

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49042; File No. SR-Amex-2003-84]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Amend Sections 132(c), 623, and 624 of the Amex Company Guide To Update the Requirements for Dissemination of Interim Reports by Listed Companies

January 8, 2004.

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 September 25, 2003, 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 Exchange. On December 29, 2003, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Sections 132(c), 623, and 624 of the Amex Company Guide to update the requirements for dissemination of interim reports by listed companies.

Below is the text of the proposed rule change, as amended.<sup>4</sup> Proposed new

language is *italicized*; proposed deleted language is [bracketed].

\* \* \* \* \*

#### American Stock Exchange LLC Company Guide

\* \* \* \* \*

#### Section 132. Listing Agreements

\* \* \* \* \*

(a) and (b)—No change.

(c) Accounting, Annual and [Quarterly] *Interim Reports*—Furnish shareholders with annual reports and release [quarterly sales] *interim* [and] earnings *and operating results* (Sections 603–624). [(Companies not having common stock listed on the Amex or NYSE are required to send annual and quarterly reports to security holders)];

(d) and (e)—No change.

\* \* \* \* \*

#### Sec. 623. Dissemination

[Interim statements (unaudited) are not required to be sent to security holders by any company whose common stock is listed on a national securities exchange. (Any company may, and many companies, in response to requests by their shareholders and the recommendation of the Exchange, now do send such statements.)]

[Companies whose common stock is not listed on a national securities exchange must send interim statements (unaudited) to holders of its securities which are listed on the Exchange.]

(a) *Each issuer whose securities are listed pursuant to Section 101(a)—(e) must disseminate (in the form of a press release or other public announcement in accordance with the requirements and procedures set forth in Sections 401–403) statements of earnings and operating results prior to or as soon as practicable following the date the company files its interim reports on an annual, quarterly or other basis with the Commission or other applicable regulatory agency. The [Interim] statement[s] of [sales and] earnings and operating results must be on the same basis of [the same degree of] consolidation as the annual report and[. Such statements should] disclose, at a minimum, any substantial items of unusual or nonrecurrent nature and [will show] net income before and after federal income taxes or net income and the amount of federal income taxes. Three copies must be sent to the Exchange.*

(b) *Interim statements are not required to be sent to security holders. As a matter of fairness, corporations [which] that choose to distribute interim reports to shareholders [should distribute] must send such reports to*

both registered and beneficial shareholders.

[In all cases, such information (whether or not furnished to security holders) must be disseminated in the form of a press release to one or more newspapers of general circulation in New York regularly publishing financial news and to one or more of the national news-wire services. Three copies must be sent to the Exchange.]

[Further information on the handling of press releases is set forth in §§ 401–405.]

\* \* \* \* \*

#### Sec. 624. Exceptions

Exceptions to the [Exchange's] requirements *set forth in Section 623 will be made* [that quarterly results be distributed in the form of a press release is made] only in cases where conditions peculiar to the type of company, or to the particular company itself, would make such [a release] *dissemination* impracticable or misleading, as in the case of companies dependent upon long-term contracts, [or companies] dependent upon the growth and sale of a crop in an annual cycle, or [companies] operating under conditions which make such releases virtually impossible or misleading.

When the Exchange is convinced that the release of quarterly *(or other applicable interim)* results is impracticable, or could be misleading, it may require an agreement to release a semi-annual statement of sales and earnings, or an interim statement of certain operating statistics which will serve to indicate the trend of the company's business during the period between annual reports. Only when the Exchange is convinced that any type of interim release is either impracticable, or misleading, will an agreement calling merely for publication of annual statements be accepted.

*A request for an exception should be in the form of a letter directed to the Exchange.*

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

<sup>8</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.

<sup>3</sup> See letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 22, 2003 ("Amendment No. 1"). Amendment No. 1 makes a technical clarification to the proposed rule language of Section 623 of the Amex Company Guide.

<sup>4</sup> The Commission has made minor formatting corrections to the proposal that are technical in nature at the Amex's request. Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Special Counsel, Division, Commission, on January 7, 2004.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Section 623 of the Amex *Company Guide* requires listed companies to disseminate statements of earnings and operating results in the form of a press release.<sup>5</sup> Under Section 623, listed companies whose common stock is listed on the Amex or another national securities exchange are not required to send these reports to shareholders. However, a company which lists a non-equity security on the Amex (e.g., bonds or preferred stock) and does not have common stock listed on a national securities exchange is required to send interim reports to holders of its Amex listed securities.

The requirement to send interim reports to security holders has been in existence for many years, and, according to the Amex, appears to have been intended to address concerns that companies that did not have listed common stock received little or no media attention. However, with the advent of the Internet and EDGAR, investors have ready access to all issuer press releases and SEC filings. The Amex represents that neither the New York Stock Exchange, Inc. nor The Nasdaq Stock Market, Inc. require that interim reports be sent to security holders, whether or not the issuer has listed common stock. Additionally, the Amex represents that some issuers impacted by this requirement have complained that it is unnecessarily costly to send interim reports to security holders.

Accordingly, the Exchange is proposing that the requirement to send interim reports to security holders be eliminated.<sup>6</sup> Other non-substantive and stylistic revisions have also been made to Sections 132, 623, and 624 of the Amex *Company Guide* to make these sections less confusing.

<sup>5</sup> The Amex represents that Section 624 of the *Company Guide* sets forth certain limited exceptions to this requirement, primarily for companies that are dependent upon long-term contracts that make release of quarterly results impracticable or misleading. The Amex further represents that exceptions are virtually never requested.

<sup>6</sup> The Commission notes, however, that if companies choose to mail interim reports to shareholders, they should be sent to both registered and beneficial shareholders. Nothing in this proposal will change this requirement. See Amex Section 623; see also Securities Exchange Act Release No. 36541 (November 20, 1995), 60 FR 62921 (December 7, 1995).

2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) <sup>7</sup> of the Act in general and furthers the objectives of Section 6(b)(5) <sup>8</sup> of the Act in particular 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 coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

*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**

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, as amended, 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

comment letters should refer to File No. SR-Amex-2003-84. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-Amex-2003-84 and should be submitted by February 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49044; File No. SR-DTC-2003-14]

**Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Filing of Service Guides**

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 1, 2003, The Depository Trust Company ("DTC") 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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