

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58650; File No. SR-Amex-2008-65)

September 25, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change to Allow Issuers of Exchange-Traded Funds (“ETFs”) and Structured Products Who Are Voluntarily Delisting the Securities From the Exchange and Re-Listing on Another National Securities Exchange to Submit to the Exchange a Letter from an Authorized Officer of the Issuer Rather Than a Certified Copy of Board of Directors Resolutions

I. Introduction

On August 7, 2008, American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Amex Rule 18 to allow issuers of exchange-traded funds (“ETFs”) and structured products who are voluntarily delisting the securities from the Exchange and re-listing on another national securities exchange to submit a letter to the Exchange from an authorized executive officer of the issuer, rather than a certified copy of board resolutions. The proposed rule change was published for comment in the Federal Register on August 21, 2008.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange seeks to amend Amex Rule 18, which governs the procedure by which an issuer may voluntarily withdraw securities from listing. Currently, Amex Rule 18 requires an issuer to provide the Exchange with a certified copy of the resolution of its board of directors approving

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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> See Securities Exchange Act Release No. 58364 (August 14, 2008), 73 FR 49508.

the delisting. Under the proposed rule change, an issuer of certain securities<sup>4</sup> that proposes to delist and re-list its securities on another national securities exchange may, in lieu of providing the Exchange with a certified copy of the board resolution, provide the Exchange with a letter signed by an authorized executive officer of the issuer. That letter must set forth the reasons for the delisting, and provide the basis of the officer's authority to take such action. In addition, the proposed rule change would be effective as of the date of closing of the acquisition of the Exchange by NYSE Euronext, the ultimate parent company of the Exchange ("NYSE Acquisition").<sup>5</sup> In the event the closing date does not occur on or before December 31, 2008, the proposed rule change would not take effect and the Exchange would rescind the rule by a separate rule filing. In its filing, the Exchange stated that, as part of the NYSE Acquisition, NYSE Euronext intends to cease the trading and listing of ETF securities and structured products on the Exchange. Upon completion of the merger, and to effectuate its business plan, NYSE Euronext will request these issuers to voluntarily delist,<sup>6</sup> and will encourage them to re-list on NYSE Arca, Inc. ("NYSE Arca") and/or New York Stock Exchange LLC ("NYSE").<sup>7</sup>

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<sup>4</sup> This proposal applies to securities listed pursuant to listed pursuant to Amex Company Guide Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants) or 107 (Other Securities) and Exchange Rules 1000-AEMI and 1001 et seq. (Portfolio Depositary Receipts), 1000A-AEMI and 1001A et seq. (Index Fund Shares), 1000B et seq. (Managed Fund Shares), 1200-AEMI and 1201 et seq. (Trading of Trust Issued Receipts), 1200A-AEMI and 1201A et seq. (Commodity-Based Trust Shares), 1400 et seq. (Trading of Paired Trust Shares), 1500-AEMI and 1501 et seq. (Trading of Partnership Units), or 1600 et seq. (Trading of Trust Units).

<sup>5</sup> Pursuant to a merger agreement dated January 17, 2008 among the Exchange, the Amex Membership Corporation, NYSE Euronext and certain other entities, a successor to the Exchange will become an indirect, wholly-owned subsidiary of NYSE Euronext. After the closing of the merger, the Exchange will be renamed NYSE Alternext US LLC.

<sup>6</sup> See note 4, supra.

<sup>7</sup> See note 14, infra.

The Exchange also proposes to make minor clarifying changes to Section 1010 of the Amex Company Guide, and to delete from that section the restatement of Exchange Rule 18 and Rule 12d2-2 under the Act.

### III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that permitting issuers of ETFs and structured products who are voluntarily delisting to submit a letter to the Exchange from an authorized executive officer instead of a certified copy of the resolution adopted by the issuer's board of directors is consistent with the requirements of the Act and Rule 12d2-2 thereunder, and is similar to the voluntary withdrawal procedures for dually-listed issuers on NYSE Arca,<sup>10</sup> and index-linked securities on NYSE.<sup>11</sup> The

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<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See NYSE Arca Equities Rule 5.4(b); see also Securities Exchange Act Release No. 54672 (October 30, 2006), 71 FR 65021 (November 6, 2006) (SR-NYSEArca-2006-47).

<sup>11</sup> See Section 806.02 of the NYSE Listed Company Manual; see also Securities Exchange Act Release No. 57041 (December 26, 2007), 73 FR 216 (January 2, 2008) (SR-NYSE-2007-99).

proposal does not alter an issuer's obligation to meet the requirements of the issuer's governing documents, the laws of its jurisdiction of incorporation, or complying with Rule 12d2-2 under the Act.

In addition to requiring the letter from the authorized executive officer to provide the reasons for the withdrawal, the new rule will require the letter to set forth the basis for the officer's authority to take such delisting action on behalf of the issuer. This latter requirement should help to ensure that the issuer complies with the applicable laws in effect in its jurisdiction of incorporation, and has the authority to act on behalf of the issuer.<sup>12</sup> At the same time, the proposal may ease the burden on issuers who wish to voluntarily delist and transfer the listing to another national securities exchange.<sup>13</sup>

The Commission also notes that the proposed delisting procedures apply only to securities that would be listed and traded on another national securities exchange. As such, transparent last sale information will continue to be disseminated on the securities on an uninterrupted basis. Further, this requirement will ensure other protections for trading a security on a national securities exchange will remain in place, such as the periodic reporting obligations under the Act.

Further, the Commission finds that the deletion of the restatements of Rule 18 and Rule 12d2-2 in the Amex Company Guide is consistent with the requirements of the Act. The rules of Amex and the Commission are equally available on the Internet, and are updated when changed. As such, the restatements in the Company Guide are no longer necessary. The Exchange rules,

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<sup>12</sup> The Commission notes that Rule 12d2-2 specifically requires, among other things, that issuers comply with all applicable laws in effect in the state in which they are incorporated to delist from a national securities exchange. See 17 CFR 240.12d2-2(c)(2)(i).

<sup>13</sup> While NYSE Euronext is requesting that these issuers re-list on NYSE Arca or the bond platform of NYSE, the Commission notes that these issuers are free to choose the best market for their securities for which they qualify and the proposed rule does not limit the issuer's choice of markets.

however, will continue to reference Rule 12d2-2 to ensure issuers know they must comply with that rule, as well as the Exchange's requirements, to delist.

Finally, as noted above, the new rule will only be implemented upon the closing of the Exchange Acquisition. The Exchange has represented that, upon closing of the merger, it will notify applicable issuers that the rule has become effective.<sup>14</sup>

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2008-65) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Acting Secretary

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<sup>14</sup> Telephone conversation between Marija Willen, Vice President and Associate General Counsel, Amex, and Steve Kuan, Special Counsel, Commission, on September 25, 2008.

<sup>15</sup> 17 CFR 200.30-3(a)(12).