

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-58650; File No. SR-Amex-2008-65]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change To Allow Issuers of Exchange-Traded Funds (“ETFs”) and Structured Products Who Are Voluntarily Delisting the Securities From the Exchange and Re-Listing on Another National Securities Exchange To Submit to the Exchange a Letter From an Authorized Officer of the Issuer Rather Than a Certified Copy of Board of Directors Resolutions

September 25, 2008.

#### I. Introduction

On August 7, 2008, American Stock Exchange LLC (“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 amend Amex Rule 18 to allow issuers of exchange-traded funds (“ETFs”) and structured products who are voluntarily delisting the securities from the Exchange and re-listing on another national securities exchange to submit a letter to the Exchange from an authorized executive officer of the issuer, rather than a certified copy of board resolutions. The proposed rule change was published for comment in the **Federal Register** on August 21, 2008.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange seeks to amend Amex Rule 18, which governs the procedure by which an issuer may voluntarily withdraw securities from listing. Currently, Amex Rule 18 requires an issuer to provide the Exchange with a certified copy of the resolution of its board of directors approving the delisting. Under the proposed rule change, an issuer of certain securities<sup>4</sup>

that proposes to delist and re-list its securities on another national securities exchange may, in lieu of providing the Exchange with a certified copy of the board resolution, provide the Exchange with a letter signed by an authorized executive officer of the issuer. That letter must set forth the reasons for the delisting, and provide the basis of the officer’s authority to take such action. In addition, the proposed rule change would be effective as of the date of closing of the acquisition of the Exchange by NYSE Euronext, the ultimate parent company of the Exchange (“NYSE Acquisition”).<sup>5</sup> In the event the closing date does not occur on or before December 31, 2008, the proposed rule change would not take effect and the Exchange would rescind the rule by a separate rule filing. In its filing, the Exchange stated that, as part of the NYSE Acquisition, NYSE Euronext intends to cease the trading and listing of ETF securities and structured products on the Exchange. Upon completion of the merger, and to effectuate its business plan, NYSE Euronext will request these issuers to voluntarily delist,<sup>6</sup> and will encourage them to re-list on NYSE Arca, Inc. (“NYSE Arca”) and/or New York Stock Exchange LLC (“NYSE”).<sup>7</sup>

The Exchange also proposes to make minor clarifying changes to Section 1010 of the Amex Company Guide, and to delete from that section the restatement of Exchange Rule 18 and Rule 12d2-2 under the Act.

#### III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent

with Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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 notes that permitting issuers of ETFs and structured products who are voluntarily delisting to submit a letter to the Exchange from an authorized executive officer instead of a certified copy of the resolution adopted by the issuer’s board of directors is consistent with the requirements of the Act and Rule 12d2-2 thereunder, and is similar to the voluntary withdrawal procedures for dually-listed issuers on NYSE Arca,<sup>10</sup> and index-linked securities on NYSE.<sup>11</sup> The proposal does not alter an issuer’s obligation to meet the requirements of the issuer’s governing documents, the laws of its jurisdiction of incorporation, or complying with Rule 12d2-2 under the Act.

In addition to requiring the letter from the authorized executive officer to provide the reasons for the withdrawal, the new rule will require the letter to set forth the basis for the officer’s authority to take such delisting action on behalf of the issuer. This latter requirement should help to ensure that the issuer complies with the applicable laws in effect in its jurisdiction of incorporation, and has the authority to act on behalf of the issuer.<sup>12</sup> At the same time, the proposal may ease the burden on issuers who wish to voluntarily delist and transfer the listing to another national securities exchange.<sup>13</sup>

The Commission also notes that the proposed delisting procedures apply only to securities that would be listed

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See NYSE Arca Equities Rule 5.4(b); see also Securities Exchange Act Release No. 54672 (October 30, 2006), 71 FR 65021 (November 6, 2006) (SR-NYSEArca-2006-47).

<sup>11</sup> See Section 806.02 of the NYSE Listed Company Manual; see also Securities Exchange Act Release No. 57041 (December 26, 2007), 73 FR 216 (January 2, 2008) (SR-NYSE-2007-99).

<sup>12</sup> The Commission notes that Rule 12d2-2 specifically requires, among other things, that issuers comply with all applicable laws in effect in the state in which they are incorporated to delist from a national securities exchange. See 17 CFR 240.12d2-2(c)(2)(i).

<sup>13</sup> While NYSE Euronext is requesting that these issuers re-list on NYSE Arca or the bond platform of NYSE, the Commission notes that these issuers are free to choose the best market for their securities for which they qualify and the proposed rule does not limit the issuer’s choice of markets.

1200A-AEMI and 1201A *et seq.* (Commodity-Based Trust Shares), 1400 *et seq.* (Trading of Paired Trust Shares), 1500-AEMI and 1501 *et seq.* (Trading of Partnership Units), or 1600 *et seq.* (Trading of Trust Units).

<sup>5</sup> Pursuant to a merger agreement dated January 17, 2008 among the Exchange, the Amex Membership Corporation, NYSE Euronext and certain other entities, a successor to the Exchange will become an indirect, wholly-owned subsidiary of NYSE Euronext. After the closing of the merger, the Exchange will be renamed NYSE Alternext U.S. LLC.

<sup>6</sup> See note 4, *supra*.

<sup>7</sup> See note 14, *infra*.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<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. 58364 (August 14, 2008), 73 FR 49508.

<sup>4</sup> This proposal applies to securities listed pursuant to listed pursuant to Amex Company Guide Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants) or 107 (Other Securities) and Exchange Rules 1000-AEMI and 1001 *et seq.* (Portfolio Depositary Receipts), 1000A-AEMI and 1001A *et seq.* (Index Fund Shares), 1000B *et seq.* (Managed Fund Shares), 1200-AEMI and 1201 *et seq.* (Trading of Trust Issued Receipts),

and traded on another national securities exchange. As such, transparent last sale information will continue to be disseminated on the securities on an uninterrupted basis. Further, this requirement will ensure other protections for trading a security on a national securities exchange will remain in place, such as the periodic reporting obligations under the Act.

Further, the Commission finds that the deletion of the restatements of Rule 18 and Rule 12d2-2 in the Amex Company Guide is consistent with the requirements of the Act. The rules of Amex and the Commission are equally available on the Internet, and are updated when changed. As such, the restatements in the Company Guide are no longer necessary. The Exchange rules, however, will continue to reference Rule 12d2-2 to ensure issuers know they must comply with that rule, as well as the Exchange's requirements, to delist.

Finally, as noted above, the new rule will only be implemented upon the closing of the Exchange Acquisition. The Exchange has represented that, upon closing of the merger, it will notify applicable issuers that the rule has become effective.<sup>14</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2008-65) be, and it 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58651; File No. SR-FINRA-2008-047]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure To Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to \$100,000

September 25, 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 September 18, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 substantially prepared by FINRA. 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

FINRA is proposing to amend NASD Rule 12401 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and NASD Rule 13401 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to raise the amount in controversy that will be heard by a single chair-qualified arbitrator to \$100,000. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

12401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

(b) Claims of More Than \$25,000 Up To \$100,000

If the amount of a claim is more than \$25,000 but not more than \$100,000

*\$100,000*, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] *unless the parties agree in writing to three arbitrators.*

(c) Claims of More Than \$50,000 \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$50,000 \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

13401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 13800.

(b) Claims of More Than \$25,000 Up To \$50,000 \$100,000

If the amount of a claim is more than \$25,000 but not more than \$50,000 \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] *unless the parties agree in writing to three arbitrators.*

(c) Claims of More Than \$50,000 \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$50,000 \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>14</sup> Telephone conversation between Marija Willen, Vice President and Associate General Counsel, Amex, and Steve Kuan, Special Counsel, Commission, on September 25, 2008.

<sup>15</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.