

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52630; File No. SR-Amex-2005-097]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Amex Listing Agreement

October 18, 2005.

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 September 29, 2005, the American Stock Exchange LLC (“Amex” 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt a modified Amex Listing Agreement for the purpose of (i) combining the two forms of Amex Listing Agreements presently available into one form of Amex Listing Agreement to be submitted to the Exchange by all issuers in connection with a listing application; (ii) eliminating a representation by issuers of structured products, exchange-traded funds, trust issued receipts and other novel securities products regarding third party claims; and (iii) making certain minor, non-substantive changes to the Amex Listing Agreement.

The text of the proposed rule change is available on the Amex’s Web site, <http://www.amex.com>, at the Amex’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B,

and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

To list on the Exchange, an issuer must execute an Amex Listing Agreement in connection with its listing application. The Exchange currently has two forms of Amex Listing Agreements: (i) A listing agreement for securities listed pursuant to sections 106 (Currency and Index Warrants) and 107 (Other Securities) of the Amex Company Guide and pursuant to Amex Rules 1000 (Portfolio Depositary Receipts), 1000A (Index Fund Shares) and 1200 (Trust Issued Receipts) (the “Other Securities Listing Agreement”) and (ii) a listing agreement for all other securities (the “Basic Securities Listing Agreement”). The Exchange proposes to consolidate the two forms of Amex Listing Agreements into one form for issuers of all types of securities.

The Other Securities Listing Agreement and Basic Securities Listing Agreement differ in only one respect: In paragraph (4) of the Other Securities Listing Agreement (“Paragraph (4)”), issuers represent that they will not implead, cross-claim against or sue the Exchange or its affiliates as a result of third party claims against the issuer. The Exchange created the Other Securities Listing Agreement in 2002<sup>3</sup> to address concerns about the Exchange’s potential legal exposure, particularly in the area of intellectual property rights associated with exchange-traded funds, HOLDRs and other structured products. The adoption of Paragraph (4) reflected the position that, even though the Exchange’s sole involvement with any particular product is that it approved the product for listing and that the securities trade on the Exchange, it was foreseeable that litigation relating to the products could include the Exchange as a defendant and that the inclusion of Paragraph (4) in the listing agreement might reduce the Exchange’s legal exposure and litigation in some circumstances.

The Exchange now proposes to delete Paragraph (4) from the Amex Listing Agreement. The Exchange believes that none of the listing agreement forms provided by other exchanges contain a provision similar to Paragraph (4). The Exchange believes that modification of the Amex Listing Agreement to more

closely resemble the listing agreements provided by other exchanges will promote fair competition between exchange markets and benefit issuers of exchange-traded funds and other structured products by simplifying their responsibilities and obligations in connection with the listing process.

The Exchange is also proposing other minor changes to the Amex Listing Agreement, to clarify existing provisions about which issuers have raised questions.

##### 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular, in that 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, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Amex believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposal.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

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

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

<sup>3</sup> See Securities Exchange Act Release No. 46451 (September 10, 2002), 67 FR 57468 (September 3, 2002) (SR-Amex-2002-46).

<sup>4</sup> 15 U.S.C. 78f(b).

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

(ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-097 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-097. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-097 and

should be submitted on or before November 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-5892 Filed 10-24-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52632; File No. SR-CHX-2005-21]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Requiring the Chicago Stock Exchange's Participants To Provide Electronic Mail Addresses to the Exchange

October 19, 2005.

#### Introduction

On July 18, 2005, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") 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 require participants and participant firms to provide electronic mail addresses to the Exchange for use in transmitting notices and other communications. On August 30, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 1, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published in the **Federal Register** on September 14, 2005.<sup>5</sup> No comments were received on the proposed rule change. This order

<sup>6</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> See Amendment No. 1. In Amendment No. 1, the Exchange made several modifications to the proposed rule change, including changes to the proposed rule text to require members to promptly update electronic mail addresses they provide to the Exchange, to clarify that the proposal will not supersede or modify any other provisions of Exchange rules that set out a specific method for the receipt of information from the Exchange, and to modify the notice to more closely conform it to the text of the proposed rule change.

<sup>4</sup> See Amendment No. 2. In Amendment No. 2, the Exchange changed the text of the proposed rule so that it uses the term "electronic mail" instead of the term "e-mail."

<sup>5</sup> See Securities Exchange Act Release No. 52375 (September 1, 2005), 70 FR 54424.

approves the proposed rule change, as amended.

New Rule 17 of Article III shall provide that every Exchange participant and Exchange participant firm shall designate one or more electronic mail addresses for the purpose of receiving Exchange notices and communications and shall promptly update those electronic mail addresses when those addresses change or are no longer valid. New Rule 17 also provides that an authorized representative of the Exchange may elect to transmit notices or other communications to participants electronically, but that nothing in Rule 17 will supersede or modify either the method for service of process or other materials in any disciplinary proceeding or any other provisions of the Exchange rules setting out a specific method for the receipt of information from the Exchange.

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest, by allowing the Exchange to take advantage of technology to communicate with participants in a more efficient and cost-effective manner.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CHX-2005-21), as amended, is approved.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-5880 Filed 10-24-05; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>8</sup> 5 U.S.C. 78(f)(b)(5).

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

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