

Institutional Broker and non-Institutional Broker units. The CHX further believes that the articulation of these standards in the proposed Interpretation and Policy will provide clarity and direction to interested Institutional Brokers in creating their information barrier procedures.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>8</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by setting forth the rules and principles governing the trading activity of Institutional Brokers. By permitting an Institutional Broker firm to operate a separate non-Institutional Broker unit within the larger firm subject to the new information barrier requirements, the proposed new Rule 5 would provide protection to the customers of such firms. Rather than routing orders which were directed to the OTC marketplace to a third-party broker-dealer for execution, the proposed non-Institutional Broker unit of the firm could handle and execute such orders. The Exchange believes that this handling could reduce the possibility for errors in transmission from one firm to another, as well as eliminate potential costs imposed by the third-party broker-dealer which might have to be borne by the order sender or the Institutional Broker firm. The creation and maintenance of adequate information barrier procedures, which are subject to the review, approval and inspection of the Exchange, should help ensure that the Institutional Broker and non-Institutional Broker units are in fact being operated separately, and that treatment of the non-Institutional Broker unit as not being part of the facilities of the Exchange is appropriate.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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*

No written comments were either solicited or received.

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

Within 45 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 self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 No. SR-CHX-2011-20 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2011-20. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-CHX-2011-20 and should be submitted on or before August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-20244 Filed 8-9-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65033; File No. SR-NYSEAmex-2011-55]

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Section 101 of the NYSE Amex Company Guide To Adopt Additional Listing Requirements for Companies Applying To List After Consummation of a "Reverse Merger" With a Shell Company**

August 4, 2011.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 22, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange proposes to amend Section 101 of the NYSE Amex Company Guide (the "Company Guide") to adopt additional initial listing requirements for companies applying to list after consummation of a "reverse merger" with a shell company. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

### **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 self-regulatory organization 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 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 Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

NYSE Amex proposes to adopt more stringent listing requirements for operating companies that become Exchange Act reporting companies by combining with a shell company which is an Exchange Act reporting company. The proposed listing requirements would apply to combinations with a shell company which is an Exchange Act reporting company, through a reverse merger, exchange offer or otherwise (a "reverse merger transaction").

In a reverse merger transaction, an existing public shell company merges with a private operating company in a transaction in which the shell company is the surviving legal entity.<sup>4</sup> While the public shell company survives the merger, the shareholders of the private operating company typically hold a large majority of the shares of the public company after the merger and the management and board of the private company will assume those roles in the post-merger public company. The assets and business operations of the post-

merger surviving public company are primarily, if not solely, those of the former private operating company. The Exchange understands that private operating companies generally enter into reverse merger transactions to enable the company and its shareholders to sell shares in the public equity markets. By becoming a public reporting company via a reverse merger, a private operating company can access the public markets quickly and avoid the generally more expensive and lengthy process of going public by way of an initial public offering. While the public shell company is required to report the reverse merger in a Form 8-K filing with the Securities and Exchange Commission (the "Commission"), generally there are no registration requirements under the Securities Act of 1933 (the "Securities Act")<sup>5</sup> at that point in time, as there would be for an IPO.

Significant regulatory concerns, including accounting fraud allegations, have arisen with respect to a number of reverse merger companies in recent times. The Commission has taken direct action against reverse merger companies. During 2011, the Commission has suspended trading in the securities of a number of reverse merger companies and has revoked the securities registration of a number of reverse merger companies.<sup>6</sup> The Commission also recently brought an enforcement proceeding against an audit firm relating to its work for reverse merger companies.<sup>7</sup> In addition, the Commission issued a bulletin on the risks of investing in reverse merger companies, noting potential market and regulatory risks related to investing in reverse merger companies.<sup>8</sup>

In response to these concerns, NYSE Regulation staff has been conducting heightened, risk-informed reviews of reverse merger companies seeking to list on the NYSE or NYSE Amex to consider factors other than the enumerated initial listing criteria in making listing determinations. In this regard, Commentary .01 to Section 101 of the Exchange's Company Guide, provides that the Exchange has "broad discretionary authority over the initial and continued listing of securities in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and

equitable principles of trade, and to protect investors and the public interest." Thus, pursuant to Section 101 of the Company Guide, "[t]he Exchange may use such discretion to deny initial inclusion, apply additional or more stringent criteria for the initial or continued inclusion of particular securities, or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing."

In light of the well-documented concerns related to some reverse merger companies described above, the Exchange believes it is appropriate to codify in its rules specific requirements with respect to the initial listing qualification of reverse merger companies. As proposed, a reverse merger company would not be eligible for listing unless the combined entity had, immediately preceding the filing of the initial listing application:

(1) Traded for at least one year in the U.S. over-the-counter market, on another national securities exchange or on a regulated foreign exchange following the consummation of the reverse merger and (i) In the case of a domestic issuer, filed with the Commission a Form 8-K including all of the information required by Item 2.01(f) of Form 8-K, including all required audited financial statements, or (ii) in the case of a foreign private issuer, filed the information described in (i) above on Form 20-F;

(2) Maintained on both an absolute and an average basis for a sustained period a minimum closing stock price equal to the stock price requirement, including all requirements based on stock price, applicable to the initial listing standard under which the Reverse Merger Company was qualifying to list; and

(3) Timely filed with the Commission all required reports since the consummation of the reverse merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the filing described in (1) above.

In addition, a reverse merger company would be required to maintain through listing, on both an absolute and an average basis, a minimum closing stock price equal to the stock price requirement, including all requirements based on stock price, applicable to the

<sup>5</sup> 15 U.S.C. 77a.

<sup>6</sup> See Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 ("Schapiro Letter"), at pages 3-4.

<sup>7</sup> See Schapiro Letter at page 4.

<sup>8</sup> See "Investor Bulletin: Reverse Mergers" 2011-123.

<sup>4</sup> In some cases a private company effects an exchange offer or other transaction pursuant to which it combines with a public shell company.

initial listing standard under which the reverse merger company was qualifying to list.

The Exchange believes that requiring a “seasoning period” prior to listing for reverse merger companies should provide greater assurance that the company’s operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company, and for any concerns that would preclude listing eligibility to be identified.

In addition, the Exchange believes that the proposed rule change will increase transparency to issuers and market participants with respect to the factors considered by NYSE Regulation in assessing reverse merger companies for listing, and generally should reduce the risk of regulatory concerns with respect to these companies being discovered after listing. However, the Exchange notes that, while it believes the proposed requirements would be a meaningful additional safeguard, it is not possible to guarantee that a reverse merger company (or any other listed company) is not engaged in undetected accounting fraud or subject to other concealed and undisclosed legal or regulatory problems.

For purposes of proposed Section 101(e) of the Company Guide, a “Reverse Merger” would mean any transaction whereby an operating company became an Exchange Act reporting company by combining with a shell company that was an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company that qualified for initial listing under Section 119 of the Company Guide (*i.e.*, the Exchange’s special purpose acquisition company (“SPAC”) listing standard). In determining whether a company was a shell company, the Exchange would consider, among other factors: Whether the company was considered a “shell company” as defined in Rule 12b–2 under the Exchange Act; what percentage of the company’s assets were active versus passive; whether the company generated revenues, and if so, whether the revenues were passively or actively generated; whether the company’s expenses were reasonably related to the revenues being generated; how many employees worked in the

company’s revenue-generating business operations; how long the company had been without material business operations; and whether the company had publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

In order to qualify for initial listing, a company that was formed by a Reverse Merger (a “Reverse Merger Company”) would be required to comply with one of the initial listing standards for operating companies set forth in Section 101(a)–(d) of the Company Guide and the applicable distribution, stock price and market value requirements of Section 102 of the Company Guide.<sup>9</sup> Proposed Section 101(e) would supplement and not replace any applicable requirements of Sections 101 and 102. However, in addition to the otherwise applicable requirements of Sections 101 and 102, a Reverse Merger Company would be eligible to submit an application for initial listing only if it meets the additional criteria specified above.

The Exchange would have the discretion to impose more stringent requirements than those set forth above if the Exchange believed it was warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company’s securities, the existence of a low number of publicly held shares that were not subject to transfer restrictions, if the Reverse Merger Company had not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company had disclosed that it had material weaknesses in its internal controls which had been identified by management and/or the Reverse Merger Company’s independent auditor and had not yet implemented an appropriate corrective action plan.

A Reverse Merger Company would not be subject to the requirements of proposed Section 101(e) if it was listing in connection with a firm commitment underwritten public offering where the proceeds to the Reverse Merger Company were at least \$40,000,000 and the offering was occurring subsequent to or concurrently with the reverse merger.<sup>10</sup> In that case, the Reverse Merger Company would only need to

<sup>9</sup> Section 110(a) of the Company Guide sets forth alternative distribution requirements for foreign companies.

<sup>10</sup> The prospectus and registration statement covering the offering would thus need to relate to the combined financial statements and operations of the Reverse Merger Company.

meet the requirements of one of the initial listing standards in Sections 101(a)–(d). The Exchange believes that it is appropriate to exempt Reverse merger Companies from the proposed rule where they are listing in conjunction with a sizable offering, as those companies would be subject to the same Commission review and due diligence by underwriters as a company listing in conjunction with its IPO, so it would be inequitable to subject them to more stringent requirements.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular in that it is designed 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. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that, as discussed above under the heading “Purpose”, its purpose is to apply more stringent initial listing requirements to a category of companies that have raised regulatory concerns, thereby furthering the goal of protection of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any 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*

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 45 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

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve or disapprove 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, as amended, 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-NYSEAmex-2011-55 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEAmex-2011-55. 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. 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-NYSEAmex-2011-55, and should be submitted on or before August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-20242 Filed 8-9-11; 8:45 am]

**BILLING CODE 8011-01-P**

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## DEPARTMENT OF STATE

### [Delegation of Authority 339]

#### **Delegation by the Assistant Secretary of State for Educational and Cultural Affairs of Certain Functions to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs**

By virtue of the authority vested in me as the Assistant Secretary of State for Educational and Cultural Affairs, including by Delegation of Authority No. 236-3 (August 28, 2000), and to the extent permitted by law, I hereby delegate to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs:

a. The functions in the North/South Center Act of 1991 (22 U.S.C. 2075) (relating to the operation of the Center for Cultural and Technical Interchange between North and South).

b. The functions in the Center for Cultural and Technical Interchange between East and West Act of 1960 (22 U.S.C. 2054) (relating to the operation of the Center for Cultural and Technical Interchange between East and West).

c. The functions in the Arts and Artifacts Indemnity Act (20 U.S.C. 971) (relating to the certification on national interest for exhibits to provide indemnification).

d. Representation of the Secretary of State on the Federal Council on the Arts and Humanities (pursuant to 20 U.S.C. 958).

e. The functions in section 102 of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2452) (relating to the provision by grant, contract or otherwise for a wide variety of educational and cultural exchanges).

Notwithstanding this Delegation, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Assistant Secretary for Educational and Cultural Affairs may at any time exercise any function or authority delegated herein.

Any reference in this Delegation of Authority to any statute or delegation of

authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This Delegation shall take effect immediately upon signature and shall remain in effect until revoked, or until an Under Secretary for Public Diplomacy and Public Affairs is appointed and enters on duty, whichever occurs first. Nothing in this Delegation of Authority shall be deemed to supersede or revoke any existing delegation of authority, which shall remain in force and effect during and after the term of this Delegation.

Actions taken pursuant to any authority delegated herein, and which have been taken prior to and are in effect on the date of this Delegation, are hereby confirmed and ratified. Such actions shall remain in force as if taken under this Delegation, unless or until rescinded, amended, or superseded.

This Delegation shall be published in the **Federal Register**.

Dated: July 26, 2011.

**Ann Stock,**

*Assistant Secretary, Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 2011-20309 Filed 8-9-11; 8:45 am]

**BILLING CODE 4710-05-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### **Advisory Circular 20-24C, Approval of Propulsion Fuels and Lubricating Oils**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 20-24C, Approval of Propulsion Fuels and Lubricating Oils. This AC provides guidance on regulations and policy applicable to adding fuels and oils to type certificates as engine, aircraft, or auxiliary power unit (APU) operating limitations. It also provides acceptable methods, but not the only methods, that may be used to approve aircraft, engines, or APUs to operate with specified propulsion fuels and lubricating oils.

**DATES:** The Engine and Propeller Directorate issued AC 20-24C on July 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** The Federal Aviation Administration, Attn: Mark Rumizen, Aviation Fuels Specialist, Engine and Propeller Standards Staff, ANE-110, 12 New England Executive Park, Burlington, MA

<sup>13</sup> 17 CFR 200.30-3(a)(12).