legending requirements, and delisting standards.

A. Preferred Stock

The Exchange proposes to amend Section 103 to make it clear that the numerical guidelines contained in this section concerning aggregate market value and price per share only apply to publicly held shares. The Exchange also proposes to amend Section 103 of the Company Guide to provide that the Amex will not consider listing any issue of convertible preferred stock unless the underlying security is subject to realtime last sale reporting. Currently, as a general rule, convertible preferred stock may be listed on the Exchange only if the underlying security is listed on either the Amex or the NYSE. The Exchange believes this restriction is no longer necessary because it was adopted at a time when only the Amex and the NYSE provided last sale reporting information. Now, however, other markets disseminate such information.5

B. Warrants

In order to simplify the listing process, the Exchange proposes to consolidate all of its listing guidelines concerning warrants into Section 105, add a paragraph to Section 105 that requires an issuer to provide the Amex with two months advance notice of any extension of the expiration date of a warrant issue, delete Section 508 of the Company Guide ⁶ and incorporate it into Section 105, and amend Section 105 to reference the guidelines contained in Section 902 of the Company Guide.⁷

C. Conflicts of Interest

The Exchange proposes to delete the clause in Section 120 of the Company Guide that authorizes the Exchange to require a company to enter into a special agreement designed to reduce the possibility of abuse of a conflict of interest situation. The Exchange believes this provision is obsolete because audit committees ⁸ are responsible for reviewing transactions presenting potential conflicts of interest and, in practice, the Exchange no longer utilizes these special agreements. Moreover, the Exchange notes that the NYSE did away with a similar provision some time ago.⁹

D. Original and Annual Listing Fees

Currently, Section 140 of the Company Guide specifies the original listing fee for more than one million shares and the fee for less than one million shares, but does not specify the fee for exactly one million shares. The Exchange proposes to correct this oversight by making it clear that the fee for exactly one million shares is \$10,000. The Exchange also proposes to make it clear that, according to Section 141 of the Company Guide, the annual listing fee for a warrant issue is based on the number of warrants issued, not the number of shares underlying the warrants.

E. Opinion of Counsel

The Exchange proposes to delete from Section 213 of the Company Guide the requirement that the opinion of counsel address a prospect company's qualification to conduct business in jurisdictions other than that of its state of incorporation. In support of this, the Exchange cites an ABA sponsored study of third-party legal opinions that states that an opinion concerning a corporation's qualification to do business in jurisdictions other than that of incorporation is generally not cost effective or necessary.10 In addition, the Exchange notes that the NYSE does not have a similar requirement.

F. Listing Resolution

The Exchange proposes to delete from Sections 213 and 330 the requirement that a prospect company's Board of Directors provide the Exchange with a listing resolution authorizing the filing of the listing application. The Exchange believes this requirement does not serve any significant purpose and, essentially, is ceremonial in nature.

G. "Backdoor" Listings

Currently, the literal language of Section 341 of the Company Guide indicates that the surviving entity of a backdoor listing¹¹ transaction must meet the Exchange's original listing guidelines in all respects. The Exchange states, however, that it has been its longstanding practice to evaluate a backdoor listing on the same basis that an original listing is reviewed. Among other things, this allows the Exchange to exercise its discretion to approve a backdoor listing even though the company does not meet all of the Exchange's numerical guidelines.¹² The Exchange proposes to make this section consistent with the Exchange's practice.

H. Fractional Shares

Very often when a company issues a stock dividend, the issuer must settle fractional share interests. The Exchange's current practice is to require those companies that do not choose to settle such interests with a cash payment to round up to a full share in payment for the fractional amount. The Exchange reasons that if the issuer were to round down, the shareholder would be deprived of assets due him or her. The Exchange proposes to make this requirement explicit by inserting it into Section 507 of the Company Guide.

I. Listing Agreement

In its present form, the Exchange's listing agreement specifies a number of obligations that a listed company is subject to by virtue of listing its securities on the Amex. Most of these obligations also are contained in various sections of the Company Guide. In order to eliminate redundancies and avoid confusion, the Exchange proposes to move to the Company Guide those provisions that currently are contained in the listing agreement, but are not contained in the Company Guide. In addition, the Exchange proposes to amend its listing agreement to simply state that the issuer agrees to comply with all of the Exchange's rules, policies, and procedures that apply to listed companies.

J. Interim Reports

The Exchange proposes to amend Section 623 of the Company Guide to advise companies that when they choose to mail interim reports to shareholders, they should send the reports to both the record holders and the beneficial owners. The Exchange believes this change strikes an appropriate balance between the benefit of mailing these reports to both the record holders and the beneficial owners against the high cost of

⁵ The Exchange also notes that such a change would be consistent with Section 104 of the Company Guide because this section permits the listing of convertible bonds and debentures so long as the underlying issue into which the bond or debenture is convertible is subject to last sale reporting. See Securities Exchange Act Release No. 22714 (Dec. 20, 1985), 50 FR 51958.

⁶ Under certain circumstances, this section requires warrants to be split in the same proportion as the underlying common stock.

⁷Section 902 contains guidelines that are applicable to redeemable (callable) issues.

⁸ The Exchange requires every listed company to establish and maintain an audit committee that, at the very least, is composed of a majority of independent directors. Amex Company Guide section 121.

⁹ Securities Exchange Act Release No. 20767 (Mar. 20, 1984), 49 FR 11275 (approving File No. SR–NYSE–83–11).

¹⁰See American Bar Association, *Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law,* 47 Bus. Law. 167 (Nov. 1991).

¹¹The Exchange defines a "backdoor" listing as any plan of acquisition, merger, or consolidation, the net effect of which is that a listed company is acquired by an unlisted company even though the

listed company is the nominal survivor. Amex Company Guide section 341.

¹² Similarly, the fact that an issuer meets the numerical guidelines does not necessarily mean that its application will be approved.