

Sequoyah Nuclear Plant, Units 1 and 2, from 3411 megawatts thermal (MWT) to 3455 MWT, an increase of approximately 1.3 percent.

Date of issuance: April 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days for Unit 1 and 120 days for Region 2.

Amendment Nos.: 275 and 264.

Facility Operating License No. DPR-79: Amendment revises the TSs and FOLs.

Date of initial notice in Federal Register: December 12, 2001 (66 FR 64303). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 7th day of May 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-11871 Filed 5-13-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45898; File No. SR-Amex-2001-47]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 by the American Stock Exchange LLC Relating to Issuer Listing Standards and Procedures

May 8, 2002.

I. Introduction

On July 16, 2001, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Amex's issuer listing standards and procedures. On January 10, 2002, the Amex filed Amendment No. 1 to the

proposed rule change,³ and on February 14, 2002, filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on February 22, 2002.⁵ The Commission received two comment letters on the proposal.⁶ On May 2, 2002, the Amex submitted Amendment No. 3 to the proposed rule change.⁷ This Order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment No. 3 to the proposal.

II. Description of the Proposal

The Exchange is proposing to amend the Amex *Company Guide* to adopt (i) new listing standards relating to the authority of the Amex Committee on Securities in respect of its review of initial listings; (ii) new procedures that would impose definitive time limits with respect to how long a non-compliant company can retain its listing; (iii) substantive revisions to the initial and continued listing standards; and (iv) changes to the appeal procedures applicable to staff denials of initial listing applications and staff delisting determinations.⁸

The Exchange represents that it has also augmented its management

reporting system to alert senior Exchange management to any developing trends emerging from the listing qualifications process, with respect to outstanding listing applications, recently approved companies, and companies failing to meet or in jeopardy of failing to meet the continued listing standards. The management review will also encompass the continued status of companies approved pursuant to the proposed alternative standards as compared to those approved pursuant to the regular standards.

A. Initial Listing Approval Process

With regard to its initial listing standards, the Exchange is proposing the following:

(1) Replace all references to listing "guidelines" with references to listing "standards."⁹

(2) Revise and clarify the authority of Listing Qualifications Department management to approve a company for initial listing, to provide that it may approve a company under the following circumstances:¹⁰

- The company satisfies new "Initial Listing Standard 1" (existing "Regular Listing Guidelines").
- The company satisfies new "Initial Listing Standard 2" (existing "Alternate Listing Guidelines").
- The company satisfies new "Initial Listing Standard 3" (new "Market Capitalization" standard).¹¹

(3) Adopt new quantitative alternative minimum listing standards limiting the authority of Amex Committee on Securities ("Committee") panels with respect to the review of initial listings determinations, such that a Committee panel would be able to approve a company that did not satisfy one of the regular initial listing standards only if

⁹ This change would also apply to references to current continued listing guidelines.

¹⁰ The Amex had originally also proposed a new "currently listed securities" standard, by which securities that are currently listed on either the New York Stock Exchange, Inc. or Nasdaq National Market would qualify for initial listing if such securities satisfy the standards with respect to continued listing set forth in Part 10 of the *Company Guide*. In Amendment No. 3, however, the Amex withdrew the "currently listed securities" standard. See Section III, *infra*.

¹¹ Under the "market capitalization" standard, a company would be eligible for initial listing if it meets the following standards: (1) Shareholders' equity of \$4 million; (2) total value of market capitalization of \$50 million; (3) market value of public float of \$15 million; and (4) a minimum public float of 500,000 and 800 public shareholders; or a minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders; or a minimum of 500,000 shares publicly held, a minimum of 400 public shareholders, and daily trading volume of 2,000 shares or more for the six months preceding the date of application.

³ See letter from Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 9, 2002 ("Amendment No. 1"). Amendment No. 1 supercedes and replaces the original Exchange Act Rule 19b-4 filing in its entirety.

⁴ See letter from Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, to Florence Harmon, Senior Special Counsel, Division, Commission dated February 13, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange corrected various typographical errors, elaborated on the augmentation of its management reporting system, clarified the procedures by which an issuer would be considered under the Alternative Listing Standards, and added rule language that had been inadvertently omitted.

⁵ See Securities Exchange Act Release No. 45451 (February 14, 2002), 67 FR 8326.

⁶ The comment letters are more fully discussed below in Section III. See Letter from Robert M. Lam, Chairman, Pennsylvania Securities Commission, to Jonathan G. Katz, Secretary, Commission, dated March 28, 2002 (PA Letter); and Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan Katz, Secretary, Commission, dated March 27, 2002 (Nasdaq Letter).

⁷ See letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 1, 2002. In Amendment No. 3, the Exchange withdrew proposed section 101(d) of the Amex *Company Guide* and designated proposed section 101(e) of the Amex *Company Guide* as section 101(d).

⁸ See generally, *Securities Regulation: Improvements Needed in the Amex Listing Program* (GAO-02-18, November 27, 2001).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(a) the company satisfies new alternative quantitative listing standards; (b) a Committee panel makes an affirmative finding that there are mitigating factors that warrant listing pursuant to the alternative standards; and (c) the company issues a press release disclosing the fact that it had been approved pursuant to the alternative listing standards. Committee panels would not have the authority to approve companies below the "floor" established by the new alternative quantitative listing standards specified in section 1203(c).

B. Continued Listing Process

The Exchange is proposing to adopt revised procedures that would impose definitive time limits with respect to how long a company that has fallen below the continued listing standards can remain listed pending corrective action. Under the new procedures, a company that falls out of compliance with the continued listing standards will be given an opportunity to submit a business plan to the Listing Qualifications Department detailing the action it proposes to take to bring it into compliance with continued listing standards within 18 months. If the Listing Qualification Department management determines that the company has made a reasonable demonstration of an ability to regain compliance within 18 months, the plan will be accepted. The company would be able to continue its listing for up to 18 months if it issues a press release indicating that it is not in compliance with the continued listing standard and that it has been granted an 18-month extension.

The Listing Qualifications Department will closely monitor the company's compliance with the plan during the 18-month plan period, and the company will be subject to delisting if it does not show progress consistent with its business plan, if further deterioration occurs, or based on public interest concerns. If, prior to the end of the 18-month plan period, the company is able to demonstrate compliance with the continued listing standards (or that it is able to qualify under an original listing standard) for a period of two consecutive quarters, the Exchange will deem the 18-month plan period over. At the conclusion of the 18-month plan period, the staff will initiate delisting proceedings if the company has not regained compliance with the continued listing standards.

If the company, within twelve months of the end of the 18-month plan period (including any early termination of the 18-month plan period), is again

determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include immediately initiating delisting procedures.¹² All staff delisting proceedings can be appealed to a Committee panel; however, the Committee panel will not have the authority to continue the company's listing unless it determines that the company has regained compliance with the continued listing standards.

C. Other Changes

With respect to continued listing, the Amex is proposing to revise section 1003(a)(iii) of the *Company Guide* to provide that a company will continue to qualify for listing, even if it has sustained losses from continuing operations and/or net losses in its five most recent fiscal years, if it has stockholders' equity of at least \$6 million. Currently, a company that has sustained such losses is subject to delisting regardless of its stockholders' equity. The Amex believes that this change is appropriate, in that a company which is able to maintain significant shareholders' equity should be able to continue its listing notwithstanding five or more years of losses. The Amex notes that many development and research-oriented companies often take a number of years to reach profitability. Although not all these companies become profitable, the ability to raise capital, as evidenced by significant shareholders' equity, is often an indication of a company's strength.

In addition, the Amex is proposing to modify the market value of public float continued listing standard contained in section 1003(b)(i)(C) of the *Company Guide*, to provide that a company will not be considered below continued listing standards unless the aggregate

market value of its shares publicly held is less than \$1 million for more than ninety consecutive days. Currently, a literal reading of the provision would result in a listed company technically falling below the requirement if the market value of its public float fell below \$1 million for even one day. In view of the volatility of the markets, the Amex believes it is appropriate to evaluate this listing standard over a period of time.

D. Appeal Procedures

The proposed changes make adjustments to the procedures applicable to the review of initial listing determinations and revise the procedures applicable to the review of delisting determinations to conform them to initial listing procedures. The proposal provides issuers with the right to appeal a staff determination to deny initial or continued listing to a panel of at least three members of the Committee. The issuer has the right to appeal an adverse panel's decision to the full Committee.

A panel decision will be dispositive with respect to both listing and delisting decisions. In the case of an appeal of an initial listing denial, this means that if the panel determines to "reverse" the staff determination, the issuer's securities will be approved for listing and listed at the convenience of the issuer. In the case of an appeal of a delisting determination, the delisting action will be stayed pending the outcome of the panel's review. Following a panel determination to delist, trading in the company's securities will be suspended. If the company does not appeal the panel's decision to the full Committee, its securities will be delisted following the expiration of the appeal period, in accordance with section 12 of the Act¹³ and the rules promulgated thereunder. If the company does appeal to the full Committee, the suspension will continue until there is a final decision (either by the full Committee or the Board based on its "call for review"), in which case the securities will be either delisted or the suspension will be lifted, depending on the outcome.

With respect to an initial listing application in which the company appeals an adverse panel decision to the full Committee, if the Committee "reverses" the panel decision and approves the listing, in order to avoid potential market disruptions and investor confusion, the securities will not begin trading unless and until the

¹² The Exchange represents that it does not view the one-year probation period as an extension of the 18-month plan period. Telephone discussion between Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 14, 2002). The Commission agrees and emphasizes in particular that companies listed pursuant to the new alternative listing standards in section 1203(c) of the *Company Guide* should not view the one-year probation period as an opportunity to gain additional time to achieve compliance. Absent extraordinary circumstances, the Commission expects the Exchange to suspend and institute delisting proceedings for the security of any section 1203(c) company that falls below the section 1203(c) criteria during the one-year probation period.

¹³ 15 U.S.C. 78l.

Board has declined to call such decision for review.

While issuers will be able to request either an oral or written hearing at the panel level, appeals to the full Committee will be based on the written record only unless the Committee determines, in its sole discretion, to hold a hearing. All decisions of the full Committee will also be subject to a discretionary "call for review" by the Amex Board of Governors. If the Board's decision provides that the issuer's security or securities should be delisted, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to section 1204(d), and an application will be submitted by the Exchange staff to the Commission to strike the security or securities from listing and registration in accordance with section 12 of the Act¹⁴ and the rules promulgated thereunder. In the event that the Board was to "reverse" a full Committee decision, the issuer's listing status would be adjusted accordingly.

Additionally, in order to recoup the costs associated with processing and conducting hearings in connection with issuer requests for review, the Amex will continue to charge a fee of \$2,500 for an oral hearing and \$1,500 for a written review. Thus, an issuer requesting an oral hearing before a panel will be assessed a fee of \$2,500, while an issuer requesting a written review by a panel will be assessed a fee of \$1,500. Should the issuer appeal the panel's decision to the full Committee, it will be assessed an additional fee of \$2,500. Issuers will not be charged fees in connection with a "call for review" by the Board of Governors.

III. Comments and Response

A. Comment Letters

The Commission received two comment letters regarding the proposal.¹⁵ Both commenters generally believed that the "currently listed securities" standard proposed in section 101(d) of the *Company Guide* is contrary to section 18 of the Securities Act of 1933 ("Securities Act").¹⁶ The commenters expressed the concern that the "currently listed securities" standards would allow a company listed on either Nasdaq's National Market or the New York Stock Exchange to be approved for listing on Amex based solely upon that company's compliance with Amex's lower continued listing

standards (rather than Amex's higher initial listing standards).

B. Amex Response

In Amendment No. 3, the Amex withdrew proposed section 101(d) of the *Company Guide* ("currently listed securities" standard) and designated proposed section 101(e) of the *Company Guide* as section 101(d).¹⁷ Notwithstanding the amendment, the Amex stated that it continues to believe strongly that their originally proposed changes to section 101(d) are fully consistent with section 18 of the Securities Act.¹⁸ The Amex represented that the provision would have provided a narrow and limited window for the securities of issuers currently listed on a marketplace that has been afforded the section 18 "blue-sky" exemption to transfer to another section 18 marketplace. These issuers must have previously satisfied the initial listing standards of such marketplace and must have been in compliance with applicable Amex initial listing standards at the time of initial listing. The Amex maintained that the ultimate beneficiaries of the proposed "currently listed securities" standard would have been the shareholders of the issues in question.

IV. Discussion

The Commission has reviewed the Amex's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of section 6 of the Act¹⁹ and the rules and regulations promulgated thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,²⁰ 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

At the outset, the Commission believes that the adoption of firm quantitative standards enhances the transparency of the Amex's listing program and provides clarity to investors. Investors are likely to assume that the companies listed on Amex meet

the Exchange's listing standards, and the proposed amendments recognize that practicality. The *Company Guide* provides that the Amex staff may approve a company for initial listing if the company satisfies clearly delineated standards. The Amex Committee on Securities ("Committee") would be able to approve a company that did not satisfy one of the regular initial listing standards only if (i) the company satisfies new alternative quantitative listing standards; (ii) a Committee panel makes an affirmative finding that there are mitigating factors that warrant listing pursuant to the alternative standards; and (iii) the company issues a press release disclosing the fact that it had been approved pursuant to the alternative listing standards.²¹ The Commission notes that Committee panels would not have authority to approve companies below the "floor" established by the new alternative quantitative listing standards.

With respect to continued listing, the Commission believes that the revision to section 1003(a)(iii), to provide that a company will continue to qualify for listing if it has stockholders' equity of at least \$6 million, even if it has sustained losses from continuing operations and/or net losses in its five most recent fiscal years, is reasonable. In its experience, the Amex has noted that many development and research-oriented companies often take a number of years to reach profitability. Although not all these companies become profitable, the Amex believes that the ability to raise capital, as evidenced by significant shareholders' equity, is often an indication of a company's strength.

The Commission similarly believes that the revision to section 1003(b)(i)(C), to modify the market value of public float continued listing standard, is reasonable. The Amex is proposing that a company not be considered below continued listing standards unless the aggregate market value of its shares publicly held is less than \$1 million for more than ninety consecutive days. Currently, a literal reading of the provision would result in a listed company technically falling below the requirement if the market value of its public float fell below \$1 million for even one day. In view of the volatility of the markets, the Amex believes it is appropriate to evaluate this listing standard over a period of time.

The Commission also believes that the modifications to the Exchange's continued listing program and appeal procedures under Parts 10 and 12 of the *Amex Company Guide* strike a

¹⁴ *Id.*

¹⁵ See PA Letter, Nasdaq Letter, *supra* at note 6.

¹⁶ 15 U.S.C. 77r.

¹⁷ See Amendment No. 3, *supra* at note 7.

¹⁸ 15 U.S.C. 77r.

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ *Amex Company Guide*, Section 1203(c).

permissible balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market. The measures by which a company may return to compliance with continued listing standards are explicitly delineated, providing greater transparency to the 18-month plan process and sustaining investor confidence in the integrity of the markets. The Commission believes that the proposed changes to the appeals process are reasonable and afford adequate due process to issuers while at the same time bringing increased efficiency to the listing and delisting processes.²² Among other things, the process provides issuers with the right to appeal a staff determination to deny initial or continued listing to a panel of at least three members of the Committee. The issuer has the right to appeal an adverse panel's decision to the full Committee.²³ All decisions of the full Committee will also be subject to a discretionary "call for review" by the Amex Board of Governors.²⁴

Finally, the Commission believes that changes to the Amex management reporting process will help to protect investors and the public interest. The Amex represents that it has augmented its management reporting system to ensure that senior Exchange management is regularly alerted to any developing trends emerging from the listing qualifications process, with respect to outstanding listing applications, recently approved companies, and companies failing to meet or in jeopardy of failing to meet the continued listing standards. In addition, Amex states that the management review will also encompass the continued status of companies approved pursuant to the proposed alternative standards as compared to those approved pursuant to the regular standards. The Amex believes that this comparison will enable the staff to provide feedback to the Committee and the Board of Governors as to the effectiveness of the Amex listing standards.

²² For example, the Committee will now follow the same review process for both listing and delisting determinations, rather than different processes for each. In addition, the Amex notes that the Committee, which has extensive experience and expertise in evaluating listing issues, will be given greater responsibility with respect to listing determinations, while the Board, through its "call for review" rights, will retain ultimate oversight of the listing and delisting process as well as of listing matters in general.

²³ Amex *Company Guide*, Sections 1203 and 1204.

²⁴ Amex *Company Guide*, Section 1206.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange withdrew proposed section 101(d), the "currently listed securities" standard, and designated proposed section 101(e) as section 101(d). As the changes to the proposal set forth in Amendment No. 3 are directly responsive to the concerns raised by the commenters, the Commission finds that, consistent with section 19(b)(2) of the Act,²⁵ good cause exists for approving Amendment No. 3 on an accelerated basis. The Commission notes that granting accelerated approval to Amendment No. 3 will allow the Amex to implement its issuer listing standards and procedures as soon as possible.

V. Solicitation of Comments

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 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 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 No. SR-Amex-2001-47 and should be submitted by June 4, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-Amex-2001-47), as amended, is approved.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12010 Filed 5-13-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45892; File No. SR-CHX-2002-08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Thereto by the Chicago Stock Exchange, Inc. Amending the Specialist Fee Schedule for Certain Nasdaq National Market Securities and Certain Tape B Issues

May 7, 2002.

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 April 26, 2002, the Chicago Stock Exchange, Inc. ("CHX" 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.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its membership dues and fees schedule ("Schedule") to provide for wider application of a recently-enacted specialist fee exemption⁴ in the case of certain modestly traded Nasdaq National Market ("NNM") securities and certain modestly traded Tape B securities, securities listed for trading on the American Stock Exchange, Inc. ("Amex"). The text of the proposed rule change is available at the principal offices of the CHX and at the Commission.

²⁷ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal was originally filed on March 29, 2002. On April 26, 2002, the CHX amended the proposal. See Letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (April 25, 2002) ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45661 (March 27, 2002), 67 FR 16481 (April 5, 2002).