

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58607 ; File No. SR-NYSE-2008-86)

September 19, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Proposing to Temporarily Suspend the Requirements of NYSE Rule 311 and Related NYSE Rules Concerning the Approval of New Member Organizations in Order to Approve Barclays Capital Inc. as an NYSE Member Organization

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 19, 2008, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

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

The Exchange is proposing to temporarily suspend the requirements of NYSE Rule 311 and related NYSE rules concerning the approval of new member organizations in order to approve Barclays Capital Inc. (“BCI”) as an NYSE member organization, subject to BCI’s complying with Exchange rules for a new member organization within 60 days of the date that BCI is provisionally approved as an NYSE member organization.

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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of NYSE Rule 311 and related rules regarding the approval of member organizations in order to immediately approve as an NYSE member organization the entity that acquires the assets of Lehman Brothers Inc. (“LBI”). The Exchange proposes this temporary suspension on an emergency basis to ensure that the acquiring entity, Barclays Capital Inc. (“BCI”), which is a U.S. registered broker dealer and FINRA member, will be able to expeditiously complete its proposed acquisition of certain LBI assets and begin operating former LBI business lines, including its specialist operations, as early as September 22, 2008. This proposed temporary suspension is contingent upon BCI having applied for and been approved as a new member

organization pursuant to Exchange rules within 60 days of the date that BCI is provisionally approved as an NYSE member organization pursuant to this filing.

a. Background

A. Lehman Files for Bankruptcy

On September 15, 2008, Lehman Brothers Holding Inc. (“Lehman”) filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York under Chapter 11 of the U.S. Bankruptcy Code. Lehman is the parent holding company of LBI, which is a registered broker dealer and NYSE member organization. Lehman filing for Chapter 11 protection was just one of the many unprecedented events that have affected our markets in the last two weeks.⁷

Although LBI did not file for bankruptcy protection at that time, Lehman’s Chapter 11 status impaired LBI’s ability to continue operations. For example, out of concern that Lehman Brothers MarketMakers (“LBMM”), the division of LBI that is approved as a specialist operation at the Exchange, might not have sufficient capital to meet both federal and NYSE rule requirements governing specialists, on September 15, 2008, pursuant to NYSE Rule 103.11, the Exchange temporarily reallocated Lehman Brothers MarketMakers securities to Spear, Leeds & Kellogg Specialists LLC (“Spear Leeds”).

⁷ On September 8, 2008, the U.S. Treasury Department took over the federally chartered mortgage companies Freddie Mac and Fannie Mae and replaced their executive teams. This week, in addition to the Lehman bankruptcy, Bank of America agreed to acquire Merrill Lynch in an all-stock transaction, the federal government bailed out American International Group, Inc. with a \$85 million loan and took control of the company, Morgan Stanley and Goldman, Sachs & Co. – the two remaining independent U.S. investment banks – experienced sharp stock declines despite reporting positive earnings, and the Securities and Exchange Commission (“SEC” or the “Commission”) has issued multiple emergency orders amending the rules governing short selling.

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

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

B. Barclays Will Transfer LBI Assets to BCI

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

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

b. Proposed Temporary Suspension of NYSE Rule 311 and Related Rules

A. Background

NYSE Rule 311 requires any person who proposes to form a member organization to notify the Exchange in writing and submit such information as may be required by NYSE rules. Unlike the Act, when a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity, NYSE member organization status cannot be transferred to the acquiring entity; the entity that proposes to continue the business operations of the predecessor member organization must be separately approved as an NYSE member organization.

Among other things, to be approved as an NYSE member organization, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as a list of all proposed parties required to be approved under NYSE Rules 304 and 311 (NYSE Rule 311.11).
- Ensure that all persons associated with the applicant, including corporate directors or general partners, as applicable, persons in control of the applicant, and any person who meets the requirements of an approved person under NYSE Rule 304, is approved as a member or approved person (NYSE Rule 311(b)).
- Submit to the Exchange partnership or corporate documents as may be applicable, including certificate of incorporation, by-laws, and other corporate documents (NYSE Rule 313.10 or .20).

- Provide the Exchange with an opinion of counsel that, among other things, the corporation is duly organized and existing, its stock is validly issued and outstanding, and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion, and redemption of its stock have been made legally effective (NYSE Rule 313.20).

In addition, the Exchange reviews whether the applicant meets federal and NYSE capital requirements and whether it has adopted controls and procedures to comply with Exchange rules. For example, an applicant that seeks approval to operate a specialist business pursuant to NYSE Rule 103 must demonstrate that it has policies and procedures in compliance with the NYSE rules governing trading by specialists, and if applicable, has been approved for an exemption for approved persons under NYSE Rule 98 (Former) or been approved to operate a specialist unit under NYSE Rule 98.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as a member organization, the member organization approval process generally takes several months to complete. The length of the approval process varies depending on the timing of the applicant's response to requests for information and documentation.

B. A Temporary Suspension of NYSE Rule 311 and Related Rules for BCI is Consistent with the Act

As proposed, BCI will continue the business operations of LBI, including the LBMM specialist operations, in the same manner that they were operated by LBI. Because the bankruptcy proceeding for LBI will likely be on September 19, 2008, BCI could be eligible to continue LBI operations on Monday, September 22, 2008.

To ensure that BCI can continue the LBI operations without unnecessary interruption, including all operations that required LBI to be a member organization of the NYSE, such as the specialist operations and entering orders directly with the Exchange, the Exchange believes that BCI should be approved immediately as an NYSE member organization. The Exchange notes that BCI is already a registered broker dealer and FINRA member, which are prerequisites to becoming an NYSE member organization. See NYSE Rule 2(b).

The Exchange therefore proposes providing BCI with a temporary suspension of NYSE Rules 304, 311, 312, and 313, as they relate to approval to operate an NYSE member organization and approval of a proposed member organization's approved persons, and immediately approve BCI as a member organization. As proposed, this temporary suspension is contingent upon:

- BCI's providing the Exchange with sufficient information to confirm that BCI will meet its capital requirements as an NYSE member organization; and
- Within 60 days of BCI's approval as an NYSE member organization under this proposed filing, BCI and its approved persons will have applied for and complied with the Exchange's new member organization requirements, as set forth in NYSE Rules 304, and 311-313.

Moreover, the Exchange proposes that in addition to being approved as an NYSE member organization, to ensure that the LBMM operations can continue, BCI should also be deemed approved as a specialist under NYSE Rule 103. This approval is contingent upon BCI's certifying in writing to the Exchange that, for the period immediately following approval as an NYSE member organization until such time that BCI is independently approved as an NYSE member organization:

- BCI will maintain the existing LBMM technologies, staffing, supervisory structure, and written supervisory procedures with respect to the specialist operations;
- Both BCI and its approved persons, as defined under NYSE Rule 304, will comply with LBI's existing written supervisory procedures and information barriers between the LBMM specialist operations and the rest of the firm and its approved persons, pursuant to NYSE Rule 98 (Former); and
- BCI will maintain the minimum capital for specialists, as required both by federal rules and NYSE Rule 104.20 and 104.21.

Upon receipt of such written statement, the Exchange will approve BCI as a successor entity to LBI's registration as a specialist and will lift the current temporary allocation of LBMM's securities to Spear Leeds and formally allocate those securities to BCI. In addition, the Exchange will extend the Rule 98 (Former) exemption currently granted to LBI and its approved persons to BCI and its approved persons, including Barclays.

As proposed, if BCI does not apply for and be approved as a new NYSE member organization pursuant to Exchange rules within 60 days of the effective date of this filing, BCI's status as an approved NYSE member organization will no longer be effective.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,⁸ in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments

⁸ 15 U.S.C. 78f(b)(5).

to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NYSE has requested the Commission to waive the 30-day operative delay. The Commission hereby grants NYSE's request.¹¹ The Commission notes that the Exchange is

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

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

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

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-NYSE-2008-86 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2008-86. 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. 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-NYSE-2008-86 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.¹²

Jill M. Peterson
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).