

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58364; File No. SR-Amex-2008-65)

August 14, 2008

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange LLC to Allow Issuers Voluntarily Delisting ETFs and Structured Products to Submit to the Exchange a Letter from an Authorized Officer of the Issuer Rather Than a Board Resolution

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 7, 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 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

The Exchange proposes to amend Exchange Rule 18 to allow issuers voluntarily delisting ETFs and structured products to submit to the Exchange a letter from an authorized officer of the issuer rather than a certified copy of a board resolution.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change. The text of these statements may be examined at the places specified in Item III 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

The Exchange proposes to amend the voluntary delisting procedures set forth in Exchange Rule 18 for issuers of securities listed pursuant to Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants) or 107 (Other Securities) of the Amex Company Guide and Exchange Rules 1000-AEMI and 1001 et seq. (Portfolio Depository 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), 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). Exchange Rule 18 requires companies voluntarily withdrawing securities from listing to provide to the Exchange a certified copy of the resolution of the board of directors of the issuer authorizing such action. The Exchange proposes to amend Rule 18 to provide that, in the case of a voluntary delisting where the listing of the securities is being transferred to another national securities exchange, the issuer will be required to provide, in lieu of a certified copy of a board resolution, a letter signed by an authorized executive officer setting forth the reasons for the proposed listing withdrawal and the basis for the officer's authority to take such action.

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 (the "Acquisition"). As

part of its strategic business planning for the post-merger group, NYSE Euronext intends to cease listing and trading exchange-traded funds and structured products (including, for example, index-linked securities such as index-linked notes) on the Amex shortly after the completion of the acquisition and plans to encourage issuers to move the listing of those securities from the Amex to its subsidiary, NYSE Arca, Inc. (“NYSE Arca”) and the New York Stock Exchange LLC (specifically, the NYSE Bonds platform).

As the change of listing venue contemplated by this business plan will require the delisting of the securities from the Exchange, and there is no basis under Exchange rules for a delisting initiated by the Exchange itself under these circumstances, the issuers will have to withdraw their securities from listing voluntarily pursuant to Exchange Rule 18 and SEC Rule 12d2-2.³ Because the change of listing venue will be effectuated at the request of NYSE Euronext as owner of the Exchange, and obtaining a certified copy of the board resolutions as required by Rule 18 may be burdensome for the issuers involved, the Exchange believes that it is appropriate to provide an alternative to this requirement for the securities that, pursuant to the NYSE Euronext business plan, will no longer be listed on the Amex (or the Amex’s successor).⁴

In lieu of the board resolution, the issuer will be required to provide a letter signed by an authorized executive officer setting forth the reasons for the proposed withdrawal and the basis for the officer’s authority to take such action. Requiring a letter from an authorized executive officer

³ Following a withdrawal of listing, an issuer may then list on any national securities exchange if it meets the listing standards of that exchange or may remain unlisted.

⁴ Some of these issuers are not required, by their constitutive documents or the laws of their jurisdictions of incorporation, to get board approval for withdrawal of listing and therefore only Rule 18 would require separate board action. For other issuers, the proposed option of providing a letter would allow them to make the listing change on a more timely and economical basis, while still having to comply with the requirements of their constitutive documents and the laws of their jurisdictions of incorporation.

that includes the reasons for the proposed withdrawal and the basis for the officer's authority to take such action will ensure that the issuer properly made the delisting decision and complied with its constitutive documents and applicable laws in effect in its jurisdiction, consistent with investor protection and the public interest.⁵ The proposed rule specifies that the letter will only be accepted for purposes of withdrawal of listing where the listing of the securities is being transferred to another national securities exchange.

The Exchange believes that changing the rule to allow this exception to the requirements of Exchange Rule 18 for these classes of securities is appropriate for a number of reasons. First, only issuers that are planning to transfer their listing to another national securities exchange will be able to provide the letter from an authorized executive officer; in the event an issuer decides no longer to be listed on an exchange, Rule 18 will still require board resolutions to effect the delisting. Secondly, separate board approval of a change of listing venue is not required of many of the issuers covered by the proposed rule. To the extent board approval is otherwise required by, for example, the governing documents of an eligible listed issuer or the law of the jurisdiction in which the issuer is incorporated, the proposed rule change would change only the form in which the Exchange must be notified of the decision to delist, not the legal requirements for approval that apply to the particular issuer.⁶

Finally, the Exchange believes the proposed change is justified because the withdrawal from listing of the applicable types of issuers would be occurring at the Exchange's request to further a

⁵ The basis for the officer's authority may be, for example, relevant provisions in the issuer's constitutive documents or board resolutions setting out the delegation of authority to the executive officer.

⁶ Notwithstanding this proposal, issuers will have to comply with Rule 12d2-2(c) and any other applicable provisions under the Act to withdraw their securities from listing on the Exchange.

business objective of the Exchange's parent company. Following the effectuation of this business plan, these types of securities will no longer be listed on the Amex, and it is therefore appropriate for Exchange to facilitate the withdrawal process, with the conditions proposed.

The Exchange also proposes to make other minor clarifying changes to Section 1010, and to delete from Section 1010 the re-statement of Exchange Rule 18 and Rule 12d2-2 under the Act.

Implementation

This rule filing is being made to implement a NYSE Euronext business plan for the Amex after the completion of the Acquisition and the rule text will specify that the rule will become operative as of the date of the closing of the Acquisition and that in the event that the Acquisition has not been effected on or before December 31, 2008, the rule will not take effect. In the event that the rule change does not take effect, 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 of the Act in general and furthers the objectives of Section 6(b)(5)⁷ in particular 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, and 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.

⁷ 15 U.S.C. 78f(b)(5).

The Exchange notes that requiring a letter from an authorized executive officer instead of a certified copy of the resolutions adopted by the issuer's board of directors is consistent with the requirements of Rule 12d2-2⁸ under the Act and notes that the proposal is similar to the voluntary withdrawal procedures for dually-listed issuers on NYSE Arca, Inc.⁹ and index-linked notes on NYSE.¹⁰ Replacing the board certification requirement with a letter from an authorized executive officer may ease the burden on issuers of securities who wish to transfer the listing to another national securities exchange. Further, the Exchange notes that the requirement of a letter from an authorized executive officer would ensure the issuer properly made the delisting decision and complied with applicable laws in effect in its jurisdiction, consistent with investor protection and the public interest, and would not supersede the requirements of the issuer's governing documents or its jurisdiction of incorporation.

The Exchange notes that the proposed alternative procedure for withdrawal of listing would apply only to securities that would be listed and traded on another national securities exchange following the withdrawal of listing. Since the securities would list and trade on another national securities exchange, transparent last sale information will continue to be disseminated on the securities on an uninterrupted basis. It would also ensure that the other protections for trading a security on a national securities exchange remain, such as the periodic reporting obligations under the Act.

Finally, the Exchange believes that the restatements of Rule 18 in Company Guide

⁸ 17 CFR 240.12d2-2.

⁹ NYSE Arca Equities Rule 5.4(b). See Securities Exchange Act Release No. 54672 (October 30, 2006), 71 FR 65021 (November 6, 2006) (SR-NYSEArca-2006-47).

¹⁰ Section 806.02 of the NYSE's Listed Company Manual. See Securities Exchange Act Release No. 57041 (December 26, 2007), 73 FR 216 (January 2, 2008) (SR-NYSE-2007-99).

Section 1010 and of Rule 12d2-2 under the Act are no longer necessary and deletion of these restatements is consistent with the requirements of the Act. When the Company Guide was published separately from the rest of the Amex Rules, the restatements of provisions not found in the Company Guide was helpful to readers. Now that all of the Amex and Commission rules are equally available, and immediately updated when changed, on the Internet, these restatements are not only not necessary, but may create confusion in the event that such rules are changed.

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

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-2008-65 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-65. 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 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

publicly available. All submissions should refer to File Number SR-Amex-2008-65 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.¹¹

Florence E. Harmon
Acting Secretary

¹¹ 17 CFR 200.30-3(a)(12).