

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR-Amex-2002-36 and should be submitted by December 26, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46905; File No. SR-Amex-2002-85]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to Amendments to Sections 610 and 701 of the Exchange Company Guide

November 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 17, 2002, 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 November 19, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 Amex proposes to amend Sections 610 and 701 of the Amex *Company Guide* to clarify that annual reports and proxy materials may be delivered as permitted by and in compliance with applicable state and federal law. The text of the proposed rule change is below. New language is italicized; deleted language is bracketed.

Sec. 610. Publication of Annual Report

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 Securities and Exchange Commission. The company must disclose in its annual report to security holders, for the year covered by the report: (a) The number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options. Three copies of the report must be filed with the Exchange. *Distribution of the annual report to shareholders shall be in such format and by such means as permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, materials referenced in*

Sec. 701, Comm. .01 of the Company Guide)

Sec. 701. Filing Material [Mailed] Distributed to Shareholders

A listed company is required to file with the Exchange five copies of proxy statements, forms of proxy and other soliciting materials [mailed] *distributed* to shareholders. A listed company is also required to file with the Exchange one copy of the notice of shareholders' meetings and three copies of annual reports [mailed] *distributed* to shareholders. Copies of such materials should be sent to the Exchange when [mailed] *distributed* to shareholders, unless the material was otherwise filed electronically with the SEC.

Commentary .01

Proxy statements, forms of proxy and other soliciting materials shall be distributed by such means as are permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, the following interpretations by the SEC: Release No. 34-36345, File No. S7-31-95; Release No. 34-37182, File No. S7-13-96; and Release No. 34-42728, File No. S7-11-00). Companies should also note Rule 576 applicable to member organizations regarding transmission of proxy material to customers.

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 IV below. The 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

The Commission in recent years has issued several interpretations regarding electronic delivery of materials to shareholders, including proxy materials. The Exchange has rules governing delivery of proxy materials by member organizations to shareholders (Amex Rules 574 through 585). Many of these rules are also included in the Amex *Company Guide* (Amex Sections 720 through 725). In addition, Amex Section

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 18, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to add the phrase "(including any interpretations thereof by the SEC)" to Section 610 of the Amex *Company Guide*.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

610 of the Amex *Company Guide* requires listed companies to publish and furnish to shareholders an annual report containing audited financial statements. In the interest of promoting greater efficiency and potentially reduced costs incurred by listed companies and member organizations in delivery of such materials to shareholders, applicable sections of the *Company Guide* are proposed to be amended to clarify that annual reports and proxy materials may be delivered as permitted by and in compliance with applicable state and federal law.

The Exchange proposes to amend Amex Section 610 of the *Company Guide* to provide that a company's distribution of its annual report to shareholders shall be in such format and by such means as permitted or required by applicable law. Amex Section 701 of the *Company Guide* relating to filing of proxy materials with the Exchange would be amended to add Commentary .01 to provide that proxy materials shall be distributed by such means as are permitted or required by applicable law or regulation. For purposes of these provisions, applicable federal law includes any interpretations thereof by the Commission. References to materials "mailed" to shareholders in Amex Section 701 would be amended to "distributed" to reflect that alternative means of distribution (e.g., electronic mail) may be applicable.

The Exchange will notify listed companies and member organizations of the amendments to Amex Sections 610 and 701, including reference to applicable state and federal law and Commission interpretations. In addition, the Exchange is interpreting Amex Rules 574 through 578 applicable to transmission of proxy materials by member organizations to permit member organizations to transmit materials to beneficial owners consistent with the proposed amendments to Amex Section 701.

Issuers and member organizations using electronic delivery means for annual reports, proxy materials and proxies are required under the proposed rule to ensure that they comply with current Commission interpretations, as well as any future interpretations that the Commission may issue on these issues. Amex understands that the Commission expects that the Exchange will monitor developments regarding electronic delivery requirements and notify their members and listed companies in the event the Commission issues future releases on these issues.⁶

⁶ Telephone call between Michael Cavalier, Associate General Counsel, Amex, and Jennifer

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

Amex believes that the proposed rule change will impose no 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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from 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 the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

At any time within 60 days of the filing of such proposed rule change, the

Lewis, Attorney, Division, Commission, on November 20, 2002.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). The Commission notes that it recently approved an identical proposal by the New York Stock Exchange. See Securities Exchange Act Release No. 45838 (April 26, 2002), 67 FR 22144 (May 2, 2002). The Commission did not receive any comments on that proposal when it was published for comment. See Securities Exchange Act Release No. 45602 (March 20, 2002), 67 FR 14756 (March 27, 2002).

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.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46904; File No. SR-Amex-2002-87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to Elimination of Separate Exchange Requirements Regarding the Use of Written Consent Solicitations

November 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.