

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58290; File No. SR-NYSE-2008-70)

August 1, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rules Governing Membership in Order to Waive-In Members in Good Standing of the American Stock Exchange LLC as Members and Member Organizations of the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 30, 2008, the New York Stock Exchange LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 proposes to amend rules governing membership in order to waive-in members in good standing of the American Stock Exchange LLC as members and member organizations of the Exchange. The text of the proposed rule change is available at the NYSE’s principal office, the Commission’s Public Reference Room, and <http://www.nyse.com>.

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 self-regulatory organization 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the acquisition by NYSE Euronext of The Amex Membership Corporation, including the relocation of all equities trading conducted on or through the existing systems and facilities of the American Stock Exchange LLC (“Amex”) to the trading systems and facilities operated by the NYSE (the “Equities Relocation”), the NYSE proposes to amend Rules 2, 300, and 304A in order to provide that all NYSE Alternext US LLC (“NYSE Alternext”) member organizations and members in good standing are deemed qualified and approved as NYSE member organizations or members.

Background

NYSE Alternext Transaction

On January 17, 2008, the Amex Membership Corporation and NYSE Euronext entered into an Agreement and Plan of Merger (“Merger Agreement”) whereby, through a series of mergers, NYSE Euronext will acquire Amex, and, as a result of these mergers, Amex will become one of the U.S. wholly-owned subsidiaries of NYSE Group and will be renamed NYSE Alternext US LLC (the “Mergers”).³

As described more fully in the Merger Transaction filing, in connection with the Mergers, Amex proposes to demutualize by separating all trading rights from equity ownership in Amex. As part of the demutualization, those persons who were previously Amex Regular Members or Options Principal Members (“OPMs”) will receive a certain amount of NYSE Euronext stock.

³ See SR-Amex-2008-62 (the “Merger Transaction filing”).

Once the Mergers close, all trading rights appurtenant to the Amex Regular Members' memberships or OPMs' memberships will be cancelled.

As proposed in the Merger Transaction filing, immediately following the closing of the Mergers, those persons and entities who were authorized to trade on the Amex before the closing of the Mergers, including Amex (i) owners, lessees, or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members, will be deemed to have satisfied applicable qualification requirements necessary to trade in NYSE Alternext's demutualized marketplace and will be issued trading permits (referred to as "86 Trinity Permits") at no cost. The 86 Trinity Permit will authorize owners, lessees, or nominees of Amex Regular Members or OPMs, Amex limited trading permit holders, and Amex associate members who were authorized to trade on the Amex immediately before the Mergers to continue to trade at NYSE Alternext's systems and facilities at 86 Trinity Place, New York, New York (the "86 Trinity Trading Systems"). NYSE Alternext will recognize the former Amex (i) owners, lessees, or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members as either NYSE Alternext member organizations or members, as applicable.

In connection with the Mergers, NYSE Euronext intends to relocate all equities trading previously conducted on the 86 Trinity Trading Systems to the NYSE's trading systems and facilities located at 11 Wall Street, New York, New York (the "NYSE Alternext Trading Systems"). The NYSE Alternext Trading Systems will be operated by the NYSE on behalf of NYSE Alternext. NYSE Alternext will also adopt a version of the NYSE's rules for trading equities on NYSE Alternext after the Equities Relocation.⁴

⁴ See SR-Amex-2008-63 (the "NYSE Alternext Equities filing").

As described more fully in the NYSE Alternext Equities filing, the Equities Relocation will take place as soon as practicable after the closing of the Mergers. Similarly, NYSE Alternext will relocate all options trading conducted on the 86 Trinity Trading Systems to new facilities of NYSE Alternext to be located at 11 Wall Street, which facilities will utilize a trading system based on the options trading system used by NYSE Arca, Inc. (“NYSE Arca”) (“Options Relocation,” and, together with the Equities Relocation, the “Relocations”).

Holders of the 86 Trinity Permits will be able to apply for an NYSE Alternext equities trading license or options trading permit upon the Equities or Options Relocations, as applicable. After the Equities Relocation, a holder of an 86 Trinity Permit will only be able to trade products other than those that have relocated to NYSE Alternext Trading Systems. After the Options Relocation, the 86 Trinity Permits will be canceled.⁵

As described more fully in the NYSE Alternext Equities Rule filing, NYSE Alternext is proposing to adopt rules governing member organizations that are closely modeled on existing NYSE Rules 2 and 300-313. These rules are substantially similar to current Amex rules concerning membership.⁶ Nonetheless, the Exchange recognizes that, after the closing of the Mergers, there may be NYSE Alternext members or member organizations holding an 86 Trinity Permit that may not immediately qualify for membership under the NYSE Alternext Equities Rules. NYSE Alternext is proposing to continue to approve such members and member organizations as NYSE Alternext members and member organizations notwithstanding whether they meet the proposed new standards. Such approval would be conditioned upon the NYSE Alternext member or member organization meeting the requirements of the adopted rules within

⁵ See SR-Amex-2008-62.

⁶ See NYSE Rules 313-313 and Amex Rules 300, 301, 310, 311, 312, 341, 353, 356, and 359 and Article IV of the Amex Constitution.

a grace period of six months from the date that the member organization receives its NYSE Alternext equities trading license in exchange for a valid 86 Trinity Permit. NYSE Alternext would revoke a member organization's approval to trade if it fails to meet the new membership qualifications by the close of the grace period. NYSE Alternext would also reserve the right to commence proceedings to terminate such a member organization's membership, if applicable.

In the NYSE Alternext Equities Rule filing, NYSE Alternext is also proposing to provide NYSE Alternext members with a grace period of six months within which to meet NYSE Alternext Equities proposed Rule 304A requirements to pass an examination required by the Exchange. This grace period would begin to run from the date that the individual member transfers to the NYSE Alternext Trading Systems, which may be a later date than the Equities Relocation.

NYSE and NYSE Alternext Membership Rules

After the Equities Relocation, 86 Trinity Permit holders who apply to receive an NYSE Alternext equities trading license will also receive an NYSE Market trading license. In order to effectuate the issuance of these licenses, several changes are necessary to both the NYSE's and NYSE Alternext's rules regarding membership so that both SROs will have consistent standards for membership. The changes to Amex/NYSE Alternext rules are addressed in the NYSE Alternext Equities Rule Filing;⁷ this filing addresses the necessary changes to NYSE rules.

NYSE Rule 2 defines the terms "member" and "member organization." Under NYSE Rule 2(b), a "member organization" means a registered broker or dealer (unless exempt pursuant to the Act) that is also a member of FINRA and has been approved by the Exchange to designate an associated natural person to effect transactions on the Floor of the Exchange. The term also

⁷ See SR-Amex-2008-63.

includes any natural person so registered and approved and who directly effects transactions on the Floor of the Exchange.⁸ NYSE Rule 2(a) provides that a “member” includes any person associated with and designated by a member organization to effect transactions on the Floor of the Exchange.

NYSE Rule 300 requires members and member organizations to have a trading license in order to effect transactions on the Floor of the Exchange or through any facility thereof. Only qualified and approved NYSE member organizations may acquire and hold a trading license. An NYSE member organization that holds a trading license may designate an NYSE member to effect transactions on its behalf on the Floor of the Exchange.

Proposed Amendments to Exchange Rules

The Exchange proposes to add supplementary material to NYSE Rule 2 to provide that an NYSE Alternext member organization is deemed qualified and approved as an NYSE member organization and thus eligible to hold an NYSE trading license. The Exchange further proposes that Exchange membership would be automatic for NYSE Alternext member organizations and that such NYSE Alternext member organizations would be exempt from the Exchange’s new member organization application fee, as required by NYSE Rule 311(a) and set forth on the NYSE Price List. In addition, the Exchange proposes that any natural persons associated with an NYSE Alternext member organization and who has been approved by NYSE Alternext as a member and has been designated by an NYSE Alternext member organization to effect transactions on the Floor of NYSE Alternext would be deemed approved as an NYSE member.

⁸ The term “member organization” also includes “member firm” and “member corporation.” See NYSE Rule 2(b)(iii).

As proposed, NYSE Alternext member organizations and members that have been approved as member organizations and members by NYSE Alternext and that seek an NYSE Alternext equities trading license would be automatically waived in as NYSE member organizations and members. In this regard, the NYSE notes that NYSE Alternext will have the same standard for membership as the NYSE, so that if NYSE Alternext determines that an applicant is qualified to be an NYSE Alternext member organization, the NYSE will accept NYSE Alternext's determination as conclusive evidence that the applicant is eligible for NYSE membership. In accordance with the Mergers, NYSE Alternext will certify to the Exchange that all such transferring members met the Amex's minimum membership standards at the time that they were approved for membership and that nothing has come to the attention of NYSE Alternext that would disqualify any of these members. If an 86 Trinity Permit is revoked for any reason, such NYSE Alternext member organization would not be deemed eligible to be approved as an NYSE member organization.

The Exchange is also proposing to adopt a temporary rule to apply to any NYSE Alternext member organizations that were approved as NYSE Alternext member organizations because they were a holder of an 86 Trinity Permit. Pursuant to proposed Rule 300.10T, which is closely modeled on the version of a similar rule in the NYSE Alternext Equities filing, the Exchange would provide NYSE Alternext member organizations with a six-month grace period within which to meet the requirements of Exchange rules governing membership. Such grace period would begin to run from the date that the NYSE Alternext member organization transfers its equities operations to the NYSE Alternext Trading Systems pursuant to a valid 86 Trinity Permit. If a member organization fails to meet the requirements of Exchange rules governing membership by the close of the grace period, the Exchange would revoke a member

organization's approval to trade. The Exchange would also reserve the right to commence proceedings to terminate such a member organization, if applicable.

The Exchange notes that the current Amex rules governing membership are substantially similar to Exchange rules governing membership.⁹ An Exchange requirement that the Amex currently does not have is that a member organization must submit an opinion of counsel that a member corporation's stock is validly issued and outstanding and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective.¹⁰ Accordingly, if a NYSE Alternext member organization has not previously provided such an opinion of counsel to Amex, it must be provided to NYSE Alternext within six months of the member organization transferring its equities operations to the NYSE Alternext Trading Systems pursuant to a valid 86 Trinity Permit.¹¹

Similar to the NYSE Alternext Equities Rule filing, the Exchange proposes that NYSE Alternext members be provided a grace period of six months within which to meet NYSE Rule 304A requirements to pass an examination required by the Exchange. The Exchange believes that this grace period should begin to run from the date that the individual member transfers to the NYSE Alternext Trading Systems, which may be a later date than the Equities Relocation. In addition, the Exchange proposes adding temporary Rule 304A.90T to address any changes that

⁹ Compare NYSE Rules 311-313 with Amex Rules 300, 301, 310, 311, 312, 341, 353, 356, and 359 and Article IV of the Amex Constitution.

¹⁰ See NYSE Rule 313.20.

¹¹ The Exchange rules governing membership impose certain ongoing obligations on member organizations that are not contained in the Amex membership rules and which NYSE Alternext member organizations would need to meet. See NYSE Rules 311(b)(7), 312(f)(2), 313.10, 313.21, and 313.23.

an approved person may have to make in connection with being associated with an Exchange member organization.

Finally, the Exchange proposes providing a temporary exemption from the Rule 2 requirement that all member organizations be a FINRA member for those NYSE Alternext member organizations that: (i) hold a valid 86 Trinity Permit as of the date that the NYSE Alternext member organization transfers its equities operations to NYSE Alternext Trading Systems; (ii) are not currently a FINRA member; and (iii) are eligible for FINRA's waive-in membership process under FINRA's proposed Interpretive Material 1013-2.¹² The Exchange proposes a 60-day grace period for such NYSE Alternext member organizations to apply for and be approved as FINRA members. Such grace period would run from the date that the NYSE Alternext member organization transfers its equities operation to NYSE Alternext Trading Systems pursuant to a valid 86 Trinity Permit, which may be a later date than the Equities Relocation.

The proposed changes to Exchange rules are contingent on the approval of the Merger Transaction filing, the closing of the Mergers, and the approval of the NYSE Alternext Equities Rule filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)¹³ of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 proposed rule change

¹² See SR-FINRA-2008-043.

¹³ 15 U.S.C. 78f(b)(5).

also is designed to support the principles of Section 11A(a)(1)¹⁴ of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market.

Specifically, because NYSE and NYSE Alternext intend to have identical membership standards, the NYSE believes that amending NYSE Rule 2 to permit the cross-licensing of members and member organizations based on approval from only one of the two self-regulatory organizations will remove an impediment to free and open markets by eliminating unnecessary regulatory duplication in the membership process. Through this regulatory streamlining, the NYSE and NYSE Alternext will enable broker-dealers to more efficiently enter both the NYSE and NYSE Alternext market centers to begin providing services on behalf of their customers. At the same time, the NYSE notes that this proposal will not in any way lessen the regulatory scrutiny that new NYSE members receive (and therefore does not adversely affect the public interest or investor protection), since, prior to the NYSE deeming their applications approved, applicants will have been reviewed and approved by a self-regulatory organization that is applying the same standard as the NYSE itself would apply.

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 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.

¹⁴ 15 U.S.C. 78k-1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 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. Please include File Number SR-NYSE-2008-70 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-70. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-NYSE-2008-70 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.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).