Company Guide* relating to shareholder approval of stock option and equity compensation plans.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

American Stock Exchange LLC Company Guide

* * * * *

Sec. 711, [Options to Officers, Directors or Key Employees]—*Shareholder Approval of Stock Option and Equity Compensation Plans*

Approval of shareholders is required in accordance with Section 705 [(unless exempted under paragraphs (a) and (b) below) as a prerequisite to approval of applications to list additional shares reserved for] *with respect to the establishment of (or material amendment to) a stock option[s] or purchase plan or other equity compensation arrangement pursuant to which options or stock may be acquired by officers, directors, employees, or consultants [granted or to be granted to officers, directors or key employees], regardless of whether or not such authorization is required by law or by the company's charter, except for:.*

[**Note:** This policy does not preclude the adoption of a stock option plan, or the granting of options, subject to ratification by shareholders, prior to the filing of an application for the listing of the shares reserved for such purpose.

The Exchange will not require shareholders' approval as a condition to listing shares reserved for the exercise of options when:]

(a) [such options are issued] *issuances* to an individual, not previously *an* employee[d] *or director of* [by] the company, *or following a bona fide period of non-employment*, as an inducement [essential] *material* to entering into [a contract of] employment with the company provided that *such issuances are approved by the company's independent compensation committee or a majority of the company's independent directors, and, promptly following an issuance of any employment inducement grant in reliance on this exception, the company*

discloses in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved [the potential issuance of shares pursuant to such options does not exceed 5% of the company's outstanding common stock]; or

(b) [such options are to be granted:] [(i)] [under a] *tax qualified, non-discriminatory employee benefit plans [or arrangement] (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the company's independent compensation committee or a majority of the company's independent directors; or plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market value [in which all, or substantially all, of the company's employees participate, in a fair and equitable manner]; or*

(c) *a plan or arrangement relating to an acquisition or merger; or*

(d) *warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan).*

A listed company is required to notify the Exchange in writing with respect to the use of any of the exceptions set forth in paragraphs (a) through (d).

[(ii) under a plan or arrangement for officers, directors or key employees provided such incentive arrangements do not authorize the issuance of more than 5% of outstanding common stock in any one year and provided that all arrangements adopted without shareholder approval in any five-year period do not authorize, in the aggregate, the issuance of more than 10% of such common stock. (For the purpose of calculating the percentage of stock issued in the aggregate, stock to be issued pursuant to options which have expired and/or been cancelled shall not be included.)]

[For purposes of the above policy, the term "options" includes not only the usual type of nontransferable options granted in consideration of continued employment, but also any other arrangement under which controlling shareholders, officers, directors or key employees may acquire (other than as part of a public offering) stock or convertible securities of a company at a price below market price at the time such stock is acquired or through the use of credit extended, directly or indirectly, by the company. Thus, the sale to such a person(s) of a common stock purchase warrant or right (not part

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 22, 2003 ("Amendment No. 1"). Amendment No. 1 supercedes and replaces Amex's original Rule 19b-4 filing in its entirety.

⁴ See letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 9, 2003 ("Amendment No. 2"). Amendment No. 2 supercedes and replaces Amex's original Rule 19b-4 filing and Amendment No. 1 in their entirety.

⁵ See letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Sapna C. Patel, Special Counsel, Division, Commission, dated October 1, 2003 ("Amendment No. 3"). In Amendment No. 3, the Amex made a technical change to the proposed rule language.