

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58705; File No. SR-Amex-2008-63]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change To Establish New Membership, Member Firm Conduct, and Equity Trading Rules Following the Exchange's Acquisition by NYSE Euronext

October 1, 2008.

#### I. Introduction

On July 28, 2008, the American Stock Exchange LLC ("Amex" or the "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 establish new membership, member firm conduct, and equity trading rules following the Exchange's acquisition by NYSE Euronext. The proposal was published for comment in the **Federal Register** on August 7, 2008.<sup>3</sup> No comments were received on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

##### A. Background

As described in detail in a separate proposed rule change,<sup>4</sup> NYSE Euronext intends to acquire Amex's parent corporation, the Amex Membership Corporation, and restructure the Exchange's ownership through a series of mergers ("Mergers"), following which Amex will be renamed NYSE Alternext U.S. LLC ("NYSE Alternext"). In a separate action today, the Commission approved that proposed rule change.<sup>5</sup>

In connection with the Mergers, Amex intends to relocate all equity trading currently conducted on its legacy facilities at 86 Trinity Place, New York, New York (the "86 Trinity Trading Systems") to 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's equity trading facilities at 11 Wall Street ("NYSE Alternext Trading Systems") will be operated by the New York Stock Exchange ("NYSE")

on behalf of the Exchange. At a later date, Amex will relocate all options trading currently conducted on the 86 Trinity Trading Systems to new facilities at 11 Wall Street, which will be operated by NYSE Arca, Inc. ("NYSE Arca") (the "Options Relocation," and together with the Equities Relocation, the "Relocations"). Before completion of the Relocations, all trading on the 86 Trinity Trading Systems will continue to be governed by the existing Amex rules, as amended pursuant to the Mergers. The Exchange anticipates that the Equities Relocation will occur as soon as reasonably practicable following the date of the Mergers and that the Options Relocation will occur at or around February 2009. Upon completion of the Relocations, Amex will rescind its legacy rules.

In this filing, Amex has proposed to adopt: (1) New membership rules, which are based closely on existing NYSE membership rules; (2) new member conduct rules, which are also based on existing NYSE member conduct rules; (3) new equity trading rules, to reflect the fact that equities trading on the Exchange will be supported by a new trading system based on NYSE's existing system; and (4) certain transitional rules that explain which of the Exchange's rules apply after the Mergers but before the Relocations are complete. The Exchange has stated that it will submit a separate filing to establish new options trading rules in anticipation of the Options Relocation.

##### B. New Membership and Member Firm Conduct Rules

The Exchange proposes to adopt rules governing member organizations that are closely modeled on the existing NYSE membership rules, including rules defining member and member organizations;<sup>6</sup> governing the admission of members, member organizations, allied members, and approved persons;<sup>7</sup> the formation and approval of member organizations;<sup>8</sup> changes within member organizations;<sup>9</sup> and submission of partnership articles and corporate documents.<sup>10</sup>

The Exchange also proposes to adopt new member firm conduct rules, which govern the off-floor conduct of members and member organizations.<sup>11</sup> These

conduct rules relate to capital;<sup>12</sup> margin;<sup>13</sup> internal controls;<sup>14</sup> business conduct, customer protection, and account maintenance;<sup>15</sup> recordkeeping;<sup>16</sup> automated submission of trading data;<sup>17</sup> and financial statements and reporting.<sup>18</sup> These rules are nearly identical to NYSE's member firm conduct rules. In addition, many of these rules were adopted by the Financial Industry Regulatory Authority, Inc. ("FINRA") in 2007 as "Common Rules" pursuant to the 17d-2 Agreement between NYSE and FINRA.<sup>19</sup>

The Exchange proposes that, upon the effective date of this filing, each NYSE Alternext member organization will continue to be approved as an NYSE Alternext member organization,<sup>20</sup> even if it does not meet all of the new membership requirements at that time.<sup>21</sup> However, the new membership rules may impose different or additional requirements than the current Amex rules concerning membership, and following the Mergers an NYSE Alternext member or member organization holding an 86 Trinity Permit might not immediately satisfy

<sup>12</sup> See proposed NYSE Alternext Equities Rules 325-328.

<sup>13</sup> See proposed NYSE Alternext Equities Rules 430-434.

<sup>14</sup> See proposed NYSE Alternext Equities Rule 342, Supplementary Material .23.

<sup>15</sup> See proposed NYSE Alternext Equities Rules 401-414.

<sup>16</sup> See proposed NYSE Alternext Equities Rule 440.

<sup>17</sup> See proposed NYSE Alternext Equities Rule 410A.

<sup>18</sup> See proposed NYSE Alternext Equities Rules 416-424.

<sup>19</sup> See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).

<sup>20</sup> As discussed in the Acquisition Proposal, immediately following the closing of the Mergers, those persons and entities who were authorized to trade on Amex before the closing of the Mergers—including (1) Amex owners, lessees, or nominees of Regular Members or Options Principal Members ("OPMs"); (2) Amex limited trading permit holders; and (3) Amex associate members—will be deemed to have satisfied applicable qualification requirements necessary to trade on NYSE Alternext and issued trading permits (referred to as "86 Trinity Permits") at no cost. The 86 Trinity Permit will authorize these persons and entities to continue to trade on the 86 Trinity Trading Systems. A holder of an 86 Trinity Permit will be able to apply for an NYSE Alternext equities license or options trading permit upon the Equities or Options Relocation, as applicable. After the Equities Relocation, a holder of an 86 Trinity Permit will be able to trade only those products that have not migrated to the NYSE Alternext Trading Systems. After the Options Relocation, the 86 Trinity Permits will be canceled. See Notice, 73 FR at 46076.

<sup>21</sup> The Exchange has stated that, following the closing of the transaction, the Exchange will work with FINRA as its agent to ensure that the Exchange's membership requirements are met.

<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. 58265 (July 30, 2008), 73 FR 46075 (SR-Amex-2008-63) ("Notice").

<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> See Securities Exchange Act Release No. 34-58673 (September 29, 2008) (SR-Amex-2008-62).

<sup>6</sup> See proposed NYSE Alternext Equity Rule 2.

<sup>7</sup> See proposed NYSE Alternext Equity Rules 300-308.

<sup>8</sup> See proposed NYSE Alternext Equity Rule 311.

<sup>9</sup> See proposed NYSE Alternext Equity Rule 312.

<sup>10</sup> See proposed NYSE Alternext Equity Rule 313.

<sup>11</sup> See NYSE Rules 325-465 (Operation of Member Organizations).

these new requirements. Therefore, the Exchange has proposed to give each such member a grace period of six months to comply with these new requirements beginning the date that it obtains an NYSE Alternext equities trading license in exchange for a valid 86 Trinity Permit. The Exchange would revoke the member's approval to trade if it failed to meet the new requirements by the close of the grace period, and reserve the right to commence proceedings to terminate its membership.

The Exchange further proposes that each NYSE Alternext member be provided a grace period of six months within which to meet proposed NYSE Alternext Equities Rule 304A requirements to pass certain required examinations. This grace period would run from the date that the individual member transfers to the NYSE Alternext Trading Systems.<sup>22</sup>

The Exchange also has proposed to require all of its members to become members of both NYSE and FINRA.<sup>23</sup>

### C. New Equity Trading Rules

The Exchange has proposed a new rule set for equities trading ("NYSE Alternext Equities Rules"), which is closely modeled on NYSE Rules 1–1004.<sup>24</sup> Because NYSE Alternext Trading Systems will be operated by NYSE on behalf of the Exchange, the NYSE Alternext Equities Rules will be substantially identical to the existing NYSE equity trading rules, with certain minor differences. The Exchange has represented that, following the Equities Relocation, the NYSE Alternext trading floor and the NYSE trading floor will be physically located in adjacent rooms at 11 Wall Street and supported by the same systems and equipment. NYSE Alternext's equity market structure will be identical to NYSE's, as the two exchanges will have the same rules regarding, among other things, order interaction, priority and parity, specialist obligations, types of market participants, trading halts, and openings, closings, and re-openings. NYSE's equity trading rules have

previously been approved by the Commission.<sup>25</sup>

There are a few minor differences between the NYSE Alternext and NYSE trading rules. For example, rules related to Registered Competitive Market Makers, Competitive Traders, and Registered Options Representatives or Principals have not been adopted, since these categories of market participants will not exist on NYSE Alternext. Similarly, NYSE Alternext will be retaining the Amex's specialist net capital requirements<sup>26</sup> reflecting NYSE Alternext's trading of smaller capitalized stocks than NYSE. Also, because ETFs, bonds, and structured products will not trade on the NYSE Alternext trading systems, rules relating to these categories of securities have not been adopted. Finally, certain NYSE rules that are obsolete will not be adopted for the NYSE Alternext rule set.

The Exchange does not intend to list any securities that are listed on NYSE or to trade any securities pursuant to unlisted trading privileges ("UTP"). The Exchange may in the future determine to trade securities listed on other exchanges on a UTP basis, subject to certain technical adjustments to the NYSE Alternext Trading Systems necessary to support such trading. However, the Exchange will not trade NYSE-listed securities on a UTP basis and will not trade pursuant to UTP any securities that might in the future be traded on the NYSE pursuant to UTP.<sup>27</sup>

The Exchange proposes to discontinue the listing and trading (including UTP trading) of exchange-traded funds ("ETFs") and certain other structured products, including index and currency warrants. All listing and trading of such products would be transferred to NYSE Arca. The Exchange also proposes to discontinue trading of bonds currently listed on the Exchange, which could then trade on NYSE Bonds, a facility of NYSE. The Exchange has stated that the transfer of ETFs, bonds, and structured products will be accomplished as soon as practicable after the closing of the Mergers. Because movement of these listings might not be completed by the date of the Equities Relocation, such products would continue to be traded on the 86 Trinity Trading Systems until the transfer of the listings can be completed. If an issuer of

an ETF, structured product, or bond does not wish to move its listing to NYSE Arca or NYSE Bonds, as the case may be, such issuer would have the opportunity to seek a listing on another market.

Following the Equities Relocation, certain securities listed and traded on the Exchange would not be eligible to trade on NYSE Alternext because of a "sub-penny trading condition" described in proposed NYSE Alternext Equities Rule 123D(3). Any such security would continue to be listed on the Exchange but subject to a non-regulatory trading halt. Trading in that security would be routed to NYSE Arca and handled in accordance with the rules governing that market.

Because NYSE Alternext will operate on the same trading systems as NYSE, future market structure changes made to the NYSE system would also affect trading on NYSE Alternext. The Exchange has represented that, as changes made to the shared platform are implemented, both NYSE and NYSE Alternext will, as necessary, submit parallel proposed rule changes pursuant to Section 19(b)(1) of the Act.

### D. Transitional Rules

The Exchange also proposes to amend the legacy Amex rules and include provisions in the new NYSE Alternext rules to clarify which rule set governs the conduct of trading following the Mergers. Proposed Amex Rule 0 provides that all transactions conducted on or through the 86 Trinity Trading Systems would continue to be governed by the legacy rules of the Exchange, including Amex Rules 1–1605, the Amex Company Guide, and AEMI Rules 1–1500 (collectively, the "86 Trinity Rules"). Proposed NYSE Alternext Equities Rule 0 provides that all trading conducted on the NYSE Alternext Trading Systems following relocation to 11 Wall Street would be governed by the NYSE Alternext Equities Rules, except to the extent any 86 Trinity Rules are specifically designated as applying.

Proposed Amex Rule 0 and NYSE Alternext Equities Rule 0 also provide that proposed NYSE Alternext Equities Rules 475–477, which address disciplinary matters and are based on NYSE Rules 475–477, will apply to all NYSE Alternext members and member organizations and will govern trading on both the 86 Trinity and NYSE Alternext Trading Systems.<sup>28</sup> Following

<sup>22</sup> See Notice, 73 FR at 46078.

<sup>23</sup> NYSE and FINRA have submitted separate filings concerning admission of Amex members. See Securities Exchange Act Release No. 58290 (August 1, 2008), 73 FR 46676 (August 11, 2008) (SR–NYSE–2008–70); Securities Exchange Act Release No. 58291 (August 1, 2008), 73 FR 46661 (August 11, 2008) (SR–FINRA–2008–043).

<sup>24</sup> The Exchange has taken NYSE Rules 1–1004 in the form they existed as of July 18, 2008. The Exchange has stated that it will—as soon after the close of the Mergers as practicable, but not later than the date of the Equities Relocation—incorporate any changes to these rules made after July 18, 2008, but before the effective date of the Mergers.

<sup>25</sup> See Securities Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05) ("Hybrid Market Approval Order").

<sup>26</sup> See proposed NYSE Alternext Equities Rule 104.20.

<sup>27</sup> The Exchange has stated that NYSE does not currently trade any securities pursuant to UTP. See Notice, 73 FR at 46076.

<sup>28</sup> The Exchange has submitted additional filings addressing its rules and procedures for certain legacy disciplinary matters. See Securities Exchange Act Release No. 58286 (August 1, 2008), 73 FR 46097 (August 7, 2008) (SR–Amex–2008–64). In addition, the Exchange intends to submit in the

completion of the Options Relocation, the 86 Trinity Rules—including Amex Rule 0—would no longer be operative and would be rescinded by the Exchange.

### III. Discussion

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>29</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>30</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>31</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. The Commission notes that the proposed rules for the new NYSE Alternext market relating to membership, member firm conduct, and equities trading are substantially similar to existing NYSE rules, which have been previously subject to notice and comment and, where appropriate, approved by the Commission.<sup>32</sup>

This approval is based on the Commission's understanding that the equity trading system of NYSE Alternext will not trade any securities that are traded on NYSE. If in the future NYSE Alternext wishes to trade any security that is also traded on NYSE, NYSE Alternext must first file with the Commission a proposed rule change pursuant to Section 19(b)(1) of the Act.

All Amex members will, upon the closing of the Mergers, be approved as members of NYSE Alternext. However, since the new NYSE Alternext membership qualification rules are not

near future a proposal to adopt Disciplinary Rule 478T, which would govern the temporary disciplinary procedures applicable to certain legacy disciplinary proceedings.

<sup>29</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>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78f(b)(8).

<sup>32</sup> See Hybrid Market Approval Order, *supra* note 25.

identical to the current Amex rules, the Exchange has proposed a six-month grace period for members to meet the new requirements and for members to take any necessary examinations. The Commission believes this is a reasonable accommodation for existing members of the Exchange that meet the current membership requirements but which might not immediately be able to satisfy the new membership requirements.

Finally, the Commission believes that the transitional rules proposed by the Exchange are consistent with the Act. They appear reasonably designed to promote an orderly transition by Amex members from the 86 Trinity Trading Systems to the NYSE Alternext Trading Systems.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR-Amex-2008-63) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58687; File No. SR-BSE-2008-42]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Appointment of Market Makers on the Boston Options Exchange Facility

September 30, 2008.

On August 19, 2008, the Boston Stock Exchange, Inc. ("BSE" 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 modify the rules of the Boston Options Exchange Group, LLC ("BOX") to: (i) clarify that a Market Maker seeking to withdraw from a particular appointment will be required to provide BOX with at least three business days' written notice of such withdrawal regardless of how long the Market Maker held such appointment, by

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</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.

removing conflicting language in BOX Rule 4(f) of Chapter VI that requires Market Makers to maintain active markets in all classes in which the Market Maker is appointed for a period of at least six months; and (ii) revise the formatting of Supplementary Material to Chapter VI, Section 5(c)(ii) of the BOX rules.

The proposed rule change was published for comment in the **Federal Register** on August 28, 2008.<sup>3</sup> The Commission received no comments on the proposal.

The Commission 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<sup>4</sup> and, in particular, the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> in that the proposal is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will eliminate ambiguity within BOX's rules and provide greater clarity concerning Market Maker appointments and requests to withdraw from such appointments.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-BSE-2008-42) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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<sup>3</sup> See Securities Exchange Act Release No. 58408 (August 22, 2008), 73 FR 50845.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).