

7. The Commission further requests comment on whether, if a commenter believes that a fee cap should be imposed, such fee cap should apply only to transactions effected by non-members through Linkage, or whether a fee cap should apply to member access as well. Would capping the maximum transaction fee that options exchanges charge non-members prevent or mitigate the negative consequences of unreasonably high access fees for members?

8. If a commenter believes that a fee cap should be imposed, the Commission specifically requests comment as to what level would be appropriate. For example, the Petition proposes an access fee limit of 20%, or \$0.20 per contract (\$0.002 per underlying share). Are there other fee cap structures that would be more appropriate for the options markets than the percentage of the minimum quoting increment model?

9. Further, the Commission requests comment as to whether such a fee cap should apply only to the best bid and offer of each exchange, or also to access to "depth of book" quotations.

10. The Commission requests comment as to whether the use of "maker-taker" pricing by options exchanges has led, or is likely to lead, to an increase in locked and crossed markets.

11. The Commission requests comment as to the impact, if any, on the use of the "maker-taker" pricing model on the quoted spread widths and sizes of registered options market makers in the classes subject to such pricing model. If a commenter believes that the "maker-taker" model has had an impact on the quality of quoted prices, the Commission requests comment as to whether there is sufficient liquidity in the classes subject to the model from market participants other than registered market makers. Would the analysis change if a similar pricing model were proposed for all options?

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-NYSEArca-2008-75 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-NYSEArca-2008-75. 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 a.m. and 3 p.m. Copies of such filing will also 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 No. SR-NYSEArca-2008-75 and should be submitted on or before September 2, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-18386 Filed 8-8-08; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58297; File No. SR-NYSEArca-2008-78]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Waive Annual Fees for Securities Transferring to NYSE Arca From NYSE Alternext U.S.**

August 4, 2008.

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> notice is hereby given that, on July 23,

2008, NYSE Arca, Inc. ("NYSE Arca" or "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 proposal from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its rules governing NYSE Arca, LLC (also referred to as the "NYSE Arca Marketplace"), which is the equities trading facility of NYSE Arca Equities. The Exchange proposes that securities transferring to NYSE Arca from NYSE Alternext U.S.<sup>3</sup> after the closing of the purchase of the American Stock Exchange LLC by NYSE Euronext (the "Merger") will not be charged any prorated Annual Fee for the remainder of the year in which the Merger takes place. The fee waiver in the preceding sentence will be of no further effect if the closing of the Merger does not take place by March 31, 2009.

#### **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 that securities transferring to NYSE Arca from NYSE Alternext U.S. after the closing of the Merger will not be charged any prorated Annual Fee for the remainder of the year in which the Merger takes place. The fee waiver in the preceding sentence will be of no further effect if the closing of the Merger does not take place by March 31, 2009.

NYSE Euronext, the ultimate parent company of the Exchange, has agreed to

Director & Deputy General Counsel, Citadel, to Nancy M. Morris, Secretary, Commission, dated July 15, 2008 ("Petition").

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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> After the closing of the Merger, the Amex will be renamed NYSE Alternext U.S. LLC.

acquire the Amex pursuant to an Agreement and Plan of Merger, dated as of January 17, 2008. It is currently anticipated that the acquisition will be consummated during the third quarter of 2008.<sup>4</sup> In connection with the acquisition, the Exchange anticipates that some issuers of NYSE Alternext U.S.-listed securities that qualify for listing on the Exchange may choose to transfer their listing to the Exchange. Consequently, the Exchange proposes to grant issuers transferring the listing of their securities to the Exchange from NYSE Alternext U.S. during the calendar year in which the Merger is consummated a waiver of the prorated annual listing fee that would normally be payable in connection with the first partial calendar year of listing on the Exchange. The Exchange believes this is appropriate as issuers transferring to the Exchange from NYSE Alternext U.S. will already have paid annual continued listing fees to the Amex for the calendar year in which they transfer. The proposed fee waiver will have no further effect if the Merger is not consummated by March 31, 2009.

The Exchange believes this proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory, in particular because, after the Merger, NYSE Regulation, Inc. ("NYSE Regulation") will perform listed company regulation for both the Exchange and NYSE Alternext U.S., including a substantial review of companies upon original listing. Many of the regulatory staff who currently perform initial and continued listing reviews at the Amex will become employees of NYSE Regulation at the time of the Merger and will continue to perform the same duties with respect to NYSE Alternext U.S. securities after the Merger. Securities transferring from NYSE Alternext U.S. will be subjected to the same rigorous regulatory review as any other securities with respect to which an application for listing is made to the Exchange. However, the Exchange expects that, on average, the review of securities transferring from NYSE Alternext U.S. to the Exchange will be less costly than the review of a transfer from an unaffiliated market, as the Amex listing regulatory staff that will have been absorbed by NYSE Regulation will already have performed a substantial review of any NYSE

Alternext U.S.-listed issuer, and NYSE Regulation will be able to rely on that prior work as a baseline in qualifying the issuer for listing on the Exchange and in conducting ongoing compliance activities with respect to any such issuer.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>5</sup> that an exchange has rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory because it is simply a recognition of the fact that issuers transferring the listing of securities from NYSE Alternext U.S. will already have paid fees to another exchange which will at that time be under the same ownership as the Exchange. The Exchange believes that the fee waiver is appropriate because the same regulatory staff will review securities on both markets and the Exchange will therefore benefit from regulatory efficiencies arising out of NYSE Regulation's prior examination of any issuers that transfer their securities.

### 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 Exchange Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

## 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 self-regulatory organization 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-78 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-NYSEArca-2008-78. 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 available publicly. All submissions should refer to File Number SR-NYSEArca-2008-78 and should be submitted on or before September 2, 2008.

<sup>4</sup> The members of the Amex voted to approve the transaction on June 17, 2008. No vote of the NYSE Euronext shareholders is required. The sole remaining condition to the consummation of the transaction is the approval by the Division of Trading and Markets of certain rule filings the NYSE and Amex expect to submit in the near future.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-18387 Filed 8-8-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58306; File No. SR-NYSEArca-2008-82]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection With the Proposed Acquisition of The Amex Membership Corporation

August 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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, a Delaware Corporation and registered national securities exchange is submitting this proposed rule change to the Commission in connection with the proposed acquisition of The Amex Membership Corporation (“MC”), a New York not-for-profit corporation that owns 100% (99% directly and 1% indirectly through a wholly owned subsidiary) of American Stock Exchange LLC, a Delaware limited liability company and registered national securities exchange (“Amex”), by NYSE Euronext, the Delaware corporation that indirectly owns 100% of the Exchange.

The text of the proposed rule change is available on the Exchange’s Web site

at <http://www.nyse.com>, at the Exchange’s principal office, 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 Exchange 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 is submitting this proposed rule change to the Commission in connection with the proposed acquisition of MC, a New York not-for-profit corporation that owns 100% of Amex, by NYSE Euronext. The proposed acquisition will occur pursuant to the terms of the Agreement and Plan of Merger, dated as of January 17, 2008 (as it may be amended from time to time, the “Merger Agreement”), by and among NYSE Euronext, Amsterdam Merger Sub, LLC, a Delaware limited liability company and a wholly owned subsidiary of NYSE Euronext formed by NYSE Euronext in connection with the Mergers (“Merger Sub”), MC, AMC Acquisition Sub, Inc., a Delaware corporation and a wholly owned subsidiary of MC (“AMCAS”), American Stock Exchange Holdings, Inc., a Delaware corporation and a wholly owned subsidiary of MC created by MC in connection with the Mergers (“Holdings”), Amex, which is 99 percent owned by MC and 1 percent owned by AMCAS, and American Stock Exchange 2, LLC, a Delaware limited liability company and a wholly owned subsidiary of Holdings formed by Holdings in connection with the Mergers (“Amex Merger Sub”).

Under the terms of the Merger Agreement, MC will demutualize and NYSE Euronext will acquire the business of MC and its subsidiaries through a series of mergers (the “Mergers”). Following the Mergers, Merger Sub, a wholly owned subsidiary of NYSE Euronext and a successor to MC and AMCAS, will directly own 100% of Amex Merger Sub, which will

be the successor to Amex and a registered national securities exchange. It is intended that Amex Merger Sub will be renamed “NYSE Alternext U.S. LLC” (and therefore is referred to in this document as “NYSE Alternext U.S.”). The proposed rule change will not become operative until completion of the Internal Merger (as defined below).

##### Corporate Structure

Immediately following the NYSE/Amex Merger, NYSE Euronext will contribute 100% of the limited liability company interest of Merger Sub to NYSE Group, Inc. (“NYSE Group”) (such contribution, the “Contribution”), causing Merger Sub to become a direct wholly owned subsidiary of NYSE Group. Immediately following the Contribution, Merger Sub will merge with and into NYSE Alternext U.S., a direct wholly owned subsidiary of Merger Sub (“Internal Merger”). As a result of the Contribution and the Internal Merger, NYSE Alternext U.S. will become a direct wholly owned subsidiary of NYSE Group.

##### Organizational Documents of NYSE Euronext

Currently the NYSE Euronext organizational documents provide certain protections to the Exchange and New York Stock Exchange LLC that are designed to protect and facilitate their self-regulatory functions. In general, the organizational documents of NYSE Euronext are being amended to provide similar protections to NYSE Alternext U.S. as are currently provided to the Exchange and New York Stock Exchange LLC under those documents. In addition, in the proposed new Director Independence Policy for NYSE Euronext directors, the three-year retrospective period (“look-back period”) over which directors’ relationships with members of the Exchange and New York Stock Exchange LLC are reviewed (which following the Mergers will apply equally to NYSE Alternext U.S.) has been reduced to one year. The Exchange believes that this reduction will be beneficial in expanding NYSE Euronext’s pool of eligible director candidates with knowledge of the exchange industry, while still maintaining sufficient director independence.

The amended and restated bylaws of NYSE Euronext are being amended to:

- Include NYSE Alternext U.S. in the definition of “U.S. Regulated Subsidiaries,” which currently includes New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., the Exchange, and

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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