

30-day operative delay is consistent with the protection of investors and the public interest because the proposal is designed to extend the operation of the existing Reserve Order pilot without interruption. Extending the Reserve Order pilot would continue to enable off-Floor market participants to compete through their ability to maintain non-displayed liquidity on the Exchange's Display Book system. Accordingly, the Commission designates the proposed rule change effective and operative upon filing with the Commission.<sup>13</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 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-NYSE-2008-92 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2008-92. 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 a.m. and 3 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 publicly available. All submissions should refer to File Number SR-NYSE-2008-92 and should be submitted on or before October 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58706; File No. SR-NYSE-2008-70]

### 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

October 1, 2008.

#### 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 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

<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").

<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.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>27</sup> 17 CFR 240.19b-4.

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.

#### *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 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

<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.

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.

### **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

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

<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).

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 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.

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

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

<sup>14</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58699; File No. SR-NYSE-2008-94]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Extend the Moratorium on the Administration of the Specialist Performance Evaluation Questionnaire ("SPEQ") Pursuant to Exchange Rule 103A and the Use of the SPEQ Pursuant to Rule 103B ("Moratorium") to the Earlier of December 31, 2008 or the Approval of SR-NYSE-2008-52, To Continue To Suspend the Use of SuperDot Turnaround for Orders Received and Responses to Administrative Messages as Objective Measures in the Assessment of Specialist Performance During the Moratorium and That the SPEQ and Order Reports/Administrative Responses Continue To Be Removed From the Criteria Used To Commence a Specialist Performance Improvement Action

October 1, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 30, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A)(iii)<sup>4</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>5</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 proposes to extend the moratorium on the administration of the Specialist Performance Evaluation Questionnaire ("SPEQ") pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Rule 103B ("Moratorium"), which was implemented on June 8, 2007 to the

earlier of December 31, 2008 or the approval of SR-NYSE-2008-52. In addition, the Exchange proposes to continue to suspend the use of SuperDot turnaround for orders received and responses to administrative messages as objective measures in the assessment of specialist performance during the Moratorium. The Exchange further proposes that the SPEQ and Order Reports/Administrative Responses continue to be removed from the criteria used to commence a specialist performance improvement action during the Moratorium.

The text of the proposed rule changes is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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 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 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 proposes to extend the moratorium on the administration of the Specialist Performance Evaluation Questionnaire ("SPEQ") pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Rule 103B ("Moratorium"), which was implemented on June 8, 2007,<sup>6</sup> to the earlier of December 31, 2008 or the approval of SR-NYSE-2008-52.<sup>7</sup>

In addition, the Exchange proposes that the use of SuperDot turnaround for orders received and responses to administrative messages continue to be removed from the objective measures

<sup>6</sup> See Securities Exchange Act Release Nos. 55852 (June 4, 2007), 72 FR 31868 (June 8, 2007) (NYSE-2007-47) ("Original Request"); 57184 (January 22, 2008), 73 FR 5254 (January 29, 2008) (NYSE-2008-02); 57591 (April 1, 2008), 73 FR 18838 (April 7, 2008) (NYSE-2008-21); and 58036 (June 26, 2008), 73 FR 38267 (July 3, 2008) (NYSE-2008-51).

<sup>7</sup> See Securities Exchange Act Release No. 58363 (August 14, 2008), 73 FR 49514 (August 21, 2008) (SR-NYSE-2008-52).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).