

MEMO# 22621

June 18, 2008

Amex Proposes Changes to Provisions Governing Contacts Between Specialists and ETF Sponsors

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TO: ETF ADVISORY COMMITTEE No. 15-08 RE: AMEX PROPOSES CHANGES TO PROVISIONS GOVERNING CONTACTS BETWEEN SPECIALISTS AND ETF SPONSORS

The American Stock Exchange (“Amex”) has filed a proposed rule change with the Securities and Exchange Commission to modify the rule provisions governing contacts between specialists and issuers, or, in the case of exchange traded funds (“ETFs”), sponsors. [\[1\]](#)

The proposal would modify Amex Rule 27, setting forth the procedures and policies pursuant to which the Amex’s Allocation Committee allocates securities listing on the Exchange to a specialist, to reflect the different treatment that is afforded ETFs. Specifically, the proposal would modify Commentaries .02 and .03 to Rule 27, containing guidelines for communications between specialists and issuers or, in the case of ETFs, sponsors that have not yet listed a security on the Exchange, have applied to list a security on the Exchange, and/or have a security that has been approved for listing on the Exchange. The proposal would make Commentary .02 more consistent with Commentary .03 by clarifying that the Amex may disqualify a specialist from an allocation when a specialist makes inappropriate representations to an issuer, as defined by the rules. Commentary .03 already permits the Amex to disqualify ETF specialists deemed to have made inappropriate representations.

The proposal also would make several changes to the communication restrictions in Commentary .03. First, it would eliminate the restriction that requires specialists to notify the Amex in writing before any planned contact, or unanticipated contact, with a potential sponsor for the purpose of listing ETFs. Second, it would narrow the scope of the requirement for specialists to report promptly any representations or commitment that they, or an individual acting on their behalf, have made to an employee of, or any individual acting on behalf of, a sponsor. Specifically, the proposal would amend Commentary .03 to require specialists to disclose only representations of commitments that relate to the prospective listing of the ETF and that are made within the six months preceding the date allocation applications are solicited with respect to that ETF. Third, the proposal would clarify that the procedures related to the interview process apply to ETF sponsors whose securities have been approved for listing on the Exchange through the Allocations Committee's processes outlined in Amex Rule 27.

Heather L. Traeger
Assistant Counsel

endnotes

[1] SEC Release No. 57952 (June 11, 2008), 73 FR 34809 (June 18, 2008). The proposal can be found on the SEC's website at <http://www.sec.gov/rules/sro/amex/2008/34-57952.pdf>. Comments on the proposal are due to the Commission by July 9, 2008.

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