

Intercompany Loans ("Subsequent Intercompany Loan Transactions").

The transactions are expected to raise approximately \$1 billion, which will be used to refinance the Bridge Loan, reduce other indebtedness of AE Supply, provide working capital for the facilities obtained in the Enron Acquisition, and for general corporate purposes.

All of the operative documents relating to the Leaseback will be negotiated on an arms length basis. Leaseback SPV at all times during the Leaseback would retain possession of and all meaningful operating rights with respect to the Facility. During the period of the Leaseback, Leaseback SPV or an affiliate will operate the Facility under the existing operating agreement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45036; File No. SR-Amex-2001-89]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Currency and Index Warrant Listing Standards

November 6, 2001.

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 October 23, 2001, 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 Amex. The proposed rule change has been filed by the Amex as a "non-controversial" rule change under rule 19b-4(f)(6) under the Act.<sup>3</sup> 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 Amex proposes to amend section 106 of the Amex Company Guide to include alternate listing standards for currency and index warrants.<sup>4</sup>

The text of the proposed rule change is available at the Amex and at the Commission.

#### 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 statutory 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

The Exchange proposes to revise section 106 of the Amex Company Guide to include alternate minimum distribution and market value standards for currency and index warrants. Under the proposed alternative standards, the minimum number of public holders required will not be defined, but will be determined on a case by case basis. Other criteria will require a minimum of 2,000,000 warrants together with an aggregate market value of \$12,000,000 and initial price of \$6 per warrant.

Section 106 of the Amex Company Guide provides listing standards for currency and index warrants which includes, among other things, minimum distribution and market value standards. Currently, section 106 requires a minimum public distribution of 1,000,000 warrants together with a minimum of 400 public warrant holders, and an aggregate market value of \$4,000,000.

From time to time, the Exchange receives requests from issuers to list currency and index warrants that may

substantially exceed the minimum number of required units and aggregate issuance price, but fail to satisfy the minimum number of public holders. As a result, the Exchange is precluded from listing such issues even though it believes listing such warrants may be appropriate given the number of units, aggregate issuance price, and relatively minor departure from the required minimum number of public holders. For example, currently the Exchange would be precluded from listing a warrant issuance that has 3,000,000 units outstanding with an aggregate issuance price of \$18,000,000, but has only 350 public holders.

As a result, the Exchange proposes to add alternative standards to allow the Exchange to list warrant issues that it believes are appropriate for listing and increase its flexibility in reviewing such issues. Accordingly, under the proposed alternative listing standards, the minimum number of public holders required will not be defined, but will be determined on a case by case basis. Other criteria will require a minimum of 2,000,000 warrants together with an aggregate market value of \$12,000,000 and minimum price of \$6 per warrant. Because currency and index warrants are in many respects similar to currency and index options, which require no minimum number of holders upon issuance, the Exchange believes reviewing the number of public warrant holders on a case by case basis is appropriate.

The Exchange believes the proposed alternative warrant listing standards will increase the Exchange's ability to review proposed warrant issues on a case by case basis in determining whether it is appropriate to list the particular warrant being proposed. Lastly, the Exchange believes that the approval of the alternative warrant listing standard will help foster competition between the Amex and options exchanges that have received approval of the alternative warrant listing standard.<sup>5</sup>

###### 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6 of the Act,<sup>6</sup> in general, and with section 6(b)(5) of the Act,<sup>7</sup> specifically, 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

<sup>4</sup> Specifically, the proposed rule change would apply to currency warrants, currency index warrants, and stock index warrants. Telephone conversation between Jeffery P. Burns, Assistant General Counsel, Amex, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney Advisor, Division of Market Regulation ("Division"), Commission, on November 2, 2001.

<sup>5</sup> See Securities Exchange Act Release No. 43611 (November 22, 2000), 65 FR 75326 (December 1, 2000).

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

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

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

coordination with persons engaged in facilitating transactions in securities, and to remove impediments to an perfect the mechanism of a free and open market and a national market system.

#### *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.

#### *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**

Because the foregoing proposed rule change: Does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and because Amex provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission,<sup>8</sup> the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

At any time within 60 days of October 23, 2001, the Commission may summarily abrogate such rule change 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, including whether the proposed rule change 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-2001-89 and should be submitted by December 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45048; File No. SR-NASD-2001-81]

#### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Temporary Access by UTP Exchanges to Certain Nasdaq Stock Market Systems**

November 8, 2001.

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 November 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested

persons and to approve the proposed rule change on an accelerated basis.

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

Nasdaq proposes to make available to the UTP Exchanges on a limited basis the Nasdaq Workstation II ("NWII"), the NWII Applications Programming Interface ("NWII/API"), and the Computer-to-Computer Interface ("CTCI") for the submission of quotations and trade reports of Nasdaq-listed securities. Temporary access shall be granted to these systems until: (1) 120 days after the technical specifications for the upgraded UTP Line have been made available to the UTP Exchanges; (2) 60 days after the upgraded UTP Line has been made available to the UTP Exchanges for testing; and (3) 30 days after the upgraded UTP Line has been made available to the UTP Exchanges for entry of actual quotations and trade reports. Below is the text of the proposed rule change. Proposed new language is in italics.

#### *4799. Temporary UTP Exchange Access*

##### *a. Definitions.*

(i) The term "Automated Confirmation Transaction" or "ACT" shall mean the Nasdaq proprietary service by which trades in Nasdaq-listed securities are reported to Nasdaq for comparison, risk management, and clearing purposes and for dissemination to the tape.

(ii) The term "Computer-to-Computer Interface" or "CTCI" shall mean a method by which Nasdaq subscribers can enter orders to designated Nasdaq execution systems, as well as ACT trade reports, from their computer systems to Nasdaq's proprietary computer systems without using a NWII or NWII/API.

(iii) The term "Nasdaq Workstation II" or "NWII" shall mean the primary presentation device consisting of hardware and software offered by Nasdaq for trading Nasdaq stocks.

(iv) The term "Nasdaq Workstation II/ Application Programming Interface" or "NWII/API" shall mean the method by which Nasdaq subscribers create customized software, consistent with Nasdaq technical specifications, that allows their computer systems to interact with Nasdaq's proprietary systems in place of NWII presentation devices.

(v) The term "UTP Exchange" shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing

<sup>8</sup> See Letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 8, 2001.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</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.