

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58570; File No. SR-Amex-2008-70)

September 17, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Revise its Initial Listing Process to Eliminate the Current Appeal Process for Initial Listing Decisions, Add a New Confidential Pre-application Eligibility Review Process, and Upgrade its Listing Requirements by Eliminating the Alternative Listing Standards

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 4, 2008, the American Stock Exchange LLC (“Amex” or the “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. Amex filed Amendment No. 1 on September 17, 2008. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

In connection with its pending acquisition by NYSE Euronext, the parent company of the New York Stock Exchange LLC (“NYSE”) and NYSE Arca, Inc. (“NYSE Arca”), the Exchange desires to revise its initial listing process to more closely align it with the process in place at the NYSE, as well as to upgrade its listing requirements. To that end, the Exchange proposes to amend Sections 101, 201, 206 and 1201-1206 of the Amex Company Guide and add new Section 202 thereto. These proposed changes would (i) eliminate the current appeal process for initial listing decisions by the Exchange, including elimination of the two alternative listing standards on which almost all such initial listing appeals are based, and (ii) add a new mandatory

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

confidential pre-application eligibility review process for the benefit of companies considering an initial listing on the Exchange. The Exchange is also proposing the addition of a temporary Section 1212T that will contain those current initial listing provisions of the Amex Company Guide that reference the alternative listing standards and other provisions of Part 12 that are applicable to such alternative standards, which provisions are otherwise being proposed for deletion from the Amex Company Guide. The temporary provisions of proposed Section 1212T would only apply to initial listing applications already filed and in process with the Exchange as of the date of effectiveness of this proposed rule change, which effective date will be the later of (i) the date of approval of the rule change by the Commission or (ii) the closing date of the acquisition of the Exchange by NYSE Euronext. The proposed rule change would also eliminate certain outdated provisions in Sections 206 and 1202 of the Amex Company Guide and certain redundant language in Section 1201(d) thereof.

The text of the proposed rule change is available on the Amex's Web site 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to an agreement dated January 17, 2008, the Amex is being acquired by NYSE Euronext, the parent company of the NYSE and NYSE Arca. As part of its strategic business planning for the post-merger group, the Exchange examined certain aspects of its initial listing program, and determined to implement changes to the initial listing process to more closely align it with the NYSE, as well as to upgrade the listing requirements by eliminating the ability of an issuer which does not meet the regular listing standards to be approved for listing under the alternative listing standards.

Sections 101(e) and 1203(c) of the Amex Company Guide currently provide that the securities of certain issuers which do not satisfy any of the Exchange's regular initial listing standards may nonetheless be eligible for initial listing on the Exchange pursuant to the Exchange's appeal procedures, which include authorization of approval of the listing by a Listing Qualifications Panel of the Exchange's Committee on Securities, if (a) the issuer satisfies one of two minimum numerical alternative listing standards and (b) the Listing Qualifications Panel makes an affirmative finding that there are mitigating factors that warrant listing pursuant to these alternative listing standards.³ In order to harmonize its initial listing process with the process in place at the NYSE, the Exchange proposes to amend Sections 101 and 1201-1206 of the Amex Company Guide in order to eliminate the current appeal process for initial listing decisions by the Exchange. In addition, the Exchange is also proposing to eliminate the two aforementioned alternative listing standards on which almost all such initial listing appeals are based. A relatively small number of companies are listed on the Exchange each year under the

³ The issuer is also required to make an announcement through the news media that it has been approved for listing pursuant to the alternative listing standards. See Section 1203(c)(iii).

two alternative listing standards that are being eliminated under the proposed rule change.

In conjunction with the changes discussed in the prior paragraph, the Exchange also proposes to amend Section 201 of the Amex Company Guide and add new Section 202 thereto to provide a new mandatory confidential pre-application eligibility review process for the benefit of companies considering an initial listing on the Exchange. Pursuant to this process, company officials seeking a listing on the Exchange would be required to undertake preliminary confidential discussions with the Exchange, prior to formal listing application, to determine whether its securities are eligible for listing approval. Only after a company has cleared the confidential pre-application eligibility review and has been authorized by the Exchange to proceed with the listing of its securities on the Exchange may it file an original listing application and complete the other formal steps in the original listing process pursuant to Section 202. The confidential pre-application eligibility review process would be comparable to the process in place at the NYSE as described in Sections 101, 104 and 701 of the NYSE Listed Company Manual.

The information needed for the purpose of conducting a confidential pre-application eligibility review is set forth in Sections 210 - 222 of the Amex Company Guide. Such information from the company would include, for example, copies of (i) the latest periodic reports under the 1934 Act, such as the Form 10-K Annual Report (or a prospectus declared effective by the Commission that contains the company's latest audited financial statements), Form 10-Q Quarterly Report(s), and Form 8-K Current Report(s); (ii) the latest proxy statement for the annual meeting of stockholders; (iii) the latest annual report distributed to stockholders; (iv) a qualified engineer's report with an estimate of proven reserves, in the case of an oil and gas company; (v) a qualified engineer's mining and reserve report, in the case of a mining

company; and (vi) such other information or documentation, public or non-public, deemed necessary by the Exchange for it to make a determination regarding a security's original listing eligibility. There will be no charge to the company in connection with the confidential pre-application eligibility review.

The Exchange has determined that it is appropriate to strengthen and enhance its initial listing standards by requiring that all companies that list on the Exchange meet the requirements of the Exchange's regular initial listing standards. Further, the Exchange anticipates that the proposed new confidential pre-application eligibility review process will enable it to provide an issuer with guidance and clarification on whether or not it is eligible for listing on a more expeditious basis. The Exchange believes that the new confidential pre-application eligibility review process will provide a fair procedure, consistent with Section 6(b)(7) of the 1934 Act, for all issuers seeking listing, including those that receive an adverse determination. Specifically, consistent with the Exchange's current review process, initial listing eligibility determinations must be made in accordance with the criteria specified in the Exchange's listing standards, following a rigorous staff analysis and managerial oversight. This structured review process, based on transparent standards, mitigates against erroneous determinations. Moreover, the Exchange's experience with its existing initial listing appeal process is that it has almost never been utilized, and never successfully, to appeal a staff determination on the basis that such determination was erroneous. Rather, the few appeals have been by issuers seeking listing under the two aforementioned alternative listing standards (which can only be achieved through the appeal process). The revised process would closely track the NYSE's longstanding process, which is reflected in the NYSE Listed Company Manual and has not, to the Exchange's knowledge, resulted in appeals of NYSE listing determinations to the Commission.

Accordingly, the Exchange is confident that the revised process will be fair to issuers.

The Exchange represents that it has considered how to transition the above-described rule changes and proposes the following treatment for issuers that have applications currently in process for an initial listing on the Exchange. Any initial listing applications that are already filed and in process with the Exchange as of the date of effectiveness of this proposed rule change (“Legacy Applications”) will be treated as if they were still governed by the initial listing procedures in the Amex Company Guide as in effect immediately prior to such date of effectiveness, which effective date will be the later of (i) the date of approval of the rule change by the Commission or (ii) the closing date of the acquisition of the Exchange by NYSE Euronext as further described below under “Implementation.” Consequently, during that transition period, companies with Legacy Applications would have the right to appeal the initial listing decision and to be evaluated for listing under the alternative initial listing standards that are being eliminated by this filing. To this end, the Exchange is proposing as part of this filing the addition of a temporary Section 1212T to the Amex Company Guide that will contain those current initial listing provisions of the Amex Company Guide that reference the alternative listing standards and other provisions of Part 12 that are applicable to such alternative standards, which provisions are otherwise being proposed for deletion from the Amex Company Guide in this filing. The temporary provisions of Rule 1212T will apply solely to the Legacy Applications and will otherwise be of no force or effect.

In addition to the changes discussed above, the Exchange is also proposing three other minor changes of a “housekeeping” nature to the text of the Amex Company Guide. Section 206, containing an outdated and non-substantive reference to listing day would be eliminated. An outdated reference in Section 1202 to the Listing Investigations Department (which no longer

exists) would be deleted under the proposed rule change. Finally, language in Section 1201(d) listing a number of non-quantitative factors that the Exchange will consider in evaluating an initial listing application would be eliminated under the proposal because those factors (and certain others) are already set forth in Section 101.

Implementation

This rule filing is being made to implement a NYSE Euronext business plan for the Amex after the consummation of the transactions contemplated by the merger agreement dated January 17, 2008 among the Exchange, the Amex Membership Corporation, NYSE Euronext and certain other entities, whereby a successor to the Exchange will become an indirect, wholly-owned subsidiary of NYSE Euronext (the “Acquisition”).⁴ In the event that the Acquisition has not occurred prior to Commission approval of the proposed rule change, the effective date of the rule change will be postponed until the closing date of the Acquisition and the Exchange’s rules will be annotated accordingly. In the event that the Acquisition has not been effected on or before December 31, 2008, the proposed rule change will not take effect and the Exchange will rescind the approved rule text by a separate filing with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the 1934 Act⁵ in general, and furthers the objectives of Section 6(b)(5)⁶ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open

⁴ The transactions that will effectuate the Acquisition are described in more detail in Form 19b-4, File No. SR Amex-2008-62, originally filed with the Commission by the Exchange on July 23, 2008, as amended.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

market and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the proposed rule change is consistent with investor protection and the public interest because the upgrading of the Exchange's initial listing standards through elimination of the current alternative listing standards will further ensure that only well-qualified companies that all meet a uniform set of standards will be listed on the Exchange. Further, the Exchange believes that the proposed rule change will have the effect of removing impediments to and perfecting the mechanism of a free and open market and a national market system by providing a more streamlined and efficient initial listing process for the Exchange that is very closely aligned with the corresponding process that is currently in place at the NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Amex 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. Please include File Number SR-Amex-2008-70 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-Amex-2008-70. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal

offices 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-Amex-2008-70 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.⁷

Florence E. Harmon
Acting Secretary

⁷ 17 CFR 200.30-3(a)(12).