

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36594; File No. SR-Amex-95-29]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Bond Listing Standards

December 14, 1995.

I. Introduction

On July 19, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to revise its standards for the listing and delisting of debt securities. On December 12, 1995, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change.³

The proposed rule change was published for comment in Securities Exchange Act Release No. 36225 (September 13, 1995), 60 FR 48734 (September 20, 1995). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

Section 104 of the Amex's *Company Guide* sets forth the current standards for listing bonds and debentures. Presently, the Amex will consider listing a debt security if: (1) The company appears to be in a financial position sufficient to satisfactorily service the debt issue; (2) the issuer meets the size and earnings guidelines applicable to issuers listing common stock;⁴ and (3) the issue has an aggregate market value and principal

amount of at least \$5 million for issuers that have common stock listed on the Amex or the New York Stock Exchange ("NYSE"), or at least \$20 million and 100 holders for issuers that do not have securities listed on the Amex or NYSE. The Amex presently gives consideration to delisting a bond issue if the aggregate market value or principal amount falls below \$400,000. For convertible debt, continued listing is dependent upon the underlying security remaining in compliance with the Amex's numerical criteria for that security.

The Amex proposes to amend its standards for the listing of debt securities with a view towards making the Exchange more accessible to debt issuers and facilitating the listing of such securities.⁵ Specifically, the proposal eliminates the requirements that the issuer demonstrate that it will be able to satisfactorily service the debt issue, and that the issuer meet the size and earnings guidelines applicable to companies listing common stock. The proposal also removes the requirement that issuers that do not have securities listed on the Amex or NYSE have at least 100 holders and an aggregate market value and principal amount of \$20 million. Finally, the proposal modifies the current aggregate market value and principal amount requirement by stating that the issuer must have at least \$5 million in aggregate market value or principal amount.

In place of the current guidelines, the proposal provides that the Amex may list an issuer's debt securities if an issuer of an equity security listed on the Amex or NYSE is in "good standing" with the respective exchange,⁶ and has an aggregate market value or principal amount of at least \$5 million. This standard also will apply to an issuer that is owned by, or under common control with, an issuer of equity securities listed on the Exchange or the NYSE ("listed issuer"); and to an issuer whose debt securities are guaranteed by a listed issuer.

In contrast, debt securities of an "unaffiliated" issuer⁷ will not be eligible for initial listing on the Amex

unless a nationally recognized securities rating organization ("NRSRO") has assigned a certain minimum rating to the bonds (or to other bonds issued by the same company). Specifically, debt securities of an unaffiliated issuer will not be eligible for initial listing on the Amex unless:

- An NRSRO has assigned a current rating to the debt security that is no lower than a Standard and Poor's ("S&P") Corporation "B" rating or an equivalent rating by another NRSRO; or
- If no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned an investment grade rating to an immediately senior issue,⁸ or a rating that is no lower than an S&P Corporation "B" rating (or an equivalent rating by another NRSRO) to a *pari passu*⁹ or junior issue.

As under its current rules, the Amex will give consideration to delisting a bond issue if the issuer is unable to meet its obligations on the listed debt, or if the debt's aggregate market value or principal amount falls below \$400,000. The Amex proposal amends the delisting standards to clarify that any debt issuer that is unable to meet its obligation on the listed debt securities may be delisted. In applying this standard, the Exchange states that it normally will not delist the debt if there is value in the security and continued Exchange trading is in the best interests of investors.¹⁰ However, if an issuer is unable to meet its financial obligations and there is minimal or no value in the security, the Exchange will give serious consideration to delisting the debt issue.¹¹ The Exchange states that it also will consider delisting debt that was listed based on the issuer being either majority-owned or guaranteed by an Amex or NYSE issuer when the equity securities of such owner or guarantor are delisted.¹²

Convertible bonds will be reviewed for continued listing when the underlying equity security is delisted, and will be delisted when the related security is no longer subject to real-time last sale reporting in the United States.¹³ Further, if the underlying equity

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See letter from Claudia Crowley, Amex, to Glen Barrentine, Senior Counsel, Division of Market regulation, SEC, dated December 12, 1995. Amendment No. 1 supplemented the proposal by specifying that (1) the underlying equities of listed convertible debt must be subject to real-time last sale reporting in the United States, (2) specialists assigned to municipal debt must comply with MSRB Rule G-3, (3) municipal securities will not be subject to off-board trading restrictions, and (4) unrated debt securities of unaffiliated issuers may be listed if an NRSRO has currently assigned an investment grade rating to an immediately senior issue by the same company.

⁴ The Amex guidelines provide for the issuer to have stockholders' equity of at least \$4,000,000 and pre-tax income of at least \$750,000 in its last fiscal year, or in two of its last three fiscal years.

⁵ The Commission notes that the new guidelines for listing debt securities are substantially similar to the NYSE's debt listing standards, which the Commission approved in Securities Exchange Act Release No. 34019 (May 5, 1994), 59 FR 24765 (May 12, 1994).

⁶ A company is in "good standing" if it is above the relevant continued listing guidelines.

⁷ An unaffiliated issuer is one that has no equity securities listed on the Amex or NYSE; is not, directly or indirectly, majority-owned by, nor under common control with, an issuer of Amex or NYSE-listed equity securities; and is not issuing a debt security guaranteed by an issuer of equity securities listed on the Amex or NYSE.

⁸ To be investment grade, an issue must be assigned a rating no lower than an S&P Corporation rating of "BBB-" (or another NRSRO's equivalent thereof). The Amex amended the proposal to specify that it will apply this standard only to unrated bonds that are immediately junior to another rated class of securities issued by the same company. See Amendment No. 1, *supra* note 3.

⁹ A *pari passu* issue has equal standing with the debt issue proposed to be listed.

¹⁰ See Securities Exchange Act Release No. 36225 (September 13, 1995), 60 FR 46734 (September 20, 1995) (notice of this proposed rule change).

¹¹ *Id.*

¹² *Id.*

¹³ See Amendment No. 1 *supra* note 3 (specifying that last trade reporting must be available in the United States).