

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58706; File No. SR-NYSE-2008-70)

October 1, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval 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

I. Introduction

On July 30, 2008, the New York Stock Exchange LLC (“NYSE” 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 amending its rules governing membership in order to permit members in good standing of the American Stock Exchange LLC (“Amex”) to waive-in to NYSE after the acquisition of Amex by NYSE Euronext. The proposed rule change was published for comment in the Federal Register on August 11, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

As described in a separate proposed rule change,<sup>4</sup> on January 17, 2008, the Amex Membership Corporation and NYSE Euronext entered into an Agreement and Plan of Merger whereby, through a series of mergers (“Mergers”), NYSE Euronext will acquire Amex, and, as a result of these mergers, Amex will become a wholly-owned subsidiary of NYSE Group and be

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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. 58290 (August 1, 2008), 73 FR 46676 (August 11, 2008) (SR-NYSE-2008-70).

<sup>4</sup> See Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (August 7, 2008) (SR-Amex-2008-62) (“Acquisition Proposal”).

renamed NYSE Alternext US LLC. Immediately following the closing of the Mergers, those persons and entities who were authorized to trade on Amex before the closing of the Mergers will be deemed to have satisfied applicable qualification requirements necessary to trade on NYSE Alternext and will be issued trading permits (referred to as “86 Trinity Permits”) which will allow them to continue to trade on NYSE Alternext’s systems and facilities at 86 Trinity Place, New York, New York (“86 Trinity Trading Systems”).

Subsequently, NYSE Euronext intends to relocate all equities trading previously conducted on the 86 Trinity Trading Systems to 11 Wall Street, New York, New York (the “Equities Relocation”).<sup>5</sup> The NYSE Alternext trading systems at 11 Wall Street will be operated by NYSE on behalf of NYSE Alternext. NYSE Alternext will also adopt a version of NYSE’s rules for trading equities on NYSE Alternext after the Equities Relocation.<sup>6</sup> 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 Relocation, as applicable. 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.

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<sup>5</sup> Subsequently, NYSE Alternext will also relocate all options trading conducted on the 86 Trinity Trading Systems to 11 Wall Street and utilize a trading system based on the options trading system used by NYSE Arca, Inc. (“Options Relocation,” and, together with the Equities Relocation, the “Relocations”).

<sup>6</sup> See Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075 (August 7, 2008) (SR-Amex-2008-63) (“NYSE Alternext Equities filing”). In the NYSE Alternext Equities filing, NYSE Alternext also proposed to adopt rules governing member organizations that are closely modeled existing NYSE Rules. After the closing of the Mergers, there may be NYSE Alternext members or member organizations holding an 86 Trinity Permit that do not immediately qualify for membership under the new NYSE Alternext membership rules. Amex has proposed that any such member would automatically retain its membership and have a six-month grace period to meet the new membership requirements. The grace period would commence from the date the member receives an NYSE Alternext equities trading permit in exchange for a valid 86 Trinity Permit.

## NYSE and NYSE Alternext Membership Rules and Proposed Changes

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 the Financial Industry Regulatory Authority, Inc. (“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 includes any natural person so registered and approved and who directly effects transactions on the floor of the Exchange. 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 a qualified and approved NYSE member organization 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.

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 any NYSE Alternext member organization, and that such NYSE Alternext member organization would be exempt from the Exchange’s new member organization application fee. In addition, the Exchange proposes that any natural person associated with an NYSE Alternext member organization, who has been approved by NYSE Alternext as a member and designated by an NYSE Alternext member organization to

effect transactions on the floor of NYSE Alternext, would be deemed approved as an NYSE member.

As proposed, NYSE Alternext members and member organizations and that seek an NYSE Alternext equities trading license would be automatically waived in as members and member organizations of NYSE. NYSE Alternext will have the same standards for membership as NYSE; therefore, if NYSE Alternext determines that an applicant is qualified to be an NYSE Alternext member organization, NYSE will accept NYSE Alternext's determination as conclusive evidence that the applicant is eligible for NYSE membership. NYSE Alternext will certify to the Exchange that each such transferring member met Amex's minimum membership standards at the time that it was approved for membership and that nothing has come to the attention of NYSE Alternext that would disqualify that member. If that member's 86 Trinity Permit were revoked for any reason, it would not be deemed eligible to be approved as an NYSE member organization.

Some NYSE Alternext members that waive into NYSE might not be fully compliant with all NYSE membership requirements at the time of the waive-in.<sup>7</sup> NYSE has proposed to provide any such member with a six-month grace period in which to meet the requirements of Exchange rules governing membership. Such grace period would begin to run from the date that the NYSE

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<sup>7</sup> The Exchange has noted that the current Amex rules governing membership are substantially similar to Exchange rules governing membership. However, there are some small variations in the membership requirements. For example, NYSE requires a member organization to 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. Amex does not have such a requirement. See NYSE Rule 313.20. Accordingly, if an 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.

Alternext member organization transfers its equities operations to the NYSE Alternext trading systems at 11 Wall Street. If the member organization fails to meet all NYSE membership requirements by the close of the grace period, NYSE would revoke its approval to trade. NYSE would also reserve the right to commence proceedings to terminate that member organization.

In addition, the Exchange proposes to provide a temporary exemption from the NYSE Rule 2 requirement that each member organization be a FINRA member. This exemption would apply to any NYSE Alternext member organization that: (1) holds a valid 86 Trinity Permit as of the date that the NYSE Alternext member organization transfers its equities operations to NYSE Alternext trading systems at 11 Wall Street; (2) is not currently a FINRA member; and (3) is eligible for FINRA's waive-in membership process.<sup>8</sup> The Exchange proposes a 60-day grace period for any such NYSE Alternext member organization to apply for and be approved as a FINRA member. Such grace period would run from the date that the NYSE Alternext member organization transfers its equities operation to NYSE Alternext trading systems at 11 Wall Street.

Finally, the Exchange proposes to add temporary Rule 304A.90T to provide a similar six-month grace period so that an approved person of a member organization, as opposed to the member organization itself, may address any changes that that approved person would have to make in connection with being associated with a member organization. If an approved person who has been designated to effect transactions on the floor of the Exchange fails to meet the relevant requirements by the end of the grace period, such approved person would not be permitted to effect trades on the floor until such requirements were met.

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<sup>8</sup> See Securities Exchange Act Release No. 58291 (August 1, 2008), 73 FR 46661 (August 11, 2008) (SR-FINRA-2008-043).

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>11</sup> which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

NYSE Alternext intends to adopt membership rules that are nearly identical to those of NYSE.<sup>12</sup> Thus, if a firm were to meet NYSE Alternext's membership rules, then it also will have met NYSE's rules. Moreover, the same staff that administer NYSE membership rules will also administer NYSE Alternext membership rules. Therefore, the Commission believes it is consistent with the Act for NYSE to waive in NYSE Alternext members that have been duly admitted to NYSE Alternext membership. Such action will eliminate regulatory duplication without undermining compliance with applicable membership requirements. Similarly, the

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<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> See NYSE Alternext Equities filing, supra note 6.

Commission believes it is consistent with the Act for NYSE to waive the new member application fee for NYSE Alternext members that waive into NYSE.

Certain NYSE Alternext members that will be waived in to NYSE do not currently meet all of NYSE's membership requirements. In a separate order, the Commission has approved Amex's proposal to give its existing members a six-month grace period to meet the new NYSE Alternext membership requirements.<sup>13</sup> In this proposal, NYSE is offering such members a similar six-month grace period to meet the NYSE membership requirements. The Commission believes that this aspect of the proposal reasonably balances the desire to allow NYSE Alternext members to continue their businesses and participate in the Relocations with the need to ensure compliance with applicable membership requirements.

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<sup>13</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008) (SR-Amex-2008-63).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSE-2008-70) be, and 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> 15 U.S.C. 78s(b)(2).

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