

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58284; File No. SR-Amex-2008-62)

August 1, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Acquisition of the Exchange by NYSE Euronext

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 23, 2008, American Stock Exchange LLC, a Delaware limited liability company (“Amex” or the “Exchange”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On July 30, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. 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

The Exchange is submitting the proposed rule change in connection with the AMCAS Merger, the Holdings Merger, the LLC Merger and the NYSE/Amex Merger (each as defined in Section 1.(a). of Item II.A. below and collectively, the “Mergers”) and related transactions which will result in the successor to Amex, to be renamed “NYSE Alternext US LLC” (“NYSE Alternext US”), becoming an indirect wholly-owned subsidiary of NYSE Euronext, a Delaware Corporation (“NYSE Euronext”).

In connection with the Mergers, New York Stock Exchange LLC (“NYSE”), an indirect wholly-owned subsidiary of NYSE Euronext, is proposing that certain organizational documents

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

of NYSE Euronext and its wholly-owned subsidiaries, NYSE Group, Inc. (“NYSE Group”) and NYSE Regulation, Inc. (“NYSE Regulation”) and the Independence Policy of NYSE Euronext (“NYSE Euronext Independence Policy”) be amended substantially concurrently with the Mergers. In addition, Amex is proposing to adopt the operating agreement of NYSE Alternext US (“NYSE Alternext US Operating Agreement”) and to amend its rules (“Amex Rules”), which will become the rules of NYSE Alternext US (“NYSE Alternext US Rules”), to reflect the Mergers and related transactions. In connection with the Mergers, Amex also proposes that the present Constitution of Amex (“Amex Constitution”) will be eliminated and relevant provisions thereof will be included in the NYSE Alternext US Operating Agreement or the NYSE Alternext US Rules, as applicable.

The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and on Amex’s Web site at <http://www.amex.com>. The text of Exhibits 5A through 5J is also available on the Commission’s Web site (<http://www.sec.gov/rules/sro.shtml>).

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 purpose of the proposed rule change is to permit the Mergers as well as certain other changes relating to corporate governance and other items to accommodate the transformation of

the Exchange from its current status as a subsidiary of a not-for-profit member-owned corporation into its post-merger status as a U.S. Regulated Subsidiary<sup>3</sup> of NYSE Euronext.

(a) Description of the Mergers

Amex is a wholly-owned subsidiary of The Amex Membership Corporation, a New York not-for-profit corporation (“MC”).<sup>4</sup> MC owns 99% of Amex’s ownership interest directly and owns the remaining 1% ownership interest indirectly through MC’s direct wholly-owned subsidiary, AMC Acquisition Sub, Inc., a Delaware corporation (“AMCAS”). To effect the Mergers, MC has established: (i) a new direct wholly-owned subsidiary of MC, American Stock Exchange Holdings, Inc., a Delaware for-profit, stock corporation (“Holdings”); and (ii) a new direct wholly-owned subsidiary of Holdings, American Stock Exchange 2, LLC, a Delaware limited liability company (“Amex 2”). Consummation of the Mergers, which have been approved by MC members<sup>5</sup>, is conditioned upon satisfaction or waiver (subject to applicable law) of the conditions set forth in the terms of the Agreement and Plan of Merger, dated as of January 17, 2008 (as may be amended, “Merger Agreement”), by and among NYSE Euronext, Amsterdam Merger Sub, LLC, a Delaware limited liability company and a wholly-owned subsidiary of NYSE Euronext created by NYSE Euronext in connection with the Mergers (“Amsterdam Merger Sub”), MC, AMCAS, Holdings, Amex and Amex 2. The proxy statement/prospectus sent to MC members in connection with their approval of the Mergers has

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<sup>3</sup> The term “U.S. Regulated Subsidiary” is defined under Article VII, Section 7.3(G) of the Bylaws of NYSE Euronext.

<sup>4</sup> For a discussion of the current governance structure of MC and Amex, see Securities Exchange Act Release No. 50057 (July 22, 2004) (Notice of filing of proposed rule change relating to the NASD’s sale of its interest in Amex to MC) and Securities Exchange Act Release No. 50927 (December 23, 2004) (Order approving proposed rule change relating to the NASD’s sale of its interest in Amex to MC). SR-Amex -2004-50.

<sup>5</sup> The term “MC members” herein refers to persons eligible to vote on the Mergers.

been filed with the Commission by NYSE Euronext. The Mergers were approved by the requisite vote of MC members at the special meeting of MC members held on June 17, 2008. In addition, the Board of Governors of Amex (“Amex Board”) approved the proposed rule change on May 21, 2008.

The following transactions are contemplated to effect the Mergers:

(i) AMCAS Merger. Prior to the Effective Time (as defined below), AMCAS will be merged with and into MC (“AMCAS Merger”) and the separate corporate existence of AMCAS will thereupon cease. MC will be the surviving entity in the AMCAS Merger and will hold 100 percent of the ownership interest in Amex. At the effective time of the AMCAS Merger, each outstanding share of AMCAS common stock, par value \$.01 per share, will be cancelled and retired without payment of any consideration therefor and will cease to exist or be outstanding.

(ii) Holdings Merger. Following the effective time of the AMCAS Merger but prior to the Effective Time (as defined below), MC will be merged with and into Holdings (“Holdings Merger”) and the separate corporate existence of MC will thereupon cease. Holdings will be the surviving entity in the Holdings Merger. At the effective time of the Holdings Merger, shares of Holding common stock, par value \$0.01 per share (“Holdings Common Stock”), will be issued to persons owning MC memberships<sup>6</sup> immediately prior to the Holdings Merger, with each Regular Membership and each Options Principal Membership (“OPM”) receiving a certain number of shares of Holdings Common Stock, as determined in the manner set forth in the Merger Agreement, which, among other things, takes into account a \$36,000 discount on the

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<sup>6</sup> “Memberships” used herein refer to Regular Memberships and OPMs (defined below) and not to the membership interests held by allied members or associate members, which membership interest granted certain limited rights but did not grant voting rights.

consideration issued to each OPM vis-à-vis each Regular Membership. Upon the Holdings Merger, each Regular Membership and OPM held by MC will be cancelled and retired without payment of any consideration therefor and will cease to exist or be outstanding.

(iii) LLC Merger. Contemporaneously with the Holdings Merger, Amex will be merged with and into Amex 2 (“LLC Merger”), and the separate limited liability company existence of Amex will thereupon cease. At the effective time of the LLC Merger, each outstanding ownership interest in Amex held by MC will be cancelled and retired without payment of any consideration therefor and will cease to exist or be outstanding. Amex 2 will be renamed NYSE Alternext US LLC.

(iv) NYSE/Amex Merger. Following the completion of the AMCAS Merger, the Holdings Merger and the LLC Merger, Holdings (as the surviving corporation of the Holdings Merger) will be merged with and into Amsterdam Merger Sub (“NYSE/Amex Merger”) and the separate corporate existence of Holdings shall thereupon cease. At the effective time of the NYSE/Amex Merger (“Effective Time”), each share of Holdings Common Stock issued and outstanding immediately prior to the Effective Time will be converted into the right to receive one fully paid and nonassessable share of the common stock of NYSE Euronext and cash in lieu of fractional shares, if any, into which such shares of Holdings Common Stock has been converted. In addition, under the terms of the Merger Agreement, persons owning MC memberships immediately prior to the Holdings Merger will be entitled to receive additional shares of NYSE Euronext common stock measured by reference to the “Net Building Sale Proceeds” (as defined in the Merger Agreement), if any, from the sale of two buildings in New York City currently owned by Amex’s realty subsidiary, to the extent such sale occurs prior to the date that is four years and 240 days following the Effective Time and certain other conditions

are satisfied, as set forth in the Merger Agreement. Immediately following the NYSE/Amex Merger, NYSE Euronext will contribute 100% of the limited liability company interest of Amsterdam Merger Sub to NYSE Group (such contribution, the “Contribution”), causing Amsterdam Merger Sub to become a direct wholly-owned subsidiary of NYSE Group. Immediately following the Contribution, Amsterdam Merger Sub will merge with and into NYSE Alternext US, a direct wholly-owned subsidiary of Amsterdam Merger Sub (“Internal Merger”). As a result of the Contribution and the Internal Merger, NYSE Alternext US will become a direct wholly-owned subsidiary of NYSE Group.

The NYSE Euronext Bylaws, the NYSE Group Charter, the NYSE Group Bylaws, the NYSE Regulation Bylaws, the Trust Agreement (each as defined in Section 1.(c). of this Item II.A. below) and the NYSE Euronext Independence Policy will be amended in connection with the Mergers. The NYSE Euronext Bylaws, the NYSE Euronext Independence Policy, the NYSE Regulation Bylaws and the Trust Agreement will become effective at the Effective Time. The NYSE Group Charter and the NYSE Group Bylaws will become effective at or prior to the time of the Contribution. In addition, upon the Contribution and the Internal Merger, the NYSE Alternext US Operating Agreement will become effective.

Upon completion of the NYSE/Amex Merger, NYSE Alternext US will continue to engage in the business of operating a national securities exchange registered under Section 6 of the Exchange Act,<sup>7</sup> and will continue to have self-regulatory responsibilities over its members. NYSE Alternext US will contract for the performance of its regulatory responsibilities with NYSE Regulation, an indirect wholly-owned subsidiary of NYSE Euronext, pursuant to a regulatory services agreement (“NYSE Regulation RSA”), as further described in Section 1.(c).(E).a. of this

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

Item II.A. below.<sup>8</sup>

The Mergers will have the effect of “demutualizing” MC because equity ownership will be separated from the rights to trade on NYSE Alternext US. As described in greater detail above, in connection with the Mergers, persons owning MC memberships immediately prior to the Holdings Merger will receive shares and cash in lieu of fractional shares, if any, of the common stock of NYSE Euronext. Upon the completion of the Holdings Merger, all trading rights appurtenant to either Regular Memberships or OPMs existing immediately prior to the Holdings Merger will be cancelled. In addition, the lessees will cease to have any trading rights under any applicable leases upon the completion of the Holdings Merger. Neither NYSE Alternext US nor NYSE Euronext will have any obligations under any leases that existed immediately prior to the Holdings Merger to any party thereto. Physical and electronic access to NYSE Alternext US’s trading facilities will be made available to individuals and organizations that obtain an equity trading license, an options trading permit (“OTP”) or prior to the issuance of the equity trading licenses and OTPs, a temporary trading permit (to be known as an “86 Trinity Permit”), from NYSE Alternext US. Unless the context otherwise requires, persons or entities to whom such trading licenses or permits are issued following the Mergers are referred to as “trading license or permit holders.”

NYSE Alternext US intends to issue equity trading licenses and OTPs upon relocation of the NYSE Alternext US equities and options trading facilities to the NYSE trading floor or the

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<sup>8</sup> Following the Mergers, NYSE Alternext US will not use any regulatory fees, fines or penalties collected by NYSE Regulation for commercial purposes. Earnings of NYSE Alternext US not retained in its business, other than regulatory fees, fines or penalties will be distributed to its parent, NYSE Group, which may in turn distribute such earnings to its parent, NYSE Euronext. See Section 4.05 of the proposed NYSE Alternext US Operating Agreement. NYSE Euronext, at its discretion, may use such distributions from NYSE Alternext US to pay dividends to its stockholders.

electronic trading platform of NYSE or NYSE Arca, Inc. (“NYSE Arca”), as applicable<sup>9</sup>. Until such new trading licenses or permits are issued, NYSE Alternext US intends to make available to persons and entities that apply and meet certain specified requirements<sup>10</sup> 86 Trinity Permits for which certain additional fees<sup>11</sup> will be waived. 86 Trinity Permits will allow the holders to trade products currently traded on the Exchange, including equities and options, prior to relocation of the NYSE Alternext US equities and options trading facilities. To ensure continuity of trading following the Mergers, persons and entities who were authorized to trade on the Exchange immediately prior to the LLC Merger, including: (i) owners, lessees or nominees of Regular Memberships or OPMs; (ii) limited trading permit holders; and (iii) associate members, in each case who were authorized to trade on the Exchange immediately prior to the LLC Merger, will be deemed to have satisfied applicable requirements necessary to receive an 86 Trinity Permit. 86 Trinity Permits will authorize owners, lessees or nominees of Regular Memberships, OPMs, limited trading permit holders and associate members who were authorized to trade on the Exchange immediately prior to the LLC Merger, to trade the products which they were previously authorized to trade and, subject to meeting the qualifications currently in place for trading products which they previously were not authorized to trade, to trade such other products.

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<sup>9</sup> Separate filings will be made to the Commission relating to the rule changes associated with such relocation.

<sup>10</sup> The requirements for 86 Trinity Permits in the NYSE Alternext US Rules will be the same as the current requirements for memberships in the Amex Rules and such requirements may be satisfied by persons or entities that were not previously authorized to trade on the Exchange immediately prior to the Mergers.

<sup>11</sup> Certain application processing fees may be charged for persons or entities that were not previously authorized to trade on the Exchange immediately prior to the Mergers. In addition, certain charges may be applicable to the 86 Trinity Permits once issued. See proposed NYSE Alternext US Rule 358.



It is currently anticipated that NYSE Alternext US will issue equity trading licenses prior to OTPs. Upon the initial effective date of the equity trading licenses, only holders of such equity trading licenses will have the right to trade equities and any other products associated with such equity trading licenses. Therefore, following the initial effective date of the equity trading licenses, a holder of an 86 Trinity Permit shall only be entitled to trade products other than those associated with the equity trading licenses. Upon the initial effective date of the OTPs, only holders of such OTPs will have the right to trade in options, and all 86 Trinity Permits will be cancelled.

Pursuant to the requirements of Section 19 of the Exchange Act, NYSE Alternext US intends to set forth in a separate rule filing the qualifications for equity trading licenses and OTPs and the application process for such trading licenses or permits. The Exchange currently expects that the qualifications for trading license or permit holders<sup>12</sup> will be based on the current requirements for memberships on the NYSE or NYSE Arca, respectively. Pursuant to the requirements of Section 19 of the Exchange Act, NYSE Alternext US also intends to set forth in a separate rule filing the fees for a trading license or permit that will be assessed. For a more detailed discussion of the 86 Trinity Permits, the equity trading licenses and OTPs, see Section 1(c)(C) of this Item II.A. below.

Finally, in connection with the Mergers, the Board of Directors of MC and the Amex Board (collectively, the “Boards”) have approved the termination of the Gratuity Fund.<sup>13</sup> As a

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<sup>12</sup> See proposed NYSE Alternext US Rule 353.

<sup>13</sup> Currently, the Amex Constitution provides for a Gratuity Fund which makes an assessment on the participants upon the death of a participant and provides benefit to the surviving family of the deceased participant. Active traders on Amex who may be the owner, lessee, or nominee of a membership are eligible to participate in the Gratuity Fund. Certain owners of a membership who are not currently active are also eligible through the operation of certain transition provisions in the Amex Constitution. See

result, the Gratuity Fund will be terminated upon the LLC Merger and neither NYSE Euronext nor NYSE Alternext US will offer a Gratuity Fund following the Mergers. There will be no further payment of gratuities other than those related to any deaths that occurred prior to the completion of the Mergers. Upon the completion of the NYSE/Amex Merger, NYSE Alternext US currently expects to allocate the assets then remaining in the Gratuity Fund (net of any administrative expenses incurred in the distribution of such amount), first to pay out any death benefits that are accrued but unpaid as of the completion of the NYSE/Amex Merger, and then to distribute the remaining balance, if any, in a manner as the Boards deem appropriate, taking into account the length of time each person was a participant in the Gratuity Fund.

(b) Reasons for the Proposed Mergers

The Mergers will have the effect of “demutualizing” MC and causing Amex to become and operate as a for-profit subsidiary market of NYSE Euronext (other than with respect to the regulatory responsibilities currently conducted by Amex, which will be carried out by NYSE Regulation, a not-for-profit entity). The Exchange believes that changing its focus to that of a for-profit business and joining the group of exchanges operated by NYSE Euronext along with modifying its corporate and governance structures to reflect its status as a subsidiary of NYSE Euronext will provide the Exchange with greater flexibility to respond to the demands of a rapidly changing business environment. In addition, the NYSE Euronext common stock issued in the NYSE/Amex Merger will provide the MC members with greater liquidity than the MC memberships they currently hold. Furthermore, by bringing NYSE Euronext’s leadership together with Amex’s historically strong position in options, exchange traded funds, closed-end

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Article IX of the current Amex Constitution for the provisions relating to the Gratuity Fund currently in place.

funds, structured products and cash equities, the combined company will be in a position to create a diversified business model, ensuring its ability to grow into, and compete using, new products and services, such as a second U.S. options exchange license, which will enable the combined company to operate a compelling dual market structure making available to all customers the choice of price-time priority on NYSE Arca and Amex's traditional market-maker model and a third, complementary U.S. cash equities exchange, in addition to NYSE and NYSE Arca.

The Exchange remains committed to its role as a national securities exchange and does not believe that the Mergers will undermine its responsibilities for regulating its marketplace. While it is currently contemplated that NYSE Alternext US will contract for the performance of its regulatory responsibilities with NYSE Regulation through the NYSE Regulation RSA, as further described in Section 1(c)(E) a. of this Item II.A. below, NYSE Alternext US will retain ultimate responsibility for the fulfillment of its statutory and self-regulatory obligations under the Exchange Act. Indeed, as further described below, the NYSE Alternext US Operating Agreement and the NYSE Alternext US Rules will have specific provisions that reinforce the responsibility of NYSE Alternext US for its self-regulatory obligations, including, without limitation, the requirement that NYSE Group seek the Commission's consent before transferring its limited liability company interests in NYSE Alternext US.<sup>14</sup>

(c) Summary of Proposed Rule Change

The proposed rule change is outlined below. In general, the proposed rule change consists of: (i) the Amended and Restated Certificate of Incorporation of NYSE Euronext ("NYSE

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<sup>14</sup> See Section 3.03 of the proposed NYSE Alternext US Operating Agreement.

Euronext Charter”),<sup>15</sup> (ii) the adoption of the Amended and Restated Bylaws of NYSE Euronext (the “NYSE Euronext Bylaws”), which will become effective at the Effective Time,<sup>16</sup> (iii) the adoption of the Second Amended and Restated Certificate of Incorporation of NYSE Group (the “NYSE Group Charter”), which will become effective at or prior to the time of the Contribution,<sup>17</sup> (iv) the adoption of the Second Amended and Restated Bylaws of NYSE Group (“NYSE Group Bylaws”), which will become effective at or prior to the time of the Contribution,<sup>18</sup> (v) the adoption of the NYSE Euronext Independence Policy, to become effective at the Effective Time,<sup>19</sup> (vi) the adoption of the Third Amended and Restated Bylaws of NYSE Regulation (“NYSE Regulation Bylaws”), to become effective at the Effective Time,<sup>20</sup> (vii) the adoption of

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<sup>15</sup> The NYSE Euronext Charter is not being amended in connection with the Mergers.

<sup>16</sup> The NYSE Euronext Bylaws are being amended to provide similar protections to NYSE Alternext US relating to its self-regulatory functions as are currently provided to the NYSE and NYSE Arca. Please see the proposed rule filing that the NYSE has filed with the Commission in connection with the Mergers for more detail.

<sup>17</sup> The NYSE Group Charter is being amended to provide similar protections to NYSE Alternext US relating to its self-regulatory functions as are currently provided to NYSE and NYSE Arca. Please see the proposed rule filing that the NYSE has filed with the Commission in connection with the Mergers for more detail.

<sup>18</sup> The NYSE Group Bylaws are being amended to provide that any amendment to or repeal of the bylaws of NYSE Group must either be (i) filed with or filed with and approved by the Commission, or (ii) submitted to the boards of directors of NYSE Alternext US, as well as the other Regulated Subsidiaries of NYSE Group, to the extent that such entity continues to be controlled by NYSE Group, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be. Please see the proposed rule filing that the NYSE has filed with the Commission in connection with the Mergers for more detail.

<sup>19</sup> The NYSE Euronext Independence Policy is being amended to ensure independence of the NYSE Euronext directors from NYSE Alternext US, similar to the independence from NYSE and NYSE Arca. Please see the proposed rule filing that the NYSE has filed with the Commission in connection with the Mergers for more detail.

<sup>20</sup> NYSE Regulation Bylaws are being amended to provide that the Committee for Review be expanded to include certain individuals who are associated with member organizations

certain amendments to the Trust Agreement of the NYSE Group Trust I by and among NYSE Euronext, NYSE Group, Wilmington Trust Company, as Delaware Trustee, Jacques de Larosière de Champfeu, as Trustee, Charles K. Gifford, as Trustee and John Shepard Reed, as Trustee and the Amendment No. 1 thereto (such Trust Agreement, as amended, the “Trust Agreement”), which will become effective at the Effective Time,<sup>21</sup> (viii) the adoption of the NYSE Alternext US Operating Agreement, to become effective upon the Internal Merger,<sup>22</sup> and (ix) the amendment of the Amex Rules, which will become the NYSE Alternext US Rules upon the completion of the LLC Merger, necessary to issue trading licenses or permits following the Mergers, to incorporate certain provisions in the Amex Constitution, which will be eliminated in connection with the Mergers and to effect certain other changes as described more fully below.<sup>23</sup> The proposed rule change will become operative upon completion of the Internal Merger. The proposed NYSE Alternext US Operating Agreement will reflect that Amex 2, to be renamed “NYSE Alternext US LLC” upon the consummation of the Mergers, will be a wholly-owned

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of NYSE Alternext US. Please see the proposed rule filing that the NYSE has filed with the Commission in connection with the Mergers for more detail.

<sup>21</sup> The Trust Agreement is being amended to make certain technical changes designed to provide NYSE Alternext US with the same protections against certain material adverse changes in European Law that it currently provides for NYSE and NYSE Arca. Please see the proposed rule filing that the NYSE has filed with the Commission in connection with the Mergers for more detail.

<sup>22</sup> Following the Holdings Merger and the LLC Merger, Holdings will be the sole member of Amex 2, as the successor of Amex. Upon the effectiveness of the NYSE/Amex Merger, Amsterdam Merger Sub, as the successor to Holdings, will become the sole member of Amex 2, whose name will then be changed to “NYSE Alternext US LLC.” Following the Contribution and upon the effectiveness of the Internal Merger, NYSE Group will be substituted as the sole member of NYSE Alternext US. The discussion of the NYSE Alternext US Operating Agreement herein refers to the operating agreement that will become effective upon the Internal Merger.

<sup>23</sup> The Exchange is also proposing, in connection with the Mergers, the elimination of the undertakings made by the Exchange to the Commission (Securities Exchange Act Release No. 50927 (December 23, 2004), 69 FR 78494 (December 30, 2004)).

Regulated Subsidiary of NYSE Group and a wholly-owned U.S. Regulated Subsidiary of NYSE Euronext.

A. Governance Structure of NYSE Alternext US Following the Mergers

Following the Mergers, the governance structure of NYSE Alternext US will be substantially similar to that of the NYSE, a New York limited liability company and an indirect wholly-owned subsidiary of NYSE Euronext.

a. Board of Directors of NYSE Alternext US.

Upon the effectiveness of the Mergers, the Contribution and the Internal Merger, the Board of Directors of NYSE Alternext US (“NYSE Alternext US Board”) will consist of a number of directors as determined by NYSE Group from time to time; provided that: (i) a majority of the directors of the NYSE Alternext US Board shall be U.S. Persons (as defined below) who are members of the NYSE Euronext board that satisfy the independence requirements of the board of directors of NYSE Euronext (each a “NYSE Euronext Independent Director”); and (ii) at least 20 percent of the directors shall be persons who are not members of the board of directors of NYSE Euronext and who do not need to be independent under the independence policy of the board of directors of NYSE Euronext<sup>24</sup> (“Non-Affiliated Directors”).<sup>25</sup> Such Non-Affiliated Directors shall be appointed and nominated pursuant to the procedures set forth in Section 1.(c).(A).c. of this Item II.A. below. For purposes of calculation of the minimum number of Non-Affiliated Directors, if 20 percent of the directors is not a whole

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<sup>24</sup> A copy of the current independence policy of the NYSE Euronext board of directors is available at [http://www.nyse.com/pdfs/director\\_independence\\_policy.pdf](http://www.nyse.com/pdfs/director_independence_policy.pdf). See also the proposed NYSE Euronext Independence Policy. See also Section 3.4 of the proposed NYSE Euronext Bylaws for the independence requirements of the board of director of NYSE Euronext.

<sup>25</sup> See Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

number, such number of directors to be nominated and selected by NYSE Alternext US members<sup>26</sup> will be rounded up to the next whole number.<sup>27</sup> A “U.S. Person” shall mean, as of the date of his or her most recent election or appointment as a director any person whose domicile as of such date is and for the immediately preceding 24 months shall have been the United States.<sup>28</sup>

Immediately following the Mergers, the Contribution and the Internal Merger, the NYSE Alternext US Board will have five directors, one of which shall be a Non-Affiliated Director selected by NYSE Group from among the Industry Governors serving on the Amex Board immediately prior to the NYSE/Amex Merger.

b. Board Term.

Following the Mergers, the Contribution and the Internal Merger, the directors of NYSE Alternext US will serve for one-year terms and will hold office until their successors are elected.<sup>29</sup> There will be no limit on the number of terms a director may serve on the NYSE Alternext US Board.

c. Nomination and Election of the NYSE Alternext US Directors.

i. General. Following the Internal Merger, NYSE Group will effectively appoint as directors of NYSE Alternext US: (i) the NYSE Euronext Independent Directors designated by it; and (ii) the Non-Affiliated Directors nominated by the nominating and

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<sup>26</sup> The term “NYSE Alternext US members” refers to the persons or entities that trade on Amex after the Mergers, including the 86 Trinity Permit Holders, to the extent such permits are outstanding.

<sup>27</sup> See Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

<sup>28</sup> Id.

<sup>29</sup> Id.

governance committee of the board of directors of NYSE Euronext (“NYSE Euronext NGC”).<sup>30</sup> To ensure fair representation of NYSE Alternext US members, the NYSE Euronext NGC shall be obligated to designate as Non-Affiliated Director candidates the persons recommended by the Director Candidate Recommendation Committee of NYSE Alternext US (“NYSE Alternext US DCRC”), as described more fully under Section 1.(c).(A).e. of this Item II.A. below; provided, however, if there are candidates who have received a plurality of the votes cast by the NYSE Alternext US members in accordance with the provisions set forth in the NYSE Alternext US Operating Agreement relating to the petition process and described in the paragraph immediately below, the NYSE Euronext NGC will be obligated to designate such candidates as Non-Affiliated Director candidates.<sup>31</sup> Notwithstanding the forgoing, as described under Section 1(c)(A) a. of this Item II.A. above, one Non-Affiliated Director on the initial NYSE Alternext US Board will be selected by NYSE Group from among the six Industry Governors serving on the Amex Board immediately prior to the Mergers. The initial NYSE Alternext US Board will serve one-year terms until their successors are duly elected.

ii. Petition by the NYSE Alternext US Members. To ensure fair representation of members on the NYSE Alternext US Board, at the end of the initial one-year term of each of the directors on the NYSE Alternext US Board, the Non-Affiliated Directors will be nominated and elected in the following manner.<sup>32</sup> A newly established NYSE Alternext US DCRC will announce to the NYSE Euronext NGC on a date in each year sufficient to accommodate the process described, the names of candidates nominated by the NYSE Alternext US DCRC as Non-Affiliated Director candidates.

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<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.



NYSE Alternext US members may nominate candidates for Non-Affiliated Director by written petition filed with NYSE Alternext US, within two weeks after the announcement. For any such petition to be valid, it must be, among other things, endorsed by at least 10 percent of the signatures eligible to endorse a candidate. For purposes of determining whether a person has been endorsed by the requisite 10 percent, each trading license or permit holder in good standing shall be entitled to one signature for each trading license or permit held by it; provided, however, that no trading license or permit holder, either alone or together with its affiliates may account for more than 50 percent of the signatures endorsing a particular candidate, and any signatures of such trading license or permit holder, either alone or together with its affiliates, in excess of such 50 percent limitation shall be disregarded.

Each petition must include a completed questionnaire used to gather information concerning Non-Affiliated Director candidates. The eligibility of any Non-Affiliated Director candidate nominated in any such petition will be determined by the NYSE Euronext NGC, in its sole discretion.

If no petitions are submitted within two weeks after the dissemination of the report of the NYSE Euronext NGC, the NYSE Euronext NGC will nominate the candidates for Non-Affiliated Director that the NYSE Alternext US DCRC initially identified. If one or more valid petitions are submitted, NYSE Alternext US members will be allowed to vote on the entire group of potential candidates. Each trading license or permit holder will have one vote per trading license or permit held by it; provided, however, that no trading license or permit holder, either alone or together with its affiliates, may account for more than 20 percent of the votes cast for a particular candidate, and any votes cast by such trading license or permit holder, either alone or

together with its affiliates, in excess of such 20 percent limitation will be disregarded. The persons with the highest number of votes will be nominated.

d. Officers of NYSE Alternext US.

The day-to-day business of NYSE Alternext US will be managed by the officers of NYSE Alternext US, appointed by, and subject to the directions of, the NYSE Alternext US Board.<sup>33</sup> NYSE Alternext US will have such officers as its Board may deem advisable. The NYSE Alternext US Operating Agreement provides that for so long as NYSE Euronext directly or indirectly owns all of the equity interest of NYSE Group and NYSE Group holds 100 percent of the limited liability company interest of NYSE Alternext US, the Chief Executive Officer of NYSE Alternext US shall be a U.S. Person.<sup>34</sup>

NYSE Alternext US will also have a Chief Regulatory Officer, who will either be the Chief Executive Officer of NYSE Regulation or an employee of NYSE Regulation who reports to the Chief Executive Officer of NYSE Regulation. Such Chief Regulatory Officer will also be an officer of NYSE Alternext US appointed by the NYSE Alternext US Board, with reporting obligation to the NYSE Alternext US Board.

e. Committees of NYSE Alternext US Board of Directors.

Following the Mergers, the NYSE Alternext US Board may create one or more committees comprised of NYSE Alternext US directors.<sup>35</sup> It is expected that the committees of the NYSE Euronext board of directors will perform the board committee functions relating to

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<sup>33</sup> See Section 2.04 of the proposed NYSE Alternext US Operating Agreement.

<sup>34</sup> See Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

<sup>35</sup> See Section 2.03(h) of the proposed NYSE Alternext US Operating Agreement.

audit, governance and compensation. The NYSE Alternext US Board may also create committees comprised in whole or in part of individuals who are not directors<sup>36</sup>.

In addition, as described under Section 1(c)(A)c.i. of this Item II.A. above, the NYSE Alternext US Board will, on an annual basis, appoint a new standing committee, the NYSE Alternext US DCRC, which will be charged with the responsibility of recommending the Non-Affiliated Director candidates to the NYSE Euronext NGC. The NYSE Alternext US Operating Agreement provides that the NYSE Alternext US DCRC shall include individuals who are (i) associated with a member organization that engages in a business involving substantial direct contact with securities customers, (ii) associated with a member organization and registered as a specialist and spend a substantial part of their time on the NYSE Alternext US trading floor, (iii) associated with a member organization and spend a majority of their time on the NYSE Alternext US trading floor and have as a substantial part of their business the execution of transactions on the NYSE Alternext US trading floor for other than their own account or the account of their member organization, but are not registered as a specialist, or (iv) associated with a member organization and spend a majority of their time on the NYSE Alternext US trading floor and have as a substantial part of their business the execution of transactions on the NYSE Alternext US trading floor for their own account or the account of their member organization, but are not registered as a specialist. The NYSE Alternext US Board will appoint such individuals after appropriate consultation with representatives of member organizations.

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<sup>36</sup> It is currently anticipated that NYSE Alternext US will retain the Committee on Securities, but will not retain the Committee for Appointment and Approval of Supplemental Registered Options Traders and Remote Registered Options Traders, each a non-board committee of Amex. The Exchange, along with NYSE Euronext, are currently evaluating whether other non-board committees of Amex should be retained by NYSE Alternext US and what changes to the NYSE Alternext US Rules such decision may require. NYSE Alternext US will submit a separate rule filing as necessary.

f. Floor Officials, Senior Floor Officials, Exchange Officials and Senior Supervisory Officer.

The Floor Officials, Senior Floor Officials, and Exchange Officials in place at Amex immediately prior to the Mergers will continue in such capacity for the period prior to the relocation of the NYSE Alternext US equities and options trading facilities to the NYSE trading floor or the electronic trading platform of the NYSE or NYSE Arca, as applicable.<sup>37</sup> However, the Exchange's Rule 21, which provides for the appointment of such officials, is proposed to be amended to reflect that such appointments will be made by the Chief Executive Officer or the Chief Regulatory Officer of NYSE Alternext US or their respective designee rather than the Chairman of the Board of Directors or the Chief Executive Officer (if delegated by the Chairman) and to allow qualified NYSE Alternext US employees who spend a substantial portion of their time on the trading floor to be appointed to serve as Floor Officials. Rule 21 will be further amended to reflect the elimination of the two Floor Governors, i.e., the Industry Governors on the Amex Board who are required to spend a substantial portion of their time on the trading floor. Rule 21 currently provides that Floor Governors are deemed to be Senior Floor Officials and if one of the Floor Governors is also the vice chairman of the Amex Board, he is the Senior Supervisory Officer on the trading floor. Rule 21 further provides that if the vice chairman is not a Floor Governor, then one of the Floor Governors is appointed Senior Supervisory Officer. Rule 22(a) describes the authority of the Senior Supervisory Officer, which includes among other duties, the supervision of Floor Officials and Senior Floor Officials in the performance of their responsibilities. As described in Section 1(c)(A)a. of this Item II.A. above, the NYSE Alternext US Board of Directors will not have a category of directors who are

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<sup>37</sup> Rule 22 describes the authority and responsibilities of Floor Officials, Senior Floor Officials, and the Senior Supervisory Officer, which responsibilities are to generally promote fair and orderly operations on the floor of the Exchange.

required to spend a substantial portion of their time on the trading floor. Therefore, Rule 21, which describes the appointment of the Senior Supervisory Officer and Floor Officials, and other rules referencing Floor Governor are proposed to be amended. For the most part when the reference to Floor Governor in a rule relates to the approval or review of activities on the trading floor and the chairing of certain committees (e.g., the Performance and Allocation committees), it is proposed that Senior Floor Officials replace the Floor Governors.<sup>38</sup> Pursuant to current Rule 21(a), a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the Floor and require review or action by a Floor Governor or Senior Floor Official. Thus, these changes will not expand the authority or responsibilities of Senior Floor Officials, but will simply eliminate the concept of Floor Governors. In situations where a rule calls upon the Floor Governors to advise the Chief Executive Officer of the Exchange in connection with floor facilities and administration, it is proposed that the Senior Supervisory Officer replace the Floor Governors.<sup>39</sup>

(B). Provisions Relating to, or Arising from, the Self-Regulatory Functions of the Exchange

The NYSE Alternext US Operating Agreement will contain specific provisions relating to the self-regulatory function of NYSE Alternext US. In addition, the NYSE Group Charter and the NYSE Group Bylaws currently contain specific provisions relating to the self-regulatory functions of its Regulated Subsidiaries, and the definition of Regulated Subsidiaries will be

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<sup>38</sup> For example, the proposed Rule 118—AEMI will require the approval of a Senior Floor Official for the dissemination of price indicators prior to 9:30 a.m. and the proposed Rule 933—ANTE will provide for the determination by a Senior Floor Official that quotes from another options exchange are not reliable before those quotes can be excluded from the National Best Bid and Offer (NBBO).

<sup>39</sup> For example, the proposed Rule 27(g) will require the Chief Executive Officer to consult the Senior Supervisory Officer prior to restoring to a specialist a specialty security previously reallocated under emergency circumstances.

amended in connection with the Mergers to also include NYSE Alternext US.<sup>40</sup> Furthermore, the ultimate parent, NYSE Euronext has provisions in place relating to the self-regulatory functions of the U.S. Regulated Subsidiaries of NYSE Euronext and such provisions will be amended in connection with the Mergers to provide that NYSE Alternext US will thereafter be considered to be one of the NYSE Euronext's U.S. Regulated Subsidiaries.<sup>41</sup>

a. Management of NYSE Alternext US

As is the case with the Amex Board, the NYSE Alternext US Board must consider applicable requirements under Section 6(b) of the Exchange Act<sup>42</sup> in connection with the management of NYSE Alternext US. The NYSE Alternext US Operating Agreement, for instance, imposes obligations on the NYSE Alternext US Board, officers and employees relating to the self-regulatory functions of NYSE Alternext US. The NYSE Alternext US Operating Agreement requires that, in discharging his or her responsibilities as a member of the Board of Directors of NYSE Alternext US, each member of the Board of Directors shall take into consideration the effect that his or her actions would have on the ability of NYSE Alternext US to carry out its responsibilities under the Exchange Act.<sup>43</sup> In addition, the NYSE Euronext Bylaws<sup>44</sup> and the NYSE Group Charter<sup>45</sup> also impose obligations on NYSE Euronext's and

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<sup>40</sup> See Article IV, Section 4(b)(1)(A)(w) of the proposed NYSE Group Charter for the definition of Regulated Subsidiaries.

<sup>41</sup> See Article VII, Section 7.3(G) of the proposed NYSE Euronext Bylaws.

<sup>42</sup> 15 U.S.C. 78f(b). Section 6(b) of the Exchange Act requires, among other things, that the Exchange's Rules must be designed to protect investors and the public interest. It also requires that the Exchange be organized so that it can carry out the purposes of the Exchange Act and enforce compliance by its participants with the Exchange Act, the rules and regulations under that Act, and the Rules of the Exchange.

<sup>43</sup> See Section 2.03(k) of the proposed NYSE Alternext US Operating Agreement.

<sup>44</sup> See Articles VII, VIII and IX of the proposed NYSE Euronext Bylaws.

<sup>45</sup> See Article XI, Sections 2 and 3 of the proposed NYSE Group Charter.

NYSE Group’s respective boards, officers and employees relating to the self-regulatory functions of their Regulated Subsidiaries, and the definition of “Regulated Subsidiaries” will be amended in connection with the Mergers to also include NYSE Alternext US.

b. Confidentiality.

As is the case with the Amex Constitution, under the NYSE Alternext US Operating Agreement, all confidential information of NYSE Alternext US pertaining to the self-regulatory function of NYSE Alternext US, including all books and records of NYSE Alternext US reflecting such confidential information (including but not limited to disciplinary matters, trading data, trading practices and audit information) will (i) not be made available to any persons (including, without limitation, any NYSE Alternext US members) other than to those officers, directors, employees and agents of NYSE Alternext US that have a reasonable need to know the contents thereof; (ii) be retained in confidence by NYSE Alternext US and the officers, directors, employees and agents of NYSE Alternext US; and (iii) not be used for any commercial purposes.<sup>46</sup> The purpose of this provision is to help ensure that confidential information relating to NYSE Alternext US’s self-regulatory function is accorded appropriate confidential treatment and is not misused.

Notwithstanding the foregoing, such confidential information of NYSE Alternext US shall be subject at all times to inspection and copying by the Commission at no cost to the Commission. Nothing in the NYSE Alternext US Operating Agreement shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information of NYSE Alternext US pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of a director, NYSE Alternext US and its personnel

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<sup>46</sup> See Article VII of the proposed NYSE Alternext US Operating Agreement.

to disclose such confidential information to the Commission. In addition, the NYSE Euronext Bylaws and the NYSE Group Charter also currently contain similar provisions relating to protecting the confidential information of its Regulated Subsidiaries,<sup>47</sup> and the definition of Regulated Subsidiaries will be amended in connection with the Mergers to also include NYSE Alternext US.

c. Ownership and Voting Limitations

General

The NYSE Alternext US Operating Agreement will provide that NYSE Group, which will be the sole member of NYSE Alternext US, may not transfer or assign its limited liability company interest in NYSE Alternext US in whole or in part, to any person or entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder.<sup>48</sup> In addition, the NYSE Group Charter provides that NYSE Euronext, as the owner of all the issued and outstanding shares of stock of NYSE Group, may not transfer or assign its ownership interest in NYSE Group, in whole or in part, to any person or entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder.<sup>49</sup>

The NYSE Euronext Charter,<sup>50</sup> in turn, imposes, and the NYSE Euronext Bylaws,<sup>51</sup> which will be amended in connection with the Mergers to include NYSE Alternext US in the

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<sup>47</sup> See Article VIII of the proposed NYSE Euronext Bylaws and Article X of the proposed NYSE Group Charter.

<sup>48</sup> See Section 3.03 of the proposed NYSE Alternext US Operating Agreement.

<sup>49</sup> See Article IV, Section 4 of the proposed NYSE Group Charter.

<sup>50</sup> See Article V of NYSE Euronext Charter.

<sup>51</sup> See Section 10.12 of the proposed NYSE Euronext Bylaws.



definition of U.S. Regulated Subsidiaries and which will become effective upon the closing of the Mergers, will impose, specific limitations on the ability to own and vote shares of NYSE Euronext stock, which are designed to protect the independence of the self-regulatory function of NYSE Euronext's U.S. Regulated Subsidiaries (as defined in the NYSE Euronext Bylaws),<sup>52</sup> including NYSE Alternext US following the Mergers. Following the Mergers, for so long as NYSE Euronext shall control, directly or indirectly, NYSE Alternext US, the board of directors of NYSE Euronext shall not adopt any resolution to repeal or amend any provision of the NYSE Euronext Charter or the NYSE Euronext Bylaws unless such amendment or repeal has been (i) filed with or filed with and approved by the Commission, or (ii) submitted to the boards of directors of NYSE Alternext US, as well as the other U.S. Regulated Subsidiaries of NYSE Euronext, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

Finally, the Exchange proposes to adopt Rule 1, which will mirror in all material respects NYSE Rule 2B. According to Rule 1(a), without prior SEC approval, NYSE Alternext US or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. The Exchange notes, however, that upon completion of the Mergers, Archipelago Securities, L.L.C. ("Arca Securities"), which is a member organization of the Exchange, will be an affiliate of NYSE Alternext US. Accordingly, the Exchange requests that the Commission approve NYSE Alternext US's affiliation with Arca Securities following the Mergers. Arca Securities is the approved outbound routing facility of

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<sup>52</sup> See Section 7.3(G) of the proposed NYSE Euronext Bylaws.

both NYSE Arca and the NYSE. In its Order approving the merger of the Archipelago Exchange (“ArcaEx”) with the Pacific Exchange (“PCX”),<sup>53</sup> the Commission permitted ArcaEx’s holding company, Archipelago Holdings, Inc. (“Archipelago”), to own and operate Arca Securities, in its capacity as a facility of the PCX that routes orders from ArcaEx to other market centers.<sup>54</sup> This approval remains in effect insofar as Arca Securities acts in the capacity of a facility of NYSE Arca for the routing of orders from NYSE Arca to other market centers, including the NYSE and NYSE Alternext US, subject to the applicable conditions.<sup>55</sup>

Arca Securities performs a similar outbound routing function on behalf of the NYSE. On April 5, 2007, in a notice of immediate effectiveness, the Commission published the NYSE’s rule change that established Arca Securities as a facility of the NYSE for purposes of routing orders to away market centers for execution in compliance with NYSE Rules and Regulation NMS.<sup>56</sup> Pursuant to NYSE Rule 17, Arca Securities receives its routing instructions from the NYSE and reports any such executions back to the NYSE.<sup>57</sup> Arca Securities has no discretion and cannot change the terms of an order or the routing instructions.<sup>58</sup> Moreover, each type of

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<sup>53</sup> Following the ArcaEx-PCX merger, Archipelago merged with the NYSE and the PCX was later renamed NYSE Arca.

<sup>54</sup> See Securities Exchange Act Release No. 52497 (Sep. 22, 2005), 70 FR 56949 (Sep. 29, 2005) (order approving SR-PCX-2005-90). The Commission’s approval was subject to several conditions and undertakings which remain in effect, specifically that: (1) Arca Securities would continue to operate and be regulated as a facility of the PCX; (2) the scope of the exception would be limited to outbound routing; (3) the primary regulatory responsibility for Arca Securities would lie with an unaffiliated SRO; and (4) the use of Arca Securities for outbound routing is only available to – and optional for – other PCX members.

<sup>55</sup> Id.

<sup>56</sup> See Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR-NYSE-2007-29).

<sup>57</sup> See Rule 17(b)(1) of the NYSE.

<sup>58</sup> Id.

order is subject to the same principles governing the NYSE's authority to route orders to away market centers, namely: use of Arca Securities for outbound routing is only available to – and is optional for – NYSE members, the primary regulatory responsibility for Arca Securities lies with an unaffiliated self-regulatory organization (“SRO”), and, as clarified herein, appropriate procedures are in place to manage any conflicts of interest or potential information advantages. In this capacity as a facility of the NYSE, Arca Securities receives the routing instructions from the NYSE and routes the orders to various away market centers, including NYSE Arca and NYSE Alternext US, for execution.

#### Policy and Procedure Regarding Affiliation

In the past, the Commission has noted the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members.<sup>59</sup> As a result, the Exchange proposes to adopt Rule 1(b), which mirrors in all material respects NYSE Rule 2B(2). Specifically, NYSE Alternext US Rule 1(b) will provide as follows: “The holding company owning both the Exchange and Archipelago Securities L.L.C. shall establish and maintain procedures and internal controls reasonably designed to ensure that Archipelago Securities, L.L.C. does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.” The Exchange believes these measures will effectively address the concerns the Commission may have regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated NYSE Alternext US members.

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<sup>59</sup> See Securities Exchange Act Release No. 57648 (April 11, 2008), 73 FR 20981 (April 17, 2008) (order abrogating NYSE Arca Rule 7.31(x)).

There is no member organization which is an affiliate of NYSE Alternext US or an entity with which NYSE Alternext US is affiliated or in which NYSE Alternext US or an entity with which NYSE Alternext US is affiliated holds ownership interest other than Arca Securities.<sup>60</sup>

#### Record Keeping Procedure

The Exchange notes that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders.<sup>61</sup>

In order to manage these concerns, with respect to orders routed to NYSE Alternext US by Arca Securities, an NYSE Alternext US member, in its capacity as a facility of either NYSE Arca or the NYSE, the Exchange notes that Arca Securities is subject to independent oversight and enforcement by the Financial Industry Regulatory Authority (“FINRA”), an unaffiliated SRO that is Arca Securities’ designated examining authority. In this capacity, FINRA is responsible for examining Arca Securities with respect to its books and records and capital obligations, and shares with NYSE Regulation the responsibility for reviewing Arca Securities’ compliance with intermarket trading rules such as SEC Regulation NMS. In addition, through an agreement by and among NYSE, FINRA and NYSE Alternext US pursuant to the provisions of SEC Rule 17d-2 under the Exchange Act (“Umbrella 17d-2 Agreement”), FINRA’s staff will review for Arca Securities’ compliance with other NYSE Alternext US Rules through FINRA’s

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<sup>60</sup> Neither Seamount Trading LLC, a wholly-owned subsidiary of the Exchange, nor Seamount Execution Services LLC, a wholly-owned subsidiary of Seamount Trading LLC, is currently operational. If, in the future, one or both entities, neither of which is an Amex member, become(s) operational, NYSE Alternext US will provide the Commission with the details relating to the function performed by such entity or entities for NYSE Alternext US and the conditions relating to the provision by such entity of such services.

<sup>61</sup> See supra note 59.

examination program<sup>62</sup>. NYSE Regulation will monitor Arca Securities for compliance with NYSE Alternext US trading rules, subject, of course, to SEC oversight of NYSE Regulation's regulatory program.

In order to alleviate any residual concerns the Commission may have regarding the potential for conflicts of interest, the Exchange notes that NYSE Regulation has agreed with NYSE Alternext US that it will collect and maintain the following information of which NYSE Regulation staff becomes aware – namely, all alerts, complaints, investigations and enforcement actions where Arca Securities (in its capacity as a facility of NYSE Arca or the NYSE, routing orders to NYSE Alternext US) is identified as a participant that has potentially violated NYSE Alternext US or applicable SEC rules – in an easily accessible manner, so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examinations.

#### Pilot Period

The Exchange proposes that the Commission authorize NYSE Alternext US to receive inbound routes from Arca Securities (in its capacity as a facility of both NYSE Arca and the NYSE, routing orders to NYSE Alternext US), for a pilot period of twelve months from the date of the approval of this rule filing. The Exchange believes that this pilot period is of sufficient length to permit both NYSE Alternext US and the Commission to assess the impact of the rule change described herein.

#### (C) Trading Licenses or Permits

Upon the completion of the Holdings Merger, all trading rights appurtenant to either Regular Memberships or OPMs existing immediately prior to the Holdings Merger will be

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<sup>62</sup> In the event the Umbrella 17d-2 Agreement is not entered into at the Effective Time, Arca Securities will be subject to the regulation of FINRA with respect to its obligations as a member organization of NYSE Alternext US pursuant to the New Multi-Party FINRA RSA (defined below).

cancelled. In addition, the lessees will cease to have any trading rights under any applicable leases upon the completion of the Holdings Merger. Neither NYSE Alternext US nor NYSE Euronext will have any obligations under the leases that existed immediately prior to the Holdings Merger to any party thereto. Physical and electronic access to NYSE Alternext US's trading facilities will be made available to individuals and organizations that obtain an 86 Trinity Permit, an equity trading license or an OTP from NYSE Alternext US.

For a period of one year following the Effective Time, as long as the market structure of NYSE Alternext US remains substantially the same as it was on the date of the Merger Agreement, the Exchange expects to make equity trading licenses available at a price no greater than the cost of licenses to trade on the NYSE and to make NYSE Alternext US OTPs available at a price no greater than the price of NYSE Arca options trading permits. Only persons or entities that are registered broker-dealers may be granted trading licenses or permits by NYSE Alternext US through an application process and payment of applicable fees to be set forth in a separate rule filing. Pursuant to the requirements of Section 19 of the Exchange Act, NYSE Alternext US intends to set forth in a separate rule filing the qualifications for trading license or permit holders and the application process for trading licenses or permits. The Exchange currently expects that the qualifications for trading license or permit holders<sup>63</sup> will be based on the current requirements for memberships on the NYSE or NYSE Arca, respectively. Pursuant to the requirements of Section 19 of the Exchange Act, NYSE Alternext US also intends to set forth in a separate rule filing the fees for a trading license or permit that will be assessed.

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<sup>63</sup> See proposed NYSE Alternext US Rule 353.

Until such new trading licenses or permits are issued, NYSE Alternext US intends to make available to persons and entities that apply and meet certain specified requirements<sup>64</sup> 86 Trinity Permits for which certain additional fees<sup>65</sup> will be waived. 86 Trinity Permits will allow the holders to trade products currently traded on the Exchange, including equities and options, prior to relocation of the NYSE Alternext US equities and options trading facilities to the NYSE trading floor or the electronic trading platform of the NYSE or NYSE Arca, as applicable. To ensure continuity of trading following the Mergers, persons and entities who were authorized to trade on the Exchange immediately prior to the LLC Merger, including (i) owners, lessees or nominees of Regular Memberships or OPMs, (ii) limited trading permit holders, and (iii) associate members, in each case who were authorized to trade on the Exchange immediately prior to the LLC Merger, will be deemed to have satisfied applicable requirements necessary to receive an 86 Trinity Permit. 86 Trinity Permits will authorize owners, lessees or nominees of Regular Memberships, OPMs, limited trading permit holders and associate members who were authorized to trade on the Exchange immediately prior to the LLC Merger, to trade the products which they were previously authorized to trade and, subject to meeting the qualifications currently in place for trading products which they previously were not authorized to trade, to trade such other products.

It is currently anticipated that NYSE Alternext US will issue the equity trading licenses prior to the OTPs. Upon the initial effective date of the equity trading licenses, only holders of

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<sup>64</sup> The requirements for 86 Trinity Permits will be the same as the current requirements for memberships in the Amex Rules and such requirements may be satisfied by persons or entities that were not previously authorized to trade on the Exchange immediately prior to the Mergers.

<sup>65</sup> Certain application processing fees may be charged for persons or entities that were not previously authorized to trade on the Exchange immediately prior to the Mergers. See proposed NYSE Alternext US Rule 358.

such equity trading licenses will have the right to trade equities and any other products associated with such equity trading licenses. Therefore, following the initial effective date of the equity trading licenses, a holder of an 86 Trinity Permit shall only be entitled to trade products other than those associated with the equity trading licenses. Upon the initial effective date of the OTPs, only holders of such OTPs will have the right to trade in options, and all 86 Trinity Permits will be cancelled.

(D) Amendment of the Amex Rules

The Amex Rules, which will become the NYSE Alternext US Rules upon the completion of the LLC Merger, will be amended to incorporate certain provisions in the Amex Constitution, which will be eliminated in connection with the Mergers, and to reflect that following the Mergers, among others, (i) access to NYSE Alternext US's trading facilities will be granted through the issuance of 86 Trinity Permits, as described in Section 1(c)(C) of this Item II.A. above, until the equity trading licenses and OTPs are issued by NYSE Alternext US, (ii) the associate member concept will be deleted and the term "member" shall mean the 86 Trinity Permit Holders who are natural persons and allied members<sup>66</sup> and the term "member organization" shall mean a partnership, corporation or such other entity as NYSE Alternext US may, by Rule, permit to become a member organization, and which meets the requirements specified in the Rules<sup>67</sup>, (iii) an owner, lessee or nominee of regular membership or OPM, a limited trading permit holder or an associate member that was authorized to trade on the Exchange immediately prior to the LLC Merger will be deemed to satisfy the requirements for receiving an 86 Trinity Permit, (iv) the procedures for the re-allocation of equity securities to specialists will be simplified with the elimination of the mediation process currently required

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<sup>66</sup> See proposed definition of "member" in the NYSE Alternext US Rules.

<sup>67</sup> See proposed definition of "member organization" in the NYSE Alternext US Rules.



when a listed company requests a change of its specialist firm, (v) the procedures for the allocation of options will be streamlined, (vi) the Gratuity Fund will be terminated, (vii) the responsibilities of the Adjudicatory Council will be transferred to the Committee for Review of NYSE Regulation since NYSE Regulation will be handling disciplinary matters for NYSE Alternext US,<sup>68</sup> through the replacement of Amex Rule 345 and the Rules of Procedure in Disciplinary Matters with proposed Rules 475, 476 and 477, which are substantially identical to the disciplinary rules of the NYSE with certain changes necessary to apply such rules to NYSE Alternext US and to reflect the application of the American Stock Exchange Sanctions Guidelines,<sup>69</sup> (viii) the concept of Floor Governors will be eliminated and the functions of the Floor Governors will be performed by Senior Floor Officials or the Senior Supervisory Officer, as the case may be, as described in greater detail under Section 1.(c).(A).f of this Item II.A. above, (ix) the administrative decisions regarding the approval of applications to become a supplemental registered options trader and determinations regarding remote quoting rights for remote registered options

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<sup>68</sup> The Committee for Review will be charged, in the discretion of the NYSE Alternext US Board of Directors, with hearing appeals of disciplinary decisions and advising the NYSE Alternext US Board of Directors thereof. With or without the advice of the Committee for Review, the NYSE Alternext US Board of Directors, may affirm, modify, reverse, or remand a hearing panel's or a hearing officer's determination, penalty, or both. Unless the NYSE Alternext US Board of Directors otherwise specifically directs further action, the determination and penalty, if any, of the NYSE Alternext US Board of Directors after review shall be final and conclusive subject to the provisions for review under the Exchange Act.

<sup>69</sup> Amex anticipates that a certain number of Exchange disciplinary cases arising prior to the closing of the Mergers will be pending at the time of the closing of the Mergers. With respect to such cases which have been formally commenced at or prior to the time of the Effective Time, Amex Rule 345, the Rules of Procedure in Disciplinary Matters and the disciplinary rules in the current Amex Constitution ("Legacy Disciplinary Procedural Rules") will govern such pending disciplinary cases. The Exchange will advise its members and member organizations of changes to the disciplinary procedures that will be implemented, including application of the Legacy Disciplinary Procedural Rules, through an Information Memorandum. Please see the proposed rule filing that the Exchange expects to file with the Commission in connection with the Legacy Disciplinary Procedural Rules for more detail.

traders will be handled by designated staff of NYSE Alternext US rather than by a committee of members as set forth in Rules 993—ANTE and 994—ANTE and (x) members and member organizations will be required to notify NYSE Alternext US of their branch offices, but will not be required to seek approval from NYSE Alternext US to establish such branch offices<sup>70</sup>. In addition, certain obsolete rules, including the rules relating to the Intermarket Trading System Plan, certain rules which have been replaced by Auction and Electronic Market Integration Rules and certain arbitration rules will be deleted.

(E) Other Proposed Changes Relating to the Mergers

a. Regulatory Service Agreement. The Exchange is currently a party to a regulatory services agreement with FINRA, dated as of April 30, 2004, as amended (“FINRA RSA”).

Under the FINRA RSA, FINRA performs market and trade practice surveillance and analysis, financial and operational regulation, options sales practice regulation, enforcement investigations and disciplinary processes and dispute resolution services for the Exchange. Upon the consummation of the Mergers, it is contemplated that NYSE Alternext US will contract with NYSE Regulation for the performance of all of its regulatory functions. NYSE Euronext has agreed to provide adequate funding to NYSE Regulation to conduct its regulatory activities with respect to NYSE, NYSE Arca and, from and after closing of the transaction, NYSE Alternext US. In addition, it is contemplated that NYSE Alternext US will participate in a multi-party

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<sup>70</sup> See proposed NYSE Alternext US Rule 320. Currently, under Article IV, Section 2(m) of the Amex Constitution, members and member organizations are allowed to establish branch offices with the consent of the Exchange; provided, however, that the Exchange’s consent is not required for members and member organizations of the Exchange that are members or member organizations of another exchange, which exchange has comparable rules or regulations, unless the Amex Board shall so direct. The change to Rule 320 to require notice without adopting the provision from Article IV, Section 2(m) of the Amex Constitution is consistent with the rules of other SROs including NYSE Arca, Chicago Board Options Exchange and Philadelphia Stock Exchange.

regulatory services agreement by and among NYSE Regulation, NYSE Arca, FINRA and NYSE Alternext US (“New Multi-Party FINRA RSA”), pursuant to which FINRA will in turn perform some of NYSE Alternext US’s regulatory functions on an ongoing basis. NYSE Regulation together with NYSE Alternext US may from time to time contract out to a third party other than FINRA certain of NYSE Alternext US’s regulatory functions. In doing so, NYSE Regulation and NYSE Alternext US must comply with proposed Rule 1B, which requires regulatory services agreements may only be entered into by NYSE Alternext US with another SRO. In addition, regardless of the fact that NYSE Alternext US will contract for the provision of regulatory services from NYSE Regulation, FINRA and/or other SROs, NYSE Alternext US will retain ultimate responsibility for the fulfillment of its statutory and self-regulatory obligations under the Exchange Act. In connection with such responsibility, NYSE Alternext US will retain the authority to direct NYSE Regulation, FINRA and any other SROs that provide regulatory service to take any action necessary to fulfill its statutory and self-regulatory obligations, consistent with the independence of the regulatory functions performed by NYSE Regulation, the NYSE Alternext US rules, policies and procedures and the federal securities laws.

b. Gratuity Fund. In connection with the Mergers, the Boards have approved the termination of the Gratuity Fund. As a result, the Gratuity Fund will be terminated upon the LLC Merger and neither NYSE Euronext nor NYSE Alternext US will offer a Gratuity Fund following the Mergers. There will be no further payment of gratuities other than those related to any deaths that occurred prior to the completion of the Mergers. Upon the completion of the NYSE/Amex Merger, NYSE Alternext US currently expects to allocate the assets then remaining in the Gratuity Fund (net of any administrative expenses incurred in the distribution of such amount), first to pay out any death benefits that are accrued but unpaid as of the completion

of the NYSE/Amex Merger, and then to distribute the remaining balance, if any, in a manner as the Boards deem appropriate, taking into account the length of time each person was a participant in the Gratuity Fund.

c. Relief from the Exchange's Periodic Financial Reporting Undertaking. The Exchange requests to be relieved from the undertakings adopted by the Amex Board on December 4, 2004 and approved by the Commission as part of an Amex proposed rule change filed under Section 19 of the Exchange Act ("Undertakings").<sup>71</sup> Section 1 of the Undertakings prohibits Amex from terminating the FINRA RSA unless on or prior to the date of such termination, Amex has entered into an alternative arrangement relating to the provision of regulatory services that has been approved by the Commission pursuant to the rule filing procedures of Rule 19b-4 under the Exchange Act and requires Amex to use its best efforts to comply in all material respects with its obligations under the FINRA RSA. Under Section 2 of the Undertakings, Amex's Chief Regulatory Officer is required, and Amex is required to use its reasonable efforts to cause the staff of FINRA responsible for providing services under the FINRA RSA, to periodically confer with staff of the Division of Trading and Markets and the Office of Compliance Inspections and Examinations regarding the status of Amex's regulatory program.

The reason for the request to be relieved from Sections 1 and 2 of the Undertakings is that the Exchange believes that it has demonstrated that Amex's regulatory program has been maintained consistent with the guidelines of the Commission Staff since the Exchange adopted such undertaking and that the new arrangements for contracting out regulatory services through the NYSE Regulation RSA, the New Multi-Party FINRA RSA and the Umbrella 17d-2

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<sup>71</sup> See Securities Exchange Act Release No. 50927 (December 23, 2004), 69 FR 78494 (December 30, 2004) (order approving SR-Amex-2004-50).

agreement among NYSE, FINRA and NYSE Alternext US would ensure that NYSE Alternext US's regulatory program continues to be maintained consistent with the guidelines of the Commission Staff. In addition, following the Mergers, NYSE Alternext US will be a wholly-owned U.S. Regulated Subsidiary of NYSE Euronext and other U.S. Regulated Subsidiaries of NYSE Euronext are not subject to such obligation.

The Exchange also requests to be permanently relieved from Sections 3 of the Undertakings.<sup>72</sup> Section 3 of the Undertakings mandates Amex to provide to the Director of the Division of Trading and Markets (i) within 75 days after the end of each fiscal year of Amex (unless otherwise directed in writing by the Director of the Division of Trading and Markets), financial statements certified by Amex's chief financial officer and reviewed by Amex's independent accountants, together with evidence of such review, (ii) within 40 days after the end of each fiscal quarter of Amex (unless otherwise directed in writing by the Director of the Division of Trading and Markets), unaudited financial statements certified by Amex's chief financial officer and reviewed by Amex's independent accountants, together with evidence of such review, (iii) within 30 days after the end of each fiscal month of Amex (unless otherwise directed in writing by the Director of the Division of Trading and Markets), (a) financial data of Amex certified by Amex's chief financial officer, together with projected and budget financial information concerning Amex, (b) a schedule reflecting the available borrowings under each of Amex's credit facilities, together with computations of compliance with all financial covenants contained therein, certified by Amex's chief financial officer, (c) a schedule of projected cash and working capital trends, including calculations of Amex's working capital and current ratio,

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<sup>72</sup> Id. In addition, Amex has separately submitted a letter to the staff of Division of Trading and Markets to request temporary waiver of Section 3(ii) of the Undertakings for the calendar year 2008.

(d) a schedule of actual year-to-date and inception-to-date expenditures in connection with any material trading technology system or platform being implemented by Amex, certified by Amex's chief financial officer, together with a narrative summary of the status of such implementation, (e) a schedule of material off-balance sheet liabilities, if any, certified by Amex's chief financial officer and (f) a narrative summary of Amex's financial results for such month and for then year-to-date, certified by Amex's chief financial officer, and (iv) such other financial information as may be reasonably requested by the Director of the Division of Trading and Markets. The reason for the request is that following the Mergers, NYSE Alternext US will be a wholly-owned subsidiary of NYSE Euronext. As such, NYSE Alternext US's financial results will be consolidated with those of NYSE Euronext. Furthermore, NYSE Euronext is a reporting company under the Exchange Act with obligations to report its financial results.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Exchange Act.<sup>73</sup> The Exchange believes the proposal is consistent with Section 6(b)(3) of the Exchange Act<sup>74</sup> in that it would assure a fair representation of its members in the selection of the Non-Affiliated Directors of NYSE Alternext US and administration of its affairs. The candidates for directors that will serve on the NYSE Alternext US Board will include at least one person intended to allow the NYSE Alternext US Board to meet the requirements of Section 6(b)(3) of the Exchange Act concerning issuers and at least one person intended to allow the NYSE

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<sup>73</sup> 15 U.S.C. 78f(b).

<sup>74</sup> 15 U.S.C. 78f(b)(5).

Alternext US Board to meet the requirements of Section 6(b)(3) of the Exchange Act concerning investors.

The Exchange believes the proposal is also consistent with Section 6(b)(5) of the Exchange Act<sup>75</sup> in that it would create a governance and regulatory structure of NYSE Alternext US that is designed to promote just and equitable principles of trade, to remove impediments, and to 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 Exchange represents that it remains committed to its role as a national securities exchange and does not believe that the proposed change to a for-profit institution will undermine its responsibilities for regulating its marketplace. Indeed, as described above, following the Mergers, the regulatory functions of NYSE Alternext US will be carried out by NYSE Regulation, whose status as a New York Type A not-for-profit entity will facilitate NYSE Alternext US in managing conflicts between its business and regulatory objectives, maintaining regulatory standards and complying with its obligations as a registered national securities exchange and SRO. Further, the Exchange believes that it has proposed specific provisions in the NYSE Alternext US Operating Agreement that reinforce the responsibility of NYSE Alternext US for its self-regulatory obligations.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(8) of the Exchange Act<sup>76</sup> which requires that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. With a new corporate and governance structure, NYSE Alternext US will be

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Id.

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15 U.S.C. 78f(b)(8).

better positioned to improve its technology and engage in value-enhancing transactions designed to facilitate its long-term success.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from persons or entities that trade on the Exchange or other interested parties.

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.

The Exchange is targeting a closing date of August 29, 2008 for the Mergers. In the event that it is necessary in order to facilitate that timetable, the Exchange requests that the Commission accelerate effectiveness of the filing pursuant to Section 19(b)(2) to a date no later than August 29, 2008.



#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2008-62 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-Amex-2008-62. 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

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 Number SR-Amex-2008-62 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>77</sup>

Florence E. Harmon  
Acting Secretary

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<sup>77</sup> 17 CFR 200.30-3(a)(12).