

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- 58606 ; File No. SR-Amex-2008-72)

September 19, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Temporarily Suspending The Requirements of Its Rules Concerning the Approval of New Member Organizations in Order to Approve Barclays Capital Inc. Immediately and Provisionally as a New Member Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 19, 2008, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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<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).

<sup>5</sup> Amex gave the Commission written notice of its intention to file the proposed rule change on September 19, 2008. The Commission reviewed the proposed rule change and gave Amex permission to file the proposed the rule change on the same day. Amex asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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

The Exchange is proposing to temporarily suspend the requirements of Article IV, Section 2 of the Amex Constitution and related Amex rules concerning the approval of new member organizations in order to approve Barclays Capital Inc. ("BCI") as a new associate member organization, subject to BCI complying with Exchange rules for a new member organization within 60 days of the date that BCI is provisionally approved.

The text of the proposed rule change is available on the Amex's website at <http://www.amex.com>, the Office of the Secretary, the Amex 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 Amex 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. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects 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 this rule filing to temporarily suspend the requirements of Article IV, Section 2 of the Amex Constitution and related Amex rules concerning the approval of new member organizations in order to immediately approve as an Amex associate member organization BCI, which is the entity acquiring the assets of Lehman Brothers Inc. ("LBI").<sup>6</sup>

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<sup>6</sup> LBI also was an associate member organization. "Associate" denotes that the member

The Exchange proposes this temporary suspension on an emergency basis to ensure that BCI will be able to expeditiously complete its proposed acquisition of certain LBI assets and begin operating former LBI business lines by September 22, 2008. This proposed temporary suspension is contingent upon BCI complying with all requirements of a new Amex member organization applicant within 60 days of the date that BCI is provisionally approved as an Amex member organization under this rule filing.

a. Background

(i) Lehman Files for Bankruptcy

On September 15, 2008, Lehman Brothers Holding Inc. (“Lehman”), after a precipitous decline in its financial condition, filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York under Chapter 11 of the U.S. bankruptcy code. Lehman is the parent holding company of LBI, which is a registered broker dealer and Amex member organization. Although LBI did not file for bankruptcy protection at that time, Lehman’s Chapter 11 status impacted the ability of LBI to continue operations.

On September 17, 2008, Barclays Bank PLC (“Barclays”), a global financial services provider, announced that it had agreed to acquire the LBI investment banking and capital markets operations and supporting infrastructure for \$1.75 billion (the “proposed acquisition”). As part of the proposed acquisition, Barclays would be acquiring the LBI fixed income and equities sales, trading and research, and investment banking businesses (the “LBI businesses”). Barclays would also be acquiring approximately 10,000 LBI employees, the Lehman headquarters located at 745 Seventh Avenue in New York City, and two data centers located in New Jersey. The proposed acquisition is subject to a number of conditions, including approval

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organization has no floor presence and only accesses the Exchange electronically.

by the United States Bankruptcy Court for the Southern District of New York and other regulatory approvals and antitrust review. Moreover, if the proposed acquisition is not completed by September 24, 2008, Barclays may terminate the agreement to acquire LBI businesses.

(ii) Barclays Will Transfer LBI Assets to BCI

On September 19, 2008, Barclays announced that certain LBI assets, including its employees and businesses, will be transferred to its wholly-owned subsidiary, BCI. BCI is a registered U.S. broker dealer and FINRA member, but not currently approved as an Amex member organization.

The Exchange understands that LBI will likely file for some form of bankruptcy protection on Friday, September 19, 2008, and thus by the close of business on Friday, LBI will be in the control of a trustee. The Exchange further understands that, subject to approval by the bankruptcy court, as part of the bankruptcy proceeding, LBI assets will be sold to Barclays and transferred to BCI. Accordingly, as early as September 19, 2008, BCI may own and control the LBI businesses.

b. Proposed Temporary Suspension of Article IV, Section 2 of the Amex Constitution and Related Rules

(i) Amex Member Organization Application Process

When a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity itself, Amex member organization status cannot be simply transferred to the acquiring entity. Rather, the entity that proposes to continue the business operations of the predecessor member organization must be separately approved as an Amex member organization.

Article IV, Section 2 of the Amex Constitution generally provides in relevant part that “[n]o ... entity shall become or remain a member organization ... unless such organization ... meets and continues to meet the standards prescribed in the Constitution and rules of the Exchange.” More specifically, Amex Rule 310 provides that any organization which proposes to become a member organization shall notify the Exchange in writing and submit such information as may be required by Amex rules. Collectively, Amex Rules 310-312 and 354-356 set forth the specific information that must be submitted to the Exchange, and procedures that must be followed, by a prospective membership organization (and/or its associate members, allied members, and approved persons) before membership will be approved. Information that must typically be submitted with an application to become a member organization includes, among other things:

- charters, certificates of incorporation, by-laws, stock certificates, and other miscellaneous agreements and documents relating to corporate governance matters;
- statements of financial condition;
- certified lists of stockholders; proposed members, directors or approved persons; and principal executive officers; and
- opinions of counsel as to various matters.

Amex membership department staff, working with Amex regulation staff, review all of the information submitted to verify that all of the rules of the Exchange are being followed, with such process generally taking several months to complete.

Ordinarily, in the context of an acquisition, the separate Amex approval of the new membership organization would occur following adequate advance notice by the acquirer, in order to afford the Amex membership department sufficient time to collect, evaluate, and process all of the materials it needs from the acquirer without any cessation of the target’s business

operations while the approval of the new membership organization is pending. However, in light of the speed of the acquisition of LBI's business operations by BCI, the ordinary Amex membership department approval process cannot occur on its usual time frame without creating a substantial gap in LBI's operations on the Exchange. To avoid such a gap – which the exchange understands would be damaging to LBI's business, the interests of its numerous customers, and the prospective transaction with Barclays – Amex proposes to temporarily suspend the rules governing the approval process for new membership organizations, solely insofar as they apply to BCI.

(ii) A Temporary Suspension of Article II, Section 2 (and related Amex Rules) for BCI is Necessary

As noted, BCI – already a registered broker-dealer and FINRA member – will continue the business operations of LBI in the same manner that they were operated by LBI. Because the bankruptcy court is expected to approve BCI's acquisition of the assets of LBI as early as Friday, September 19, 2008, BCI could be ready to begin operations on the Amex as early as Monday, September 22, 2008. However, absent a suspension of the relevant Amex rules, BCI would be unable to continue LBI's operations without interruption because of the time frame required to complete the member organization application process.

The Exchange therefore proposes providing BCI with a temporary suspension of Article IV, Section 2 of the Amex Constitution, as well as Amex Rules 310-312 and 354-356, as they relate to approval to operate an Amex member organization and approval of a proposed member organization's approved persons, so that BCI can be immediately approved as a member organization. As proposed, this temporary suspension is contingent upon BCI and its approved persons within 60 days completing all steps otherwise required to obtain approval as a member organization (as set forth in Article IV, Section 2 of the Amex Constitution and Amex Rules

310-312 and 354-56), failing which BCI's provisional status as an Amex member organization will no longer be effective.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### 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.

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

The Exchange did not receive any written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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.

The Amex has requested the Commission to waive the 30-day operative delay. The Commission hereby grants Amex's request.<sup>11</sup> The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that BCI can be provisionally approved as an Amex member organization. The proposed relief does not exempt BCI from Exchange rule requirements governing member organizations. BCI would have a 60-day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that immediate effectiveness is appropriate to ensure a smooth transition of the LBI businesses to another entity. In particular, with respect to BCI, time is of the essence as it has been announced that BCI may succeed to LBI's assets as early as September 19, 2008. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).



#### 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 [rulecomments@sec.gov](mailto:rulecomments@sec.gov). Please include File No. SR-Amex-2008-72 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 No. SR-Amex-2008-72. 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 at (<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 10:00 a.m. and 3:00 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 No. SR-Amex-2008-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Jill M. Peterson  
Assistant Secretary

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

