

needs of the CHX. Among other things, Nasdaq market makers that already subscribe to BRASS will be able to route OTC/UTP orders to specialists on the CHX floor through a SelectNet linkage with BRASS workstations on the CHX floor. Conversely, CHX specialists will be able to route orders into SelectNet through their BRASS workstations.<sup>17</sup> The Commission notes that ASC will be subject to the Commission's inspection and examination procedures with regards to the specific customized BRASS system that ASC will provide to the CHX because ASC will be operating a facility of an exchange.

The Commission continues to solicit comment regarding the BBO calculation, the trade through rule and the CHX's use of the BRASS system as well as issues resulting by changes occurring in the market place.

## VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through December 31, 1998, is appropriate and in furtherance of Section 11A of the Act. The Commission believes that such extension will provide the Participants with additional time to seek Commission approval of pending proposals concerning the BBO calculation<sup>18</sup> and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. In addition, the Commission believes that the extension will afford the CHX adequate time to test the BRASS system, address any operating issues concerning its use and implement it. While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants on or before September 30, 1998 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by December 31, 1998.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2 under the Act until the earlier of December 31, 1998 or until such time as the calculation methodology for the BBO is based on a price/size/time algorithm pursuant to a mutual agreement among the Participants approved by the

Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3-1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through December 31, 1998. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3-1 and 11Aa3-2 thereunder.

## VII. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the extension, including whether the extension is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission and all written communications relating to the proposed plan amendment 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 at the Commission's Public Reference Room. All submissions should refer to File No. S7-24-89 and should be submitted by [insert date 21 days from date of publication].

## VIII. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A and the Act and paragraph (c)(2) of Rule 11Aa3-2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through December 31, 1998, and certain exemptive relief until December 31, 1998, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40143; File No. SR-Amex-97-38]

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Exchange's Warrant Listing Guidelines.

June 29, 1998.

## I. Introduction

On October 22, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 amend its *Company Guide* to revise its warrant listing and maintenance guidelines.

The proposed rule change was published for comment in the **Federal Register** on December 10, 1997.<sup>3</sup> No comments were received on the proposal. On April 3, 1998, Amex filed an Amendment to the proposed rule change.<sup>4</sup> This order approves the Amex proposal, as amended.

## II. Description of the Proposal

The Amex proposes to amend its *Company Guide* to revise its warrant listing standards.<sup>5</sup> Currently, Section 105 provides that the Amex will not list warrants unless the underlying common stock is listed on the Amex or the New York Stock Exchange ("NYSE") and further provides that the Exchange will evaluate the warrant issuer's listing eligibility using the same financial and distribution guidelines as are applied to the listing of common stock.

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

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

<sup>3</sup> Securities Exchange Act Release No. 39392 (Dec. 3, 1997), 62 FR 65112.

<sup>4</sup> See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated April 3, 1998 ("Amendment No. 1"). In Amendment No. 1, Amex proposes raising the initial warrant listing standards from 100,000 warrants with no public holder requirement, as originally proposed, to 200,000 warrants publicly held by not less than 100 public warrant holders. Amendment No. 1 makes several other clarifications which are discussed herein.

<sup>5</sup> The Amex has represented that the proposal would only affect warrants listed under Section 105 of the Exchange's *Company Guide* and not currency or other types of warrants listed pursuant to Section 106 or 107. See Amendment No. 1.

<sup>17</sup> See December 1997 Extension Request and Letter from George T. Simon, Foley & Lardner to Howard L. Kramer, Senior Associate Director, Division, SEC, dated December 12, 1997 ("CHX Letter").

<sup>18</sup> See e.g., Actual Size Rule Release, supra note 13 and IODES Proposal, supra note 14.

<sup>19</sup> 17 CFR 200.30-3(a)(29).

Specifically, with respect to financial guidelines, the issuer of the warrants must meet the size and earnings requirements for common stock set forth in Section 101 (*i.e.*, stockholders equity of at least \$4,000,000 and pre-tax income of at least \$750,000 in its last fiscal year, or in two of its last three fiscal years). The Exchange believes that these guidelines are unnecessarily high when applied to the listing of warrants. In this regard, the Amex notes that a listed company is not required to meet the original listing guidelines when issuing additional shares of its common stock and that warrants are nothing more than a claim on a company to issue more stock that does not expose a company to financial risk. Thus, Amex believes that warrant issuers should not be subject to the same stringent financial requirements as required of issuers of common stock.

Similarly, Amex believes that the current original listing distribution requirements (*i.e.*, a minimum of 500,000 publicly held warrants and not less than 800 public warrant holders or 1,000,000 publicly held warrants and not less than 400 public warrant holders) are too high because price discovery occurs with the underlying security and, therefore, such a high degree of liquidity is not as important for the warrant.

As a result of the above, the Amex is proposing to amend Section 105, relating to initial listing requirements for warrants, and Section 1003, relating to maintenance requirements for warrants.<sup>6</sup> The Amex is proposing that Section 105 be amended to eliminate the express requirements that companies applying for listing of warrants must meet the size and earnings criteria for common stock. However, in addition to the current requirement that the underlying common stock (or other security underlying the warrant) must be listed on the Amex or the NYSE, the Amex is proposing to amend Section 105 to include a requirement that the underlying security must be in "good standing." The Amex has represented that for a company's common stock to be in "good standing," it must be above the numerical maintenance standards of the Amex or the NYSE.<sup>7</sup> Where common stock underlies the warrant, the "good

standing" requirement results in a de facto size and earnings requirement for the issuer of the warrant.<sup>8</sup> The Amex also is proposing that Section 105 be amended to reduce the original listing distribution criteria for warrants from 500,000 warrants outstanding and not less than 800 public warrant holders or 1,000,000 publicly held warrants and not less than 400 public warrant holders to 200,000 warrants outstanding and not less than 100 public warrant holders.<sup>9</sup> In addition, recognizing that a minimum level of liquidity is necessary to support a public market, the Amex is proposing to amend Section 1003 to add a specific maintenance standard of at least 50,000 publicly held warrants in order for Amex to continue listing the warrants. The Amex also has represented that it would suspend or delist the warrants if the underlying common stock (or other security underlying the warrant) is suspended or delisted.<sup>10</sup>

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>11</sup> Specifically, the Commission finds that revising the initial listing criteria and adopting specific maintenance requirements for warrants will serve to promote the public interest, protect investors and remove impediments to a free and open securities market by making more warrants eligible for trading on the Amex by reducing the numerical listing requirements while, at the same time, ensuring a minimum level of liquidity will exist to support the public trading market in such warrants.<sup>12</sup>

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization ("SRO") to screen issuers and provide listed status only to bona fide companies with sufficient float, investor

base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an SRO to monitor the status and trading characteristics of that issue to ensure that it continues to meet the SRO's standards for market depth and liquidity.

The Commission believes that the proposed initial listing standards should help Amex to ensure that only substantial companies are eligible to have their warrants listed on the Exchange. While the proposed rule would no longer require issuers of warrants to meet the initial size and earnings requirements for issuers of common stock, the rule would require the common stock or other security underlying the warrant to be listed and in "good standing" on either the Amex or the NYSE.<sup>13</sup> This standard will ensure, at a minimum, that only issuers who meet the numerical continued listing standards for issuers of common stock (or other securities underlying the warrant) on the Amex or NYSE may list warrants on the Amex.<sup>14</sup> These requirements contain specific issuer standards including shareholders' equity, public float and earnings.<sup>15</sup> In addition, the Amex will not list a warrant if the security underlying the warrant has been suspended.

The Commission finds that it is not unreasonable for the Exchange to reduce

<sup>13</sup> This standard requires Amex to ensure the underlying security is meeting the numerical continued listing standards on the market where it is listed (*e.g.*, Amex of NYSE). We note that the mere fact that a security continues to be listed on the Amex or NYSE is not sufficient inquiry to determine if it is meeting the numerical continued listing criteria.

<sup>14</sup> Section 105 is, in the Commission's view, generally intended to provide listing standards for traditional corporate warrants where the issuer of the underlying security is the same as the warrant issuer. The Commission believes that an issuer desiring to list warrants on another issuer's security may be more appropriately listed under another listing standard depending on such factors as whether the issuer of the warrant holds the underlying securities. For example, if the issuer did not hold the securities underlying the warrants and/or the issuer did not have a pre-existing relationship with the issuer of the underlying security, we believe the warrant should not be listed under Section 105 for warrants. In any case, for the warrants that are appropriate for listing under Section 105, the Amex has stated that, if a third party issuer seeks to list warrants on the Exchange, the Amex will evaluate the listing eligibility of the warrants by applying the listing criteria in Section 105 to both the issuer of the warrants as well as to the issuer of the common stock underlying the warrants. See Letter from Michael Emen, Senior Vice President and Counsel—Securities, Legal and Regulatory Policy, Amex, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated June 16, 1998.

<sup>15</sup> See Amex Company Guide, Sections 1001–1004; NYSE Rule 499.

<sup>6</sup> The Commission notes that currently the Exchange has no separate maintenance standards for warrants, but instead applies the general delisting provision in Section 1003.

<sup>7</sup> See Amendment No. 1. This representation clarifies that the underlying common stock must meet the objective numerical maintenance criteria rather than the subjective criteria that may permit a company to remain listed despite being below the numerical criteria.

<sup>8</sup> See Amex Company Guide, Sections 1001–1004; NYSE Rule 499.

<sup>9</sup> See Amendment No. 1.

<sup>10</sup> See Amendment No. 1.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

the initial listing distribution criteria from 500,000 warrants publicly held and not less than 800 public warrant holders or 1,000,000 publicly held warrants and not less than 400 public warrant holders to 200,000 warrants publicly held and not less than 100 public warrant holders with a maintenance standard of 50,000 warrants publicly held. The Commission recognizes that the reduction in the initial listing standards is substantial. In reviewing the Amex's proposal the Commission has been particularly concerned about the lowered public holder requirement and the lack of such a public holder requirement for continued listing. While the Commission's determination on this issue was close, we have determined to approve the new standards based, in part, on the unique, completely derivative nature of warrants and the fact that they are exercisable into another security that must remain in "good standing" on its listed market. Accordingly, although the Commission is concerned about maintaining sufficient liquidity in the marketplace for listed warrants, the Commission believes that the revised initial listing criteria together with the added maintenance standard will serve to enable the Exchange to evaluate the propriety of continued exchange trading of warrants.

Finally, the Commission notes that warrants will trade under the Amex's existing regulatory regime for trading securities, and, therefore, the Commission believes that adequate safeguards are in place to ensure the protection of investors in warrants. In addition, the Amex will delist or suspend trading in warrants whenever the underlying equity security is delisted or suspended. Because warrants represent a claim on a company to issue stock, it is reasonable to expect the underlying equity security to meet the maintenance criteria of the exchange on which it is listed. It also would be undesirable to continue trading in listed warrants when the underlying equity security has been suspended or delisted and no longer trades in the secondary market.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 raises the initial listing requirements from 100,000 warrants with no public warrant holder requirement, as originally proposed, to 200,000 warrants publicly held by not less than 100 public

warrant holders. The Commission believes that these higher standards are appropriate and serve to protect investors and the public interest. In addition, the Commission notes that no comments were received when the original notice of the proposed rule change was published and that no new regulatory issues are presented in Amendment No. 1.

Accordingly, the Commission believes that good cause exists, consistent with Section 6(b)(5) and 19(b)(2) <sup>16</sup> of the Act, to approve Amendment No. 1 on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent comments, 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. 522, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-97-38 and should be submitted by July 29, 1998.

For the foregoing reasons, the Commission finds that the Amex's amended proposal to revise original listing and maintenance requirements for Section 105 warrants is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-97-38), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. <sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40150; File No. SR-CHX-98-16]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

July 1, 1998.

On June 17, 1998, the Chicago Stock Exchange, Incorporated ("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> 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 and to grant accelerated approval of the proposed rule change.

#### I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby requests a six month extension of the pilot program relating to the trading of Nasdaq/NM Securities on the Exchange that is currently due to expire on June 30, 1998. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules and the Exchange proposes that the amendments remain in effect on a pilot basis through December 31, 1998.

#### 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 Exchange 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 III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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