

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58678; File No. SR-Amex-2008-64)

September 29, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving the Adoption of New Rule 478T To Set Forth the Temporary Procedures That Will Apply To Disciplinary Proceedings Pending as of the Closing Date of the Acquisition of Amex by NYSE Euronext

On July 28, 2008, American Stock Exchange LLC, a Delaware limited liability company (“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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a new rule to set forth the temporary procedures that would apply to the disciplinary proceedings pending with the Exchange as of the closing date of the acquisition of Amex by NYSE Euronext (“Transaction Date”). On August 7, 2008, the proposed rule change was published for comment in the Federal Register.³ The Commission received no comments on the proposed rule change. This order grants approval to the proposed rule change.

Pursuant to an agreement dated January 17, 2008, NYSE Euronext, the ultimate parent company of NYSE, Inc. (“NYSE”) and NYSE Arca, Inc. (“NYSE Arca”), is acquiring Amex, through a series of mergers (“Mergers”).⁴ Upon completion of the Mergers and Related

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58286 (August 1, 2008), 73 FR 46097 (“Amex Notice”)

⁴ Immediately following the Mergers, NYSE Euronext plans to effectuate certain related transactions, as a result of which NYSE Alternext US will become a direct wholly-owned subsidiary of NYSE Group, Inc. (“NYSE Group”), the wholly-owned subsidiary of NYSE Euronext (“Related Transactions”). For a detailed description of the Mergers and Related Transactions, see Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (SR-Amex-2008-62) (“Amex Merger Notice”).

Transactions, Amex will continue to operate as a national securities exchange under Section 6 of the Act and will be renamed NYSE Alternext US LLC (“NYSE Alternext US”).

In a separate proposed rule change adopting various rules in connection with the Mergers and Related Transactions, Amex proposes to adopt new NYSE Alternext US Rules 475, 476 and 477 as its disciplinary rules, which are substantially similar to the existing NYSE disciplinary rules.⁵ To avoid any potential confusion to respondents in disciplinary matters that had been commenced by Amex and still pending as of the Transaction Date (each, a “Legacy Disciplinary Proceeding”),⁶ Amex proposes applying rules that are substantially similar to the current procedures governing Amex disciplinary proceedings to such Legacy Disciplinary Proceedings. Accordingly, Amex proposes to adopt new Rule 478T to set forth the temporary procedures that will apply to such Legacy Disciplinary Proceedings. This rule will become operative as of the closing of the Mergers and Related Transactions.

Currently, the procedural rules governing Amex disciplinary proceedings are set forth in portions of the Amex Constitution, Amex Rule 345, and the Rules of Procedure in Disciplinary Matters (collectively, the “Legacy Disciplinary Procedural Rules”). Proposed NYSE Alternext US Rule 478T will effectively “grandfather” the substance of these Legacy Disciplinary Procedural Rules with respect to resolution of disciplinary matters by means of a settlement (i.e., stipulation and consent) or hearing at NYSE Alternext US. The Legacy Disciplinary Procedural Rules, as incorporated in proposed Rule 478T(c), have been modified in certain respects from their current form, to account for certain changes in the disciplinary structures and processes at

⁵ See Amex Merger Notice, supra note 4 and Securities Exchange Act Release No. 58673 (September 29, 2009) (order approving SR-Amex-2008-62).

⁶ Paragraph (a) of proposed NYSE Alternext US Rule 478T(c) defines “Legacy Disciplinary Proceedings” to include disciplinary charges, executed (but not yet approved) stipulations and consents, suspensions, summary proceedings, and summary fine notices for minor rule violations.

NYSE Alternext US that are expected as a consequence of the Mergers and Related Transactions.⁷

Amex proposes to replace the Amex roster of appointed hearing officers and hearing board members from which the chairman and members of individually-constituted disciplinary hearing panels are selected, with a new roster appointed by the Chairman of the NYSE Alternext US Board of Directors (“NYSE Alternext US Board”) pursuant to proposed NYSE Alternext US Rule 476(b). Notwithstanding the change in the manner in which the roster of hearing officers and hearing board members is assembled, the process of selection of hearing officers and hearing board members from that roster to serve on an individual hearing panel will not change.⁸

In addition, appeals from disciplinary determinations will be governed solely by the proposed NYSE Alternext US rules pertaining to appeals.⁹ Specifically, Amex proposes to eliminate the Amex Adjudicatory Council (“AAC”), a body which currently hears appeals from determinations of Amex disciplinary panels, and whose decisions, in turn, can be further appealed to Amex’s Board of Governors. Instead, these functions of the AAC will be performed by the NYSE Alternext US Board or by an official standing committee of NYSE Regulation (the “NYSE Regulation Committee”), in the sole discretion of the NYSE Alternext US Board.¹⁰ The NYSE Regulation Committee will be charged with the responsibility to review determinations in Legacy Disciplinary Proceedings¹¹ and render advisory opinions to the NYSE Alternext US

⁷ See paragraph (c) of proposed NYSE Alternext US Rule 478T(c).

⁸ Amex notes that the proposed NYSE Alternext US roster of appointed hearing officers and hearing board members would be substantially similar to that of the NYSE.

⁹ See proposed NYSE Alternext US Rules 475(c) and (j) and 476(e)-(g), and Amex Merger Notice, supra note 4.

¹⁰ See paragraph (b) of proposed NYSE Alternext US Rule 478T(c).

¹¹ Section 3(f) of Legacy Article V of the Amex Constitution and Section 5(a) of Legacy Article IV of the Amex Constitution hold open the possibility that the NYSE Regulation

Board, which will have the ultimate responsibility to rule on such appeals.¹² The NYSE Regulation Committee will be expanded to include at least four individuals who are associated with member organizations of NYSE Alternext US.¹³

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the propose rule change is

Committee may also be charged with the responsibility to hear: (i) appeals from suspensions of members and member organizations in view of their financial and/or operating condition and (ii) applications for reinstatement following such suspensions.

¹² Specifically, any review of a disciplinary decision shall be conducted by the NYSE Alternext US Board or the NYSE Regulation Committee, in the sole discretion of the NYSE Alternext US Board. Upon review, and with the advice of the NYSE Regulation Committee, the NYSE Alternext US Board, by the affirmative vote of a majority of the NYSE Alternext US Board then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the provisions of Rule 476. Unless the NYSE Alternext US Board otherwise specifically directs, the determination and penalty, if any, of the NYSE Alternext US Board after review shall be final and conclusive subject to the provisions for review of the Act.

¹³ These new members of the NYSE Regulation Committee must include at least one of each of the following: (1) an individual associated with a member organization of NYSE Alternext US that engages in a business involving substantial direct contact with securities customers; (2) An individual associated with an member organization of NYSE Alternext US that is registered as a specialist and spends a substantial part of his or her time on the trading floor of NYSE Alternext US; (3) an individual associated with a member organization of NYSE Alternext US not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his business the execution of transactions on the trading floor of NYSE Alternext US for other than his or her own account or the account of his NYSE Alternext US member organization; and (4) an individual associated with a NYSE Alternext US Member Organization not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his or her business the execution of transactions on the trading floor of NYSE Alternext US for his own account or the account of his or her NYSE Alternext US Member Organization. See Securities Exchange Act Release No. 58285 (August 1, 2008), 73 FR 46117 (SR-NYSE-2008-60).

¹⁴ In approving the proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

consistent with Sections 6(b)(6) and 6(b)(7) of the Act¹⁵ in that it provides a fair procedure for the discipline of members and persons associated with members. The Commission further finds that the proposed rule change provides NYSE Alternext US with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules or regulations thereunder, or the rules of NYSE Alternext US.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2008-64), be and hereby is approved.

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

Florence E. Harmon
Acting Secretary

¹⁵ 15 U.S.C. 78f(b)(6) and 15 U.S.C. 78f(b)(7).

¹⁶ 17 CFR 200.30-3(a)(12).