

least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant International Fund.

*Sections 17(a)(1) and (2) of the Act*

9. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Advisor or an entity controlling, controlled by or under common control with the Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (an "Affiliated Fund").

10. Applicants request an exemption from section 17(a), under sections 6(c) and 17(b), to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (1) holding 5% or more, or more than 25%, of the outstanding Shares of the respective Trust or one or more Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

11. Applicants contend that no useful purpose would be served by prohibiting these affiliated persons or second tier affiliates of a Fund from purchasing or redeeming Creation Units through "in-kind" transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state

that in-kind purchases and redemptions will afford no opportunity for the affiliated persons and second tier affiliates described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by these persons of the Fund.

**Applicants' Conditions**

The applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Each Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Fund, which is a registered investment company and that the acquisition of Shares by investment companies and companies relying on sections 3(c)(1) or 3(c)(7) of the Act is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

2. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on a Stock Exchange.

3. Neither the Trusts nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that the Fund is an actively managed exchange-traded fund. Each Prospectus will prominently disclose that the Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price against the NAV; and (b) data in chart format displaying the frequency distribution of discounts

and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

5. The Prospectus and annual report for each Fund will also include: (a) the information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years (or for the life of the Fund, if shorter), and (b) calculated on a per Share basis for one-, five- and ten-year periods (or for the life of the Fund, if shorter), the cumulative total return and the average annual total return based on NAV and Bid/Ask Price.

6. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The Advisor or Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for the Fund through a transaction in which the Fund could not engage directly.

8. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23366 Filed 10-2-08; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58678; File No. SR-Amex-2008-64]

**Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving the Adoption of New Rule 478T To Set Forth the Temporary Procedures That Will Apply To Disciplinary Proceedings Pending as of the Closing Date of the Acquisition of Amex by NYSE Euronext**

September 29, 2008.

On July 28, 2008, American Stock Exchange LLC, a Delaware limited

liability company (“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 adopt a new rule to set forth the temporary procedures that would apply to the disciplinary proceedings pending with the Exchange as of the closing date of the acquisition of Amex by NYSE Euronext (“Transaction Date”). On August 7, 2008, the proposed rule change was published for comment in the **Federal Register**.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval to the proposed rule change.

Pursuant to an agreement dated January 17, 2008, NYSE Euronext, the ultimate parent company of NYSE, Inc. (“NYSE”) and NYSE Arca, Inc. (“NYSE Arca”), is acquiring Amex, through a series of mergers (“Mergers”).<sup>4</sup> Upon completion of the Mergers and Related Transactions, Amex will continue to operate as a national securities exchange under Section 6 of the Act and will be renamed NYSE Alternext US LLC (“NYSE Alternext US”).

In a separate proposed rule change adopting various rules in connection with the Mergers and Related Transactions, Amex proposes to adopt new NYSE Alternext US Rules 475, 476 and 477 as its disciplinary rules, which are substantially similar to the existing NYSE disciplinary rules.<sup>5</sup> To avoid any potential confusion to respondents in disciplinary matters that had been commenced by Amex and still pending as of the Transaction Date (each, a “Legacy Disciplinary Proceeding”),<sup>6</sup> Amex proposes applying rules that are substantially similar to the current procedures governing Amex

disciplinary proceedings to such Legacy Disciplinary Proceedings. Accordingly, Amex proposes to adopt new Rule 478T to set forth the temporary procedures that will apply to such Legacy Disciplinary Proceedings. This rule will become operative as of the closing of the Mergers and Related Transactions.

Currently, the procedural rules governing Amex disciplinary proceedings are set forth in portions of the Amex Constitution, Amex Rule 345, and the Rules of Procedure in Disciplinary Matters (collectively, the “Legacy Disciplinary Procedural Rules”). Proposed NYSE Alternext US Rule 478T will effectively “grandfather” the substance of these Legacy Disciplinary Procedural Rules with respect to resolution of disciplinary matters by means of a settlement (*i.e.*, stipulation and consent) or hearing at NYSE Alternext US. The Legacy Disciplinary Procedural Rules, as incorporated in proposed Rule 478T(c), have been modified in certain respects from their current form, to account for certain changes in the disciplinary structures and processes at NYSE Alternext US that are expected as a consequence of the Mergers and Related Transactions.<sup>7</sup>

Amex proposes to replace the Amex roster of appointed hearing officers and hearing board members from which the chairman and members of individually-constituted disciplinary hearing panels are selected, with a new roster appointed by the Chairman of the NYSE Alternext US Board of Directors (“NYSE Alternext US Board”) pursuant to proposed NYSE Alternext US Rule 476(b). Notwithstanding the change in the manner in which the roster of hearing officers and hearing board members is assembled, the process of selection of hearing officers and hearing board members from that roster to serve on an individual hearing panel will not change.<sup>8</sup>

In addition, appeals from disciplinary determinations will be governed solely by the proposed NYSE Alternext US rules pertaining to appeals.<sup>9</sup> Specifically, Amex proposes to eliminate the Amex Adjudicatory Council (“AAC”), a body which currently hears appeals from determinations of Amex disciplinary panels, and whose decisions, in turn,

can be further appealed to Amex’s Board of Governors. Instead, these functions of the AAC will be performed by the NYSE Alternext US Board or by an official standing committee of NYSE Regulation (the “NYSE Regulation Committee”), in the sole discretion of the NYSE Alternext US Board.<sup>10</sup> The NYSE Regulation Committee will be charged with the responsibility to review determinations in Legacy Disciplinary Proceedings<sup>11</sup> and render advisory opinions to the NYSE Alternext US Board, which will have the ultimate responsibility to rule on such appeals.<sup>12</sup> The NYSE Regulation Committee will be expanded to include at least four individuals who are associated with member organizations of NYSE Alternext US.<sup>13</sup>

<sup>10</sup> See paragraph (b) of proposed NYSE Alternext US Rule 478T(c).

<sup>11</sup> Section 3(f) of Legacy Article V of the Amex Constitution and Section 5(a) of Legacy Article IV of the Amex Constitution hold open the possibility that the NYSE Regulation Committee may also be charged with the responsibility to hear: (i) Appeals from suspensions of members and member organizations in view of their financial and/or operating condition and (ii) applications for reinstatement following such suspensions.

<sup>12</sup> Specifically, any review of a disciplinary decision shall be conducted by the NYSE Alternext US Board or the NYSE Regulation Committee, in the sole discretion of the NYSE Alternext US Board. Upon review, and with the advice of the NYSE Regulation Committee, the NYSE Alternext US Board, by the affirmative vote of a majority of the NYSE Alternext US Board then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the provisions of Rule 476. Unless the NYSE Alternext US Board otherwise specifically directs, the determination and penalty, if any, of the NYSE Alternext US Board after review shall be final and conclusive subject to the provisions for review of the Act.

<sup>13</sup> These new members of the NYSE Regulation Committee must include at least one of each of the following: (1) An individual associated with a member organization of NYSE Alternext US that engages in a business involving substantial direct contact with securities customers; (2) An individual associated with a member organization of NYSE Alternext US that is registered as a specialist and spends a substantial part of his or her time on the trading floor of NYSE Alternext US; (3) an individual associated with a member organization of NYSE Alternext US not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his business the execution of transactions on the trading floor of NYSE Alternext US for other than his or her own account or the account of his NYSE Alternext US member organization; and (4) an individual associated with a NYSE Alternext US Member Organization not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his or her business the execution of transactions on the trading floor of NYSE Alternext US for his own account or the account of his or her NYSE Alternext US Member Organization. See Securities Exchange Act Release No. 58285 (August 1, 2008), 73 FR 46117 (SR–NYSE–2008–60).

<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. 58286 (August 1, 2008), 73 FR 46097 (“Amex Notice”).

<sup>4</sup> Immediately following the Mergers, NYSE Euronext plans to effectuate certain related transactions, as a result of which NYSE Alternext US will become a direct wholly-owned subsidiary of NYSE Group, Inc. (“NYSE Group”), the wholly-owned subsidiary of NYSE Euronext (“Related Transactions”). For a detailed description of the Mergers and Related Transactions, see Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (SR–Amex–2008–62) (“Amex Merger Notice”).

<sup>5</sup> See Amex Merger Notice, *supra* note 4 and Securities Exchange Act Release No. 58673 (September 29, 2009) (order approving SR–Amex–2008–62).

<sup>6</sup> Paragraph (a) of proposed NYSE Alternext US Rule 478T(c) defines “Legacy Disciplinary Proceedings” to include disciplinary charges, executed (but not yet approved) stipulations and consents, suspensions, summary proceedings, and summary fine notices for minor rule violations.

<sup>7</sup> See paragraph (c) of proposed NYSE Alternext US Rule 478T(c).

<sup>8</sup> Amex notes that the proposed NYSE Alternext US roster of appointed hearing officers and hearing board members would be substantially similar to that of the NYSE.

<sup>9</sup> See proposed NYSE Alternext US Rules 475(c) and (j) and 476(e)–(g), and Amex Merger Notice, *supra* note 4.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange.<sup>14</sup> In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(6) and 6(b)(7) of the Act<sup>15</sup> in that it provides a fair procedure for the discipline of members and persons associated with members. The Commission further finds that the proposed rule change provides NYSE Alternext US with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules or regulations thereunder, or the rules of NYSE Alternext US.

### Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2008-64), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23314 Filed 10-2-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58673; File Nos. SR-Amex-2008-62 and SR-NYSE-2008-60]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendments No. 1 and 4 Thereto, Relating to the Acquisition of the Amex by NYSE Euronext; Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Acquisition of the Amex by NYSE Euronext

September 29, 2008.

#### I. Introduction

On July 23, 2008, American Stock Exchange LLC, a Delaware limited liability company ("Amex"), 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 in connection with the acquisition of Amex by NYSE Euronext, a Delaware Corporation ("NYSE Euronext"). On July 30, 2008, Amex filed Amendment No. 1 to the proposed rule change. On August 7, 2008, the proposed rule change, as amended, was published for comment in the **Federal Register**.<sup>3</sup> Amex filed Amendment No. 2 to the proposed rule change on September 3, 2008, and withdrew Amendment No. 2 on September 4, 2008. Amex filed Amendment No. 3 on September 4, 2008, and withdrew Amendment No. 3 on September 5, 2008. Amex filed Amendment No. 4 on September 5, 2008.<sup>4</sup> The Commission

<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. 58284 (August 1, 2008), 73 FR 46086 ("Amex Notice").

<sup>4</sup> In Amendment No. 4, Amex: (1) Made several technical, non-substantive clarifying changes to the proposed NYSE Alternext US LLC rules; (2) amended the proposed NYSE Alternext US LLC rules to provide for other Amex proposed rule changes that have been approved since this proposal was filed; (3) modified the description of Arca Securities, LLC ("Arca Securities") to include, among other things, a representation that, with respect to its oversight of Arca Securities, which will be an affiliated member of NYSE Alternext US LLC after the Mergers and Related Transactions (as described herein), NYSE Regulation, Inc. ("NYSE Regulation") has agreed with Amex that it will provide a report to NYSE Alternext US LLC's Chief Regulatory Officer on a quarterly basis that: (a) Quantifies all open alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE Alternext US LLC or Commission rules and (b)

received no comments on the proposed rule change. This order provides notice of filing of Amendment No. 4 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendments No. 1 and 4.

On July 23, 2008, the New York Stock Exchange LLC ("NYSE"), a New York limited liability company, filed with the Commission, pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> a proposed rule change in connection with the acquisition of Amex by NYSE Euronext. On July 30, 2008, the NYSE filed Amendment No. 1 to the proposed rule change. On August 7, 2008, the proposed rule change, as amended, was published for comment in the **Federal Register**.<sup>7</sup> The Commission received no comments on the proposed rule change. This order grants approval to the proposed rule change, as modified by Amendment No. 1.

#### II. Background

On January 17, 2008, NYSE Euronext, Amex, Amex's parent companies (The Amex Membership Corporation ("MC") and its direct wholly-owned subsidiary, AMC Acquisition Sub, Inc.), and several other entities created by NYSE Euronext and Amex in connection with the Mergers entered into an agreement ("Merger Agreement") to effect a series of mergers ("Mergers") as a result of which the successor to Amex, to be renamed "NYSE Alternext US LLC" ("NYSE Alternext US"), will become a

quantifies the number of all open investigations that identify Arca Securities as a participant that has potentially violated NYSE Alternext US LLC or Commission rules; (4) revised the rule filing to reflect that the parties to a multi-party regulatory services agreement (as described herein) have been modified to include NYSE Alternext US LLC, NYSE Group, Inc., NYSE Regulation, and Financial Industry Regulatory Authority ("FINRA"); (5) revised the rule filing to reflect a change to the Mergers and Related Transactions, which will not affect the final outcome of the Mergers and Related Transactions (as described herein) through which NYSE Alternext US LLC will become a subsidiary of NYSE Euronext; and (6) clarified that Arca Securities will not provide "outbound" routing services for NYSE Alternext US LLC until the relocation of the NYSE Alternext US LLC equities and options trading facilities to the NYSE trading floor or the electronic trading platform of NYSE or NYSE Arca, Inc., as applicable, and that, at a later time, NYSE Alternext US LLC will submit a separate rule filing to the Commission seeking approval to provide such outbound routing services to NYSE Alternext US LLC.

<sup>5</sup> 15 U.S.C. 78s(b)(1).

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

<sup>7</sup> See Securities Exchange Act Release No. 58285 (August 1, 2008), 73 FR 46117 (SR-NYSE-2008-60) ("NYSE Notice").

<sup>14</sup> In approving the proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78f(b)(6) and 15 U.S.C. 78f(b)(7).

<sup>16</sup> 17 CFR 200.30-3(a)(12).