

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58779; File No. SR-NYSE-2008-78)

October 14, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Amending NYSE Rule 18 to Allow NYSE Alternext US LLC to Participate in the Compensation Fund Established by NYSE to Reimburse Claimants for Losses Associated with NYSE-Operated System Failures

I. Introduction

On August 26, 2008, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change amending NYSE Rule 18 to allow NYSE Alternext US LLC (“NYSE Alternext”³) to participate in the compensation fund established by NYSE to reimburse claimants for losses associated with a malfunction of the Exchange’s physical equipment, devices, and/or programming which results in an incorrect execution or no execution of an order that was received in Exchange systems (an “Exchange systems malfunction”). The proposed rule change was published for comment in the Federal Register on September 9, 2008.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NYSE Alternext US LLC will be a self-regulatory organization distinct from NYSE Euronext’s European-market subsidiary, NYSE Alternext. When used throughout this order, “NYSE Alternext” refers to NYSE Alternext US LLC.

⁴ See Securities Exchange Act Release No. 58450 (September 2, 2008), 73 FR 52439 (September 9, 2008) (SR-NYSE-2008-78) (“Notice”).

II. Description of the Proposal

Through a series of mergers (the “Mergers”), the American Stock Exchange LLC (“Amex”) has become a subsidiary of NYSE Euronext and was renamed NYSE Alternext US LLC.⁵ In connection with the Mergers, NYSE Alternext will relocate all equities trading currently conducted on or through the Amex legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to the NYSE trading systems and facilities located at 11 Wall Street, New York, New York (the “NYSE Alternext Trading Systems”), which will be operated by the NYSE on behalf of NYSE Alternext (the “Equities Relocation”).

NYSE Rule 18 establishes a compensation fund and provides a procedure for compensating NYSE member claimants in the event of an Exchange system failure.⁶ The Commission recently approved Amex’s proposal to adopt a rule substantially similar to NYSE Rule 18.⁷ This rule, NYSE Alternext Equities Rule 18, provides a procedure for compensating NYSE Alternext member claimants in the event of an NYSE Alternext systems failure. Specifically, under NYSE Alternext Equities Rule 18, NYSE Alternext members and member organizations affected by a failure of the NYSE Alternext Trading Systems would have the right to submit claims for compensation to NYSE Alternext. NYSE Alternext’s Compensation Review Panel would then decide the validity of NYSE Alternext claims.

⁵ See Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (August 7, 2008) (SR-Amex-2008-62) and Securities Exchange Act Release No. 58673 (September 29, 2008) (SR-Amex-2008-62).

⁶ See Securities Exchange Act Release Nos. 56085 (July 17, 2007), 72 FR 40348 (July 24, 2007) (SR-NYSE-2007-09) (adopting NYSE Rule 18); 56718 (October 29, 2007), 72 FR 62506 (November 5, 2007) (SR-NYSE-2007-95) (approving certain amendments to NYSE Rule 18). For a complete discussion of Rule 18, see the Notice, *supra* note 4.

⁷ See Securities Exchange Act Release No. 34-58705 (October 1, 2008) 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63).

Because NYSE Alternext will operate on the Exchange's trading systems after the Equities Relocation, NYSE proposes to amend NYSE Rule 18 to provide a mechanism for NYSE Alternext itself to seek reimbursement from NYSE for the amounts that NYSE Alternext undertakes to pay out to NYSE Alternext members under NYSE Alternext Equities Rule 18 as a result of an Exchange system malfunction.⁸ Thus, after the NYSE Alternext Compensation Review Panel has determined the number and amount of claims that NYSE Alternext deems valid, NYSE Alternext would submit to the NYSE a separate claim for each valid claim made by NYSE Alternext members or member organizations, subject to the same requirements under NYSE Rule 18 as any other NYSE claimant. NYSE Alternext will not, however, be required to provide verbal notice of its claims to the Exchange's Division of Floor Operations.

In the event that the total amount of valid claims by NYSE members and NYSE Alternext exceeds the available funds in the NYSE Rule 18 compensation fund, NYSE Alternext would receive a partial payment of claims pursuant to NYSE Rule 18(c), and NYSE Alternext's obligation to compensate its members for valid claims would be reduced by a like percentage.⁹ In the event that a reduction is required, in calculating any such reduction, NYSE officials would consider each claim submitted by NYSE Alternext as a separate claim, so that all claimants from both the Exchange and NYSE Alternext will share equitably from the compensation fund.

NYSE also proposes technical changes to NYSE Rule 18, including corrections to the numbering of certain subparagraphs of the Rule.

⁸ NYSE Alternext members and member organizations would not be able to submit their claims directly to the NYSE.

⁹ In the Notice, NYSE stated that it does not anticipate that the additional claims by NYSE Alternext would create a substantial burden on the fund in the event of a system malfunction in view of: (i) the probable volume of trading on NYSE Alternext; (ii) the fact that to date, the existing compensation fund has been sufficient to pay all valid claims in full; and (iii) the current amount available in the supplemental fund. Notice at 52440.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed amendments to NYSE Rule 18 provide for a fair and reasonable process by which NYSE Alternext may participate in the compensation fund established by the Exchange to reimburse claimants for losses suffered due to a malfunction of a systems operated by the Exchange.

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-2008-78) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Acting Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).