

mandating such action. In support of this rule change, the Exchange notes that the NYSE previously made a similar change to its rules.¹³

K. Legending Requirements

Currently, Section 980 of the Company Guide requires that listed securities issued in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1933¹⁴ bear a legend specifying that sale or transfer restrictions apply to such securities. The Exchange proposes to delete this requirement. The Exchange states issuers have complained that the Exchange requirement may be unnecessary and, in some instances, more restrictive than the applicable laws. In addition, the Amex notes that the NYSE does not impose an independent legending requirement on its listed companies.

L. Delisting Standards

Because more brokerage firms are holding securities for their customers in "street name," and fewer customers are demanding physical delivery of their securities,¹⁵ the proportion of beneficial holders to record holders has increased dramatically in recent years. Accordingly, companies are less likely to meet the Exchange's maintenance standards concerning the total number of round lot shareholders of record. As a result, certain companies that have well over 300 round lot beneficial shareholders could be subject to delisting proceedings.¹⁶ In order to address this situation, the Exchange proposes to amend Section 1003 of the Company Guide to refer to "public shareholders"¹⁷ instead of "shareholders of record."

¹³ Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (approving File No. SR-NYSE-94-42).

¹⁴ 15 U.S.C. 77e.

¹⁵ This change in practice is in accordance with recommendations for increased safety and soundness in the securities industry made by the Bachmann Task Force. See Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement Reform in the U.S. Securities Markets 24-26 (May 1992) (recommending the reduction in use of physical certificates).

¹⁶ Section 1003 of the Company Guide provides, in pertinent part, that the Exchange normally will consider delisting a security "if the total number of round lot shareholders of record is less than 300 * * *." (Emphasis added).

¹⁷ This term would include both shareholders of record and beneficial holders, but exclude officers, directors, controlling shareholders, and other concentrated (i.e., 5% or greater), affiliated, or family holdings. In addition, the Exchange proposes to make conforming changes to sections 102, 103, 105, 106, 107, 110, and 118.

III. Discussion

The Commission has reviewed the Amex's proposed rule changes carefully and concludes that these proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the amendments contained in this proposal are consistent with the Section 6(b)(5)¹⁸ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public; and are not designed to permit unfair discrimination between issuers.

The Commission supports the Amex's efforts to continue to review the form and substance of its listed company regulations in response to changes in market structure and eliminate requirements that no longer serve a meaningful regulatory purpose. In this regard, the changes to the listing process, such as eliminating the requirement for a Board resolution authorizing the submission of a listing application, should make the listing process easier for issuers without raising any regulatory concerns. The Commission also believes the proposed rule changes should be helpful in updating the Amex's listed company rules, should facilitate transactions in securities, should clarify certain obligations contained in the rules and, in general, further the purposes of the Act. Finally, although the Commission has certain concerns regarding the amendments to backdoor listings, delisting standards, and convertible preferred stock, for the reasons discussed below, we believe these provisions should be approved.

First, according to the Amex, the changes to the backdoor listing standards will provide the Exchange with the same flexibility it currently has in evaluating original listing applications. Although the Commission is approving the Exchange's more liberal language concerning backdoor listings, we believe that, as a general matter, listed companies should meet the Exchange's numerical and other listing guidelines. To the extent certain flexibility in applying listing standards may occasionally be needed, the Commission expects the Exchange to exercise its discretion conservatively when granting an exception to these standards. Moreover, when the Exchange chooses to make an exception

¹⁸ 15 U.S.C. 78f(b)(5).

to its stated listing standards, the Commission expects the Exchange to have procedures in place that adequately document and provide sufficient analysis as to why it is making such an exception and which factors it considered pertinent.

Second, the proposed amendment to the Exchange's delisting standards concerning the total number of round lot shareholders is a reasonable response to changing market conditions. In approving this amendment, however, the Commission understands the Exchange will have certain procedures in place to verify the total number of round lot beneficial holders. In this regard, the Exchange has represented to the Commission that if Item 5 of a listed company's Form 10K reflects that there are less than 300 record holders, the Corporate Relations Manager assigned to this company will ask the company to provide confirmation of the number of beneficial holders.¹⁹ The Commission believes these procedures will help ensure that listed companies continue to meet the minimum shareholder requirements for continued listing.

Finally, in approving the changes to Section 103 that would permit the listing of convertible preferred stock where the underlying security is subject to real-time last sale reporting, the Commission expects the Amex, where appropriate, to ensure that the underlying security is generally consistent with the Exchange's common stock listing guidelines. This would be particularly expected in cases where the convertible preferred could act as a surrogate for trading in the underlying common stock (i.e., the preferred stock is structured in a way to trade as a surrogate for the common stock and represents a substantial portion of the outstanding underlying common stock).

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the amended proposed rule change (SR-Amex-95-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Jonathan G. Katz,
Secretary.

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¹⁹ See Letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy, Amex, to Glen Barrentine, Senior Counsel, SEC (Oct. 18, 1995).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).