

(1) The amended rule reburies broker-dealers to disclose that they are not members of the Securities Investor Protection Corporation ("SIPC") if, in fact, they are not so affiliated. These broker-dealers may make such disclosures by noting "[Name of broker-dealer] is not a member of SIPC" in the Special Instructions field of trade data submitted to the ID system. PHILADEP's and MSTC's proposed rule changes add to their respective procedures the method by which broker-dealers indicate that they are not SIPC members.

(2) In the case of a private debt security, the amended rule requires broker-dealers to disclose if the security is not rated by a nationally recognized statistical rating organization. A broker-dealer using the ID system can disclose that fact by entering "Not Rated" or "N/R" in the Special Instructions field. PHILADEP's and MSTC's proposed rule changes add to their respective procedures a statement of the meaning of the codes "Not Rated" or "N/R."

(3) The amended rule requires broker-dealers to disclose that the yield for asset-backed securities that are continuously subject to prepayment may vary depending upon the rate of prepayments. Upon written request from their customers, broker-dealers will provide certain information concerning the factors that affect these securities' yield. A broker-dealer using the ID System can enter one of several acronyms in the Security Type field identifying the security as one of several types of securities that meet the rule's definition of asset-backed security. PHILADEP's and MSTC's proposed rule changes add to their respective procedures a provision designating several acronyms that when placed in the Security Type field will denote that the security meets the Rule 10b-10 definition of an asset-backed security.

PHILADEP and MSTC believe the proposed rule changes are consistent with the requirements of Section 17A(B)(3)(F)<sup>7</sup> of the Act and the rules and regulations thereunder applicable to PHILADEP and MSTC because the proposed rule changes will facilitate the confirmation of transactions through the use of the ID system in compliance with the additional requirements of Rule 10b-10 and in conjunction with the expiration date of the temporary exemption on November 1, 1995.

### *B. Self-Regulatory Organizations' Statements on Burden on Competition*

PHILADEP and MSTC believe these procedural modifications will not impose a burden on competition.

### *Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others*

PHILADEP and MSTC have neither solicited nor received comments on the proposed rule changes.

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

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(i)<sup>8</sup> of the Act and pursuant to Rule 19b-4(e)(4)<sup>9</sup> promulgated thereunder because the proposals constitute changes in existing services of registered clearing agencies that do not adversely affect the safeguarding of securities or funds in the custody or control of those clearing agencies or for which they are responsible and do not significantly affect the respective rights or obligations of the clearing agencies or persons using the service. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule changes that are filed with the Commission, and all written communications concerning the proposed rule changes between the Commission and any person, other than those that may be withheld from the public pursuant to the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the respective filings will also be available for inspection and copying at the principal offices of PHILADEP and MSTC. All submissions

should refer to File Nos. SR-PHILADEP-95-09 and SR-MSTC-95-09 and should be submitted by December 28, 1995.

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

Jonathan G. Katz,  
Secretary.

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[Release No. 34-36541; File No. SR-Amex-95-28]

### **Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Updates to the Exchange's Company Guide**

November 30, 1995.

#### I. Introduction

On July 19, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to 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 update various sections of its Company Guide. On September 28, 1995, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the Federal Register on October 10, 1995.<sup>4</sup> No comments were received on the proposal.

#### II. Description of the Proposal

The Exchange has proposed amendments to several sections of the Amex Company Guide in order to conform it with recent changes to comparable New York Stock Exchange ("NYSE") sections, to update certain sections that contain provisions that are no longer applicable, and to clarify certain obligations contained in the rules. As described more fully below, the Exchange proposes to amend sections of its Company Guide that pertain to preferred stock, warrants, conflicts of interest, original and annual listing fees, the listing resolution, "backdoor" listings, fractional shares, the listing agreement, interim reports,

<sup>10</sup> 17 CFR 200.30-3(a)(12) (1994).

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

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

<sup>3</sup> See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Glen Barrentine, Senior Counsel/Team Leader, SEC (Sept. 28, 1995).

<sup>4</sup> Securities Exchange Act Release No. 36326 (Oct. 3, 1995), 60 FR 52713.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i) (1988).

<sup>9</sup> 17 CFR 240.19b-4(e)(4) (1994).

legending requirements, and delisting standards.

#### A. Preferred Stock

The Exchange proposes to amend Section 103 to make it clear that the numerical guidelines contained in this section concerning aggregate market value and price per share only apply to publicly held shares. The Exchange also proposes to amend Section 103 of the Company Guide to provide that the Amex will not consider listing any issue of convertible preferred stock unless the underlying security is subject to real-time last sale reporting. Currently, as a general rule, convertible preferred stock may be listed on the Exchange only if the underlying security is listed on either the Amex or the NYSE. The Exchange believes this restriction is no longer necessary because it was adopted at a time when only the Amex and the NYSE provided last sale reporting information. Now, however, other markets disseminate such information.<sup>5</sup>

#### B. Warrants

In order to simplify the listing process, the Exchange proposes to consolidate all of its listing guidelines concerning warrants into Section 105, add a paragraph to Section 105 that requires an issuer to provide the Amex with two months advance notice of any extension of the expiration date of a warrant issue, delete Section 508 of the Company Guide<sup>6</sup> and incorporate it into Section 105, and amend Section 105 to reference the guidelines contained in Section 902 of the Company Guide.<sup>7</sup>

#### C. Conflicts of Interest

The Exchange proposes to delete the clause in Section 120 of the Company Guide that authorizes the Exchange to require a company to enter into a special agreement designed to reduce the possibility of abuse of a conflict of interest situation. The Exchange believes this provision is obsolete because audit committees<sup>8</sup> are responsible for reviewing transactions

<sup>5</sup> The Exchange also notes that such a change would be consistent with Section 104 of the Company Guide because this section permits the listing of convertible bonds and debentures so long as the underlying issue into which the bond or debenture is convertible is subject to last sale reporting. See Securities Exchange Act Release No. 22714 (Dec. 20, 1985), 50 FR 51958.

<sup>6</sup> Under certain circumstances, this section requires warrants to be split in the same proportion as the underlying common stock.

<sup>7</sup> Section 902 contains guidelines that are applicable to redeemable (callable) issues.

<sup>8</sup> The Exchange requires every listed company to establish and maintain an audit committee that, at the very least, is composed of a majority of independent directors. Amex Company Guide section 121.

presenting potential conflicts of interest and, in practice, the Exchange no longer utilizes these special agreements. Moreover, the Exchange notes that the NYSE did away with a similar provision some time ago.<sup>9</sup>

#### D. Original and Annual Listing Fees

Currently, Section 140 of the Company Guide specifies the original listing fee for more than one million shares and the fee for less than one million shares, but does not specify the fee for exactly one million shares. The Exchange proposes to correct this oversight by making it clear that the fee for exactly one million shares is \$10,000. The Exchange also proposes to make it clear that, according to Section 141 of the Company Guide, the annual listing fee for a warrant issue is based on the number of warrants issued, not the number of shares underlying the warrants.

#### E. Opinion of Counsel

The Exchange proposes to delete from Section 213 of the Company Guide the requirement that the opinion of counsel address a prospect company's qualification to conduct business in jurisdictions other than that of its state of incorporation. In support of this, the Exchange cites an ABA sponsored study of third-party legal opinions that states that an opinion concerning a corporation's qualification to do business in jurisdictions other than that of incorporation is generally not cost effective or necessary.<sup>10</sup> In addition, the Exchange notes that the NYSE does not have a similar requirement.

#### F. Listing Resolution

The Exchange proposes to delete from Sections 213 and 330 the requirement that a prospect company's Board of Directors provide the Exchange with a listing resolution authorizing the filing of the listing application. The Exchange believes this requirement does not serve any significant purpose and, essentially, is ceremonial in nature.

#### G. "Backdoor" Listings

Currently, the literal language of Section 341 of the Company Guide indicates that the surviving entity of a backdoor listing<sup>11</sup> transaction must

<sup>9</sup> Securities Exchange Act Release No. 20767 (Mar. 20, 1984), 49 FR 11275 (approving File No. SR-NYSE-83-11).

<sup>10</sup> See American Bar Association, *Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law*, 47 Bus. Law. 167 (Nov. 1991).

<sup>11</sup> The Exchange defines a "backdoor" listing as any plan of acquisition, merger, or consolidation, the net effect of which is that a listed company is acquired by an unlisted company even though the

meet the Exchange's original listing guidelines in all respects. The Exchange states, however, that it has been its longstanding practice to evaluate a backdoor listing on the same basis that an original listing is reviewed. Among other things, this allows the Exchange to exercise its discretion to approve a backdoor listing even though the company does not meet all of the Exchange's numerical guidelines.<sup>12</sup> The Exchange proposes to make this section consistent with the Exchange's practice.

#### H. Fractional Shares

Very often when a company issues a stock dividend, the issuer must settle fractional share interests. The Exchange's current practice is to require those companies that do not choose to settle such interests with a cash payment to round up to a full share in payment for the fractional amount. The Exchange reasons that if the issuer were to round down, the shareholder would be deprived of assets due him or her. The Exchange proposes to make this requirement explicit by inserting it into Section 507 of the Company Guide.

#### I. Listing Agreement

In its present form, the Exchange's listing agreement specifies a number of obligations that a listed company is subject to by virtue of listing its securities on the Amex. Most of these obligations also are contained in various sections of the Company Guide. In order to eliminate redundancies and avoid confusion, the Exchange proposes to move to the Company Guide those provisions that currently are contained in the listing agreement, but are not contained in the Company Guide. In addition, the Exchange proposes to amend its listing agreement to simply state that the issuer agrees to comply with all of the Exchange's rules, policies, and procedures that apply to listed companies.

#### J. Interim Reports

The Exchange proposes to amend Section 623 of the Company Guide to advise companies that when they choose to mail interim reports to shareholders, they should send the reports to both the record holders and the beneficial owners. The Exchange believes this change strikes an appropriate balance between the benefit of mailing these reports to both the record holders and the beneficial owners against the high cost of

listed company is the nominal survivor. Amex Company Guide section 341.

<sup>12</sup> Similarly, the fact that an issuer meets the numerical guidelines does not necessarily mean that its application will be approved.

mandating such action. In support of this rule change, the Exchange notes that the NYSE previously made a similar change to its rules.<sup>13</sup>

#### K. Legending Requirements

Currently, Section 980 of the Company Guide requires that listed securities issued in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1933<sup>14</sup> bear a legend specifying that sale or transfer restrictions apply to such securities. The Exchange proposes to delete this requirement. The Exchange states issuers have complained that the Exchange requirement may be unnecessary and, in some instances, more restrictive than the applicable laws. In addition, the Amex notes that the NYSE does not impose an independent legending requirement on its listed companies.

#### L. Delisting Standards

Because more brokerage firms are holding securities for their customers in "street name," and fewer customers are demanding physical delivery of their securities,<sup>15</sup> the proportion of beneficial holders to record holders has increased dramatically in recent years. Accordingly, companies are less likely to meet the Exchange's maintenance standards concerning the total number of round lot shareholders of record. As a result, certain companies that have well over 300 round lot beneficial shareholders could be subject to delisting proceedings.<sup>16</sup> In order to address this situation, the Exchange proposes to amend Section 1003 of the Company Guide to refer to "public shareholders"<sup>17</sup> instead of "shareholders of record."

<sup>13</sup> Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (approving File No. SR-NYSE-94-42).

<sup>14</sup> 15 U.S.C. 77e.

<sup>15</sup> This change in practice is in accordance with recommendations for increased safety and soundness in the securities industry made by the Bachmann Task Force. See Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement Reform in the U.S. Securities Markets 24-26 (May 1992) (recommending the reduction in use of physical certificates).

<sup>16</sup> Section 1003 of the Company Guide provides, in pertinent part, that the Exchange normally will consider delisting a security "if the total number of round lot shareholders of record is less than 300 \* \* \*" (Emphasis added).

<sup>17</sup> This term would include both shareholders of record and beneficial holders, but exclude officers, directors, controlling shareholders, and other concentrated (*i.e.*, 5% or greater), affiliated, or family holdings. In addition, the Exchange proposes to make conforming changes to sections 102, 103, 105, 106, 107, 110, and 118.

### III. Discussion

The Commission has reviewed the Amex's proposed rule changes carefully and concludes that these proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the amendments contained in this proposal are consistent with the Section 6(b)(5)<sup>18</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public; and are not designed to permit unfair discrimination between issuers.

The Commission supports the Amex's efforts to continue to review the form and substance of its listed company regulations in response to changes in market structure and eliminate requirements that no longer serve a meaningful regulatory purpose. In this regard, the changes to the listing process, such as eliminating the requirement for a Board resolution authorizing the submission of a listing application, should make the listing process easier for issuers without raising any regulatory concerns. The Commission also believes the proposed rule changes should be helpful in updating the Amex's listed company rules, should facilitate transactions in securities, should clarify certain obligations contained in the rules and, in general, further the purposes of the Act. Finally, although the Commission has certain concerns regarding the amendments to backdoor listings, delisting standards, and convertible preferred stock, for the reasons discussed below, we believe these provisions should be approved.

First, according to the Amex, the changes to the backdoor listing standards will provide the Exchange with the same flexibility it currently has in evaluating original listing applications. Although the Commission is approving the Exchange's more liberal language concerning backdoor listings, we believe that, as a general matter, listed companies should meet the Exchange's numerical and other listing guidelines. To the extent certain flexibility in applying listing standards may occasionally be needed, the Commission expects the Exchange to exercise its discretion conservatively when granting an exception to these standards. Moreover, when the Exchange chooses to make an exception

<sup>18</sup> 15 U.S.C. 78f(b)(5).

to its stated listing standards, the Commission expects the Exchange to have procedures in place that adequately document and provide sufficient analysis as to why it is making such an exception and which factors it considered pertinent.

Second, the proposed amendment to the Exchange's delisting standards concerning the total number of round lot shareholders is a reasonable response to changing market conditions. In approving this amendment, however, the Commission understands the Exchange will have certain procedures in place to verify the total number of round lot beneficial holders. In this regard, the Exchange has represented to the Commission that if Item 5 of a listed company's Form 10K reflects that there are less than 300 record holders, the Corporate Relations Manager assigned to this company will ask the company to provide confirmation of the number of beneficial holders.<sup>19</sup> The Commission believes these procedures will help ensure that listed companies continue to meet the minimum shareholder requirements for continued listing.

Finally, in approving the changes to Section 103 that would permit the listing of convertible preferred stock where the underlying security is subject to real-time last sale reporting, the Commission expects the Amex, where appropriate, to ensure that the underlying security is generally consistent with the Exchange's common stock listing guidelines. This would be particularly expected in cases where the convertible preferred could act as a surrogate for trading in the underlying common stock (*i.e.*, the preferred stock is structured in a way to trade as a surrogate for the common stock and represents a substantial portion of the outstanding underlying common stock).

*It therefore is ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the amended proposed rule change (SR-Amex-95-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

Jonathan G. Katz,  
Secretary.

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<sup>19</sup> See Letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy, Amex, to Glen Barrentine, Senior Counsel, SEC (Oct. 18, 1995).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).