

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58306; File No. SR-NYSEArca-2008-82)

August 5, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection with the Proposed Acquisition of The Amex Membership Corporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange, a Delaware Corporation and registered national securities exchange is submitting this proposed rule change to the Commission in connection with the proposed acquisition of The Amex Membership Corporation (“MC”), a New York not-for-profit corporation that owns 100% (99% directly and 1% indirectly through a wholly owned subsidiary) of American Stock Exchange LLC, a Delaware limited liability company and registered national securities exchange (“Amex”), by NYSE Euronext, the Delaware corporation

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

that indirectly owns 100% of the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

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 Exchange 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange is submitting this proposed rule change to the Commission in connection with the proposed acquisition of MC, a New York not-for-profit corporation that owns 100% of Amex, by NYSE Euronext. The proposed acquisition will occur pursuant to the terms of the Agreement and Plan of Merger, dated as of January 17, 2008 (as it may be amended from time to time, the "Merger Agreement"), by and among NYSE Euronext, Amsterdam Merger Sub, LLC, a Delaware limited liability company and a wholly owned subsidiary of NYSE Euronext formed by NYSE Euronext in connection with the Mergers ("Merger Sub"), MC, AMC Acquisition Sub, Inc., a Delaware corporation and a wholly owned subsidiary of MC ("AMCAS"), American Stock Exchange Holdings, Inc., a Delaware corporation and a wholly owned subsidiary of MC created by MC in connection with the Mergers ("Holdings"), Amex, which is 99 percent owned by MC and 1 percent owned by AMCAS, and American Stock Exchange 2, LLC, a Delaware

limited liability company and a wholly owned subsidiary of Holdings formed by Holdings in connection with the Mergers (“Amex Merger Sub”).

Under the terms of the Merger Agreement, MC will demutualize and NYSE Euronext will acquire the business of MC and its subsidiaries through a series of mergers (the “Mergers”). Following the Mergers, Merger Sub, a wholly owned subsidiary of NYSE Euronext and a successor to MC and AMCAS, will directly own 100% of Amex Merger Sub, which will be the successor to Amex and a registered national securities exchange. It is intended that Amex Merger Sub will be renamed “NYSE Alternext US LLC” (and therefore is referred to in this document as “NYSE Alternext US”). The proposed rule change will not become operative until completion of the Internal Merger (as defined below).

#### Corporate Structure

Immediately following the NYSE/Amex Merger, NYSE Euronext will contribute 100% of the limited liability company interest of Merger Sub to NYSE Group, Inc. (“NYSE Group”) (such contribution, the “Contribution”), causing Merger Sub to become a direct wholly owned subsidiary of NYSE Group. Immediately following the Contribution, Merger Sub will merge with and into NYSE Alternext US, a direct wholly owned subsidiary of Merger Sub (“Internal Merger”). As a result of the Contribution and the Internal Merger, NYSE Alternext US will become a direct wholly owned subsidiary of NYSE Group.

#### Organizational Documents of NYSE Euronext

Currently the NYSE Euronext organizational documents provide certain protections to the Exchange and New York Stock Exchange LLC that are designed to protect and facilitate their self-regulatory functions. In general, the organizational documents of NYSE Euronext are being amended to provide similar protections to NYSE Alternext US as are currently provided to

the Exchange and New York Stock Exchange LLC under those documents. In addition, in the proposed new Director Independence Policy for NYSE Euronext directors, the three-year retrospective period (“look-back period”) over which directors’ relationships with members of the Exchange and New York Stock Exchange LLC are reviewed (which following the Mergers will apply equally to NYSE Alternext US) has been reduced to one year. The Exchange believes that this reduction will be beneficial in expanding NYSE Euronext’s pool of eligible director candidates with knowledge of the exchange industry, while still maintaining sufficient director independence.

The amended and restated bylaws of NYSE Euronext are being amended to:

- Include NYSE Alternext US in the definition of “U.S. Regulated Subsidiaries,” which currently includes New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., the Exchange, and NYSE Arca Equities, Inc. and to provide that the term “U.S. Regulated Subsidiaries” includes those entities listed or their successors, but only so long as they continue to be controlled, directly or indirectly, by NYSE Euronext;
- Provide that the provisions referencing New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., the Exchange, and NYSE Arca Equities, Inc. apply with respect to those entities or their successors, but only so long as they or their successors continue to be controlled, directly or indirectly, by NYSE Euronext;
- Provide the same protection to confidential information pertaining to the self regulatory function of NYSE Alternext US or its successor (including but not limited to disciplinary matters, trading data, trading practices and audit

information) contained in the books and records of any of the U.S. Regulated Subsidiaries, that shall come into the possession of NYSE Euronext, as is currently provided under the bylaws of NYSE Euronext with respect such confidential information pertaining to the self regulatory function of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, and NYSE Arca Equities, Inc., but only to the extent that NYSE Alternext US and its successor continues to be controlled, directly or indirectly by NYSE Euronext;

- Provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Euronext directly or indirectly controls NYSE Alternext US (or its successor), the board of directors of NYSE Euronext shall not adopt any resolution pursuant to clause (2) of Section 1(B) of Article V of the certificate of incorporation of NYSE Euronext unless the board of Directors of NYSE Euronext shall have determined that:
  - in the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, neither such Person nor any of its Related Persons (as defined in the certificate of incorporation of NYSE Euronext) is, with respect to NYSE Alternext US (or its successor), a “member,” as defined in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act<sup>5</sup> (a “NYSE Alternext Member”) (any such person that is a “Related Person” (as defined in the Certificate of incorporation of NYSE Euronext) of such NYSE Alternext Member is also deemed to be a

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<sup>5</sup> 15 U.S.C. 78c(a)(3)(A).

“NYSE Alternext Member” for the purposes of the proposed Second Amended and Restated Bylaws of NYSE Euronext, as the context may require); and

- in the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of NYSE Euronext that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any person, but for Article V of the certificate of incorporation of NYSE Euronext, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of NYSE Euronext that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of NYSE Euronext that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), neither such Person nor any of its Related Persons is, with respect to NYSE Alternext US (or its successor), a NYSE Alternext Member;
- Provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Euronext directly or indirectly controls NYSE Alternext US (or its successor), the board of directors of NYSE Euronext shall not adopt any resolution pursuant to clause (2) of Section 2(B) of Article V of the certificate of incorporation of NYSE Euronext (which relates to NYSE Euronext board of directors approval of ownership of NYSE Euronext capital stock in excess of

20%), unless the board of directors of NYSE Euronext shall have determined that neither such Person nor any of its Related Persons is, with respect to NYSE Alternext US (or its successor), a NYSE Alternext Member;

- Provide that, for so long as NYSE Euronext controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the bylaws of NYSE Euronext must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act<sup>6</sup> and the rules promulgated thereunder or (ii) submitted to the boards of directors of the New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, NYSE Arca Equities, Inc. and NYSE Alternext US or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by the NYSE Euronext, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act<sup>7</sup> and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be;
- Provide that, for as long as NYSE Euronext Controls any European Market Subsidiary (as defined in the bylaws of NYSE Euronext), any amendment to or repeal of the bylaws of NYSE Euronext must either be (i) filed with or filed with and approved by a European Regulator (as defined in the bylaws of NYSE

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<sup>6</sup> 15 U.S.C. 78s.

<sup>7</sup> Id.

Euronext) under European Exchange Regulations (as defined in the bylaws of NYSE Euronext) or (ii) submitted to the boards of directors of the European Market Subsidiaries and, if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by a European Regulator under European Exchange Regulations before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the relevant European Regulator(s);

- Provide that so long as NYSE Euronext shall control, directly or indirectly, NYSE Alternext US (or its successor), the board of directors of NYSE Euronext shall not adopt any resolution to repeal or amend any provision of the Certificate of Incorporation unless such amendment or repeal shall either (i) be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act<sup>8</sup> and the rules promulgated thereunder or (ii) be submitted to the board of directors of NYSE Alternext US (or the board of directors of its successor), and if such board of directors determines that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act<sup>9</sup> and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be; and

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<sup>8</sup> Id.

<sup>9</sup> Id.

- Remove or update certain references to the Combination Agreement, dated as of June 1, 2006, as amended and restated as of November 24, 2006, by and among the NYSE Euronext, NYSE Group, Inc., Euronext N.V. and Jefferson Merger Sub, Inc.

The proposed new independence policy of the NYSE Euronext board of directors will be substantially similar to the current Commission-approved independence policy of the NYSE Euronext board of directors,<sup>10</sup> except that:

- The independence policy provision relating to relationships with New York Stock Exchange LLC and Exchange market participants have been expanded to equally apply to relationships with NYSE Alternext US market participants (or the market participants of its successor);
- Instead of relying on the definition of “member” or “member organization” or similar terms in the rules of the individual exchanges, the proposed new independence policy relies on the definition of “member” in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act.<sup>11</sup> This technical change is designed to harmonize the use of those terms in the proposed new independence policy with respect to each of the Exchange, New York Stock Exchange LLC, and NYSE Alternext US and to simplify the language of the policy;

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<sup>10</sup> See Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120).

<sup>11</sup> 15 U.S.C. 78c(a)(3)(A).

- Independence requirements for the NYSE Alternext US board of directors (or the board of directors of its successor) have been added that are the same as those for New York Stock Exchange LLC's board of directors;
- The "look back period" with respect to directors' relationships with members of the Exchange and New York Stock Exchange LLC (which following the Mergers will apply equally to NYSE Alternext US) has been reduced from three years to one year;
- All references to New York Stock Exchange LLC, the Exchange, NYSE Arca Equities, Inc., and NYSE Alternext US shall mean each of those entities or its successor; and
- The provision providing for a transition period so that the independence requirements of the NYSE Euronext director independence policy would not apply to the European Persons on the NYSE Euronext board of directors until the annual meeting of NYSE Euronext stockholders in 2008 has been deleted since the revised NYSE Euronext Independence Policy is expected to go into effect after the meeting of NYSE Euronext Stockholders in 2008.

#### Organizational Documents of NYSE Group

Currently the NYSE Group organizational documents provide certain protections to the Exchange and New York Stock Exchange LLC that are designed to protect and facilitate their self-regulatory functions. In general, the organizational documents of NYSE Group are being amended to provide similar protections to NYSE Alternext US as are currently provided to the Exchange and New York Stock Exchange LLC under those documents.

The amended and restated certificate of incorporation of NYSE Group is being amended to:

- Provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Group directly or indirectly controls NYSE Alternext US (or its successor), the board of directors of NYSE Group shall not adopt any resolution pursuant to clause (ii) of Section 4(b)(1)(A) of Article IV of the certificate of incorporation of NYSE Group unless the board of Directors of NYSE Group shall have determined that:
- in the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, neither such Person nor any of its Related Persons (as defined in the certificate of incorporation of NYSE Group) is, with respect to NYSE Alternext US (or its successor), a “member,” as defined in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and (3)(a)(A)(iv) of the Exchange Act<sup>12</sup>) (a “NYSE Alternext Member”) (any such person that is a Related Person (as defined in the Second Amended and Restated Certificate of Incorporation of NYSE Group) of such NYSE Alternext Member is also deemed to be an “NYSE Alternext Member” for purposes of the proposed Second Amended and Restate Certificate of Incorporation of NYSE Group, as the context may require); and
- in the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of NYSE Group that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto,

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<sup>12</sup> 15 U.S.C. 78c(a)(3)(A).

where the effect of such agreement, plan or other arrangement would be to enable any person, but for Article IV of the certificate of incorporation of NYSE Group, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of NYSE Group that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of NYSE Group that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), neither such Person nor any of its Related Persons is, with respect to NYSE Alternext US (or its successor), a NYSE Alternext Member;

- Provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Group directly or indirectly controls NYSE Alternext US (or its successor), the board of directors of NYSE Group shall not adopt any resolution pursuant to clause (ii) of Section 4(b)(2)(B) of Article IV of the certificate of incorporation of NYSE Group (which relates to NYSE Group board of directors approval of ownership of NYSE Group capital stock in excess of 20%), unless the board of directors of NYSE Group shall have determined that neither such Person nor any of its Related Persons is, with respect to NYSE Alternext US (or its successor), a NYSE Alternext Member;
- Include NYSE Alternext US in the definition of “Regulated Subsidiaries,” which currently includes New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., the Exchange, and NYSE Arca Equities, Inc. and to provide that the term “Regulated Subsidiaries” includes those entities

listed or their successors, but only so long as they continue to be controlled, directly or indirectly, by NYSE Group;

- Provide the same protections to all confidential information pertaining to the self-regulatory function of NYSE Alternext US as are currently provided under the Amended and Restated Certificate of Incorporation of NYSE Group to confidential information pertaining to the self regulatory function of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, and NYSE Arca Equities, Inc.;
- Provide that any amendment to or repeal of the certificate of incorporation of NYSE Group must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act<sup>13</sup> and the rules promulgated thereunder or (ii) submitted to the boards of directors of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, NYSE Arca Equities, Inc. and NYSE Alternext US or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by the NYSE Group, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act<sup>14</sup> and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated

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<sup>13</sup> 15 U.S.C. 78s.

<sup>14</sup> Id.

until filed with or filed with and approved by the Commission, as the case may be.

The amended and restated bylaws of NYSE Group are being amended to:

- Provide that any amendment to or repeal of the bylaws of NYSE Group must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder or (ii) submitted to the boards of directors of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Exchange, NYSE Arca Equities, Inc. and NYSE Alternext US or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by the NYSE Group, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

#### Trust Agreement of the NYSE Group Trust I

The Trust Agreement is being amended to make certain technical changes designed to better provide NYSE Alternext US with the same protections against certain material adverse changes in European Law that it currently provides for the Exchange and New York Stock Exchange LLC.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>15</sup> in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

### 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 does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> As required under Rule 19b-4(f)(6)(iii) under the Exchange

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

Act,<sup>18</sup> the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change. The Exchange represents that the proposed rule change is substantially the same as the proposed rule change filed by New York Stock Exchange LLC related to the acquisition of MC by NYSE Euronext (the “NYSE Rule Filing”).<sup>19</sup>

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

#### 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 Exchange Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-82 on the subject line.

##### Paper Comments:

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<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> SR-NYSE-2008-60. Specifically, the Exchange represents that each exhibit filed with the proposed rule filing is identical to the corresponding exhibit filed with the NYSE Rule Filing.

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-NYSEArca-2008-82. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-82 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon  
Acting Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).