

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55963; File No. SR-Amex-2007-38]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Preferred Stock Voting Rights

June 26, 2007.

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 April 20, 2007, 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 substantially prepared by the Amex. 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 amend the minimum voting rights to be provided to preferred shareholders in order for a preferred stock issue to list on the Amex. The text of the proposed rule change is available at the Amex, on the Amex’s Web site at <http://amex.com>, 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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Section 124, “Preferred Voting Rights,” of the Company Guide sets forth the minimum voting rights an issuer must provide to holders of

preferred stock in order for a preferred stock issue to be approved for listing on the Amex. Currently, the Exchange may decline to list a preferred stock issue unless the preferred shareholders have the right, voting as a class, to vote on any change in the rights, privileges or preferences of their preferred shares and/or the creation of any additional class of preferred stock senior to or equal in preference to their preferred shares. Additionally, any such change in the rights, privileges or preferences of preferred shares and/or creation of an additional class of senior preferred stock must be approved by at least two-thirds of the preferred shareholders, and any creation of an additional class of preferred stock equal in preference must be approved by at least a majority of the preferred shareholders.

The Exchange now proposes amendments to the minimum preferred voting rights required for listing in order to provide additional flexibility to issuers of preferred stock and to make the requirements more consistent with those of the New York Stock Exchange LLC (“NYSE”).<sup>3</sup>

(i) *Alteration of Existing Provisions.* The Exchange proposes to amend paragraph (i) of Section 124(b) to specify that: (A) Holders of at least two-thirds of the outstanding shares of a preferred stock issue should be required to approve any charter or by-law amendment that would materially affect existing terms of the preferred stock; and (B) if all series of a class of preferred stock are not equally affected by a proposed change to the terms of the preferred stock, two-thirds approval of both the class and the series to be affected by the proposed change should be required to authorize such change. The Exchange also proposes to require that an issuer’s charter not hinder preferred shareholders’ right to alter the terms of their stock by limiting modification to specific items, e.g., interest rate, redemption price.

(ii) *Creation of a Senior Issue.* The Exchange proposes to amend paragraph (ii) of Section 124(b) to provide that: (A) A vote by an existing series of preferred stock is not required for the board of directors of an issuer to create a senior series if shareholders authorized such action when the existing series was created; and (B) a vote by an existing class is not required for the creation of a senior issue if the existing class received adequate notice of redemption to occur within 90 days and the existing issue is not being retired with proceeds from the sale of the new issue.

(iii) *Increase in Authorized Amount or Creation of a Pari Passu Issue.* The Exchange proposes to provide in new paragraph (iii) of Section 124(b) that an increase in the authorized amount of a class of preferred stock or the creation of a pari passu issue is required to be approved by a majority of the outstanding shares of the class or classes to be affected by such change. A majority vote would not, however, be required if, at the time a class of preferred stock was created, the preferred shareholders gave the board of directors the authority to increase the authorized amount of a series of preferred stock or create an additional series of preferred stock equal in preference.

The Exchange believes that by enabling preferred stock issuers to obtain in advance the shareholder authorization required for future creations of senior or pari passu series and/or increases in authorized amounts of a series, their capital raising processes will be less restricted. In addition, the proposed rule change will align preferred voting rights with current market practices. Shareholders purchasing affected preferred shares will be put on notice, either at the time of the initial offering or subsequently, that the board of directors has such authority. Moreover, preferred shareholders will still retain important voting rights, particularly in the case of dividend defaults, and will still be protected against adverse corporate actions pursuant to applicable state law.

###### 2. Statutory Basis

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) of the Act,<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 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.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

<sup>3</sup> Section 313.00(C) of the NYSE Listed Company Manual.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

### 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 (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-2007-38 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-38. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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-2007-38 and should be submitted on or before July 23, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55950; File No. SR-BSE-2007-09]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Appointment of Market Makers

June 25, 2007.

#### I. Introduction

On February 20, 2007, the Boston Stock Exchange, Inc. ("BSE" 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 grant the authority for the Exchange to approve Market Maker appointments instead of the Board or a committee designated by the Board and to provide a process for those Market Makers who wish to withdraw from trading an option issue within their appointment. The Exchange filed Amendment No. 1 to the proposed rule change on May 11, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 23,

2007.<sup>3</sup> The Commission received no comments on the proposal.

#### II. Description of the Proposal

The Exchange proposes to amend Section 4 (Appointment of Market Makers) of Chapter VI of the BOX Rules to grant the authority for the Exchange to approve Market Maker appointments instead of the Board or committee designated by the Board, as the rule currently states. This proposed change would allow the regulatory staff of the Exchange to approve Market Maker appointments. According to the Exchange, the BSE regulatory staff is more accessible than the Board and this change would help with the expediency of the Market Maker allocation approval process.

The Exchange also has proposed to add a provision to establish a process for those Market Makers who wish to withdraw from trading an option issue within their appointment.<sup>4</sup> A Market Maker may withdraw from an appointment as long as the Market Maker provides BOX with three business days written notice of its intent to withdraw from an appointment. If such written notice is not provided to BOX, then the Market Maker may be subject to formal disciplinary action.

#### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act.<sup>6</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes the proposal to grant the Exchange the authority to approve Market Maker appointments, instead of the Board, should help make the Market Maker allocation approval process more efficient, thereby potentially increasing liquidity on the Exchange. The proposal also provides transparency to the Exchange's process governing Market Makers who wish to

<sup>3</sup> See Securities Exchange Act Release No. 55774 (May 16, 2007), 72 FR 29019.

<sup>4</sup> See Proposed Section 4, subparagraph (i), Chapter VI of the BOX Rules.

<sup>5</sup> The Commission has considered the amended proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<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.