

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59685; File No. SR-NYSEAmex-2009-04)

April 1, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC to Modify its Annual Report Distribution Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 23, 2009, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) 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 prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)³ under the Exchange Act. 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 requirements of the Company Guide with respect to the distribution of annual reports. The text of the proposed rule change is available on the Exchange’s Website (<http://www.nyse.com>), at the Exchange’s Office of the Secretary 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE 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 610(a) of the Company Guide provides that a listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements prepared in conformity with the requirements of the SEC. The Exchange interprets this rule as requiring companies to physically distribute their annual reports to shareholders. The Exchange proposes to amend this requirement in response to the SEC's adoption of amendments to its proxy rules to permit the electronic delivery of financial statements.⁴ Section 610(a) is also amended to conform its requirements to those of Section 203.01 of the NYSE's Listed Company Manual.

Under Section 610(a) as amended, any company listed on the Exchange that is required to file with the SEC an annual report that includes audited financial statements (including on Forms 10-K, 20-F, 40-F or N-CSR) will be required to simultaneously make such annual report available to shareholders of such securities on or through the company's website. A company must also post to its website a prominent undertaking in the English language to provide all holders (including preferred stockholders and bondholders) the ability, upon request, to receive a hard copy of the company's complete audited financial statements free of charge and

⁴ See Securities Exchange Act Release No. 56135 (July 26, 2007), 72 FR 42221 (August 1, 2007).

simultaneously issue a press release stating that its annual report has been filed with the SEC.

This press release must also specify the company's website address and indicate that shareholders have the ability to receive a hard copy of the company's complete audited financial statements free of charge upon request. The company must provide such hard copies within a reasonable period of time following the request. Moreover, the press release must be published pursuant to the Exchange's press release policy.⁵

A listed company that:

- is subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10-K, 20-F and 40-F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a-3 and 14a-16 of the U.S. proxy rules, or
- is an issuer not subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10-K, 20-F and 40-F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a-3 and 14a-16 of the U.S. proxy rules,

will not be required to issue the press release or post the undertaking required above.⁶ A

company that fails to file its annual report on Forms 10-K, 20-F, 40-F or N-CSR with the SEC in a timely manner will be subject to delisting pursuant to Section 1002(d) of the Company Guide.

The Exchange proposes to eliminate the requirement of Section 610(a) that companies must provide three copies of their annual report to the Exchange. The Exchange relies on the publicly filed annual report available on EDGAR for all of its regulatory purposes and does not need to receive physical copies.

⁵ See Section 401 of the Company Guide.

⁶ The Commission notes that while the Exchange will not have independent undertakings for companies complying with Rules 14a-3 and 14a-16, these Commission rules do contain their own requirements for making a hard copy available in addition to other requirements.

Section 110(a) of the Company Guide sets forth the Exchange's annual report requirements for foreign companies. Section 110(a) currently permits foreign companies to follow home country practices regarding the distribution of annual reports to shareholders, if, at a minimum, shareholders (i) are provided at least summary annual reports, including summary financial information, and (ii) have the ability, upon request, to receive a complete annual report, and the financial information contained in the summary annual report is reconciled to U.S. generally accepted accounting principles to the extent that such reconciliation would be required in the full annual report. The Exchange proposes to amend Section 110(a) to provide that foreign companies must comply with the requirements of Section 610(a) as amended. In doing so, the Exchange is conforming its annual report requirements applicable to foreign companies to those of the NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁷ Exchange Act in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act⁸ 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 proposed rule change is designed to facilitate compliance with NYSE Amex rules by aligning NYSE Amex's disclosure requirements with those of the SEC.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 Exchange Act

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

Written comments were neither solicited nor received.

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Exchange Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Exchange Act, the Exchange is required to give the Commission 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. The Exchange has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that the NYSE recently adopted a substantially similar listing requirement governing the distribution of annual reports,¹³ and the Commission believes that the NYSE Amex's proposed rule change raises no new regulatory issues. The Commission also notes that the NYSE's proposal was subject to full notice and comment, and the Commission received no comments on the NYSE's rule proposal. In addition, the Commission believes that waiving the 30-day operative delay will immediately give issuers that have just filed, or are about to file, their annual reports with the Commission the option to comply with NYSE Amex's distribution of annual reports requirement by satisfying the requirements for furnishing an annual report contained in Rules 14a-3 and 14a-16 under the Exchange Act. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 Exchange Act.

¹³ See Securities Exchange Act Release No. 59123 (December 19, 2008), 73 FR 7991 (December 30, 2008) (SR-NYSE-2008-128).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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. Please include File Number SR-NYSEAmex-2009-04 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-2009-04. 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 10:00 am and 3:00 pm. 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-NYSEAmex-2009-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).