

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59144; File No. SR-NYSEALTR-2008-12)

December 22, 2008

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing of Proposed Rule Change to Establish its New Risk Management Gateway Service

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 12, 2008, NYSE Alternext US LLC (“NYSE Alternext” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, formerly the American Stock Exchange LLC, is proposing to establish its new Risk Management Gateway (“RMG”) service.

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

In its filing with the Commission, NYSE Alternext 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 these statements may be examined at the places specified in Item IV below. NYSE Alternext has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

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

1. Purpose

The Exchange proposes to offer, through NYSE Euronext Advanced Trading Solutions, Inc., the RMG service to NYSE Alternext members and member organizations. NYSE Transact Tools, Inc, a division of the NYSE Euronext Advanced Trading Solutions Group ("NYXATS"), owns RMG. RMG is a part of the NYSE Alternext Trading Systems (defined below) operated on behalf of the Exchange by New York Stock Exchange LLC ("NYSE").<sup>3</sup>

Background

As described more fully in a related rule filing<sup>4</sup>, NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act").<sup>5</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York (the "86 Trinity Trading Systems"), to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The

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<sup>3</sup> NYXATS, similarly seeks to offer the same services to the NYSE through a separate filing, SR-NYSE-2008-101.

<sup>4</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).

<sup>5</sup> 15 U.S.C. 78f.

Exchange's trading systems and facilities at 11 Wall Street (the "NYSE Alternext Trading Systems") are operated by the NYSE on behalf of the Exchange.<sup>6</sup>

In order to implement the Equities Relocation, the Exchange adopted NYSE Rules 1-1004 as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems. Rule 54 - NYSE Alternext Equities provides that only members are permitted to "...make or accept bids or offers, consummate transactions, or otherwise transact business on the Floor for any security admitted to dealings on the [Exchange]..."<sup>7</sup>

Pursuant to Rule 123B - NYSE Alternext Equities, however, the Exchange permits NYSE Alternext members and member organizations (a "Sponsoring Member Organization") to sponsor access to Exchange systems by non-member firms or customers ("Sponsored Participants"). Rule 123B - NYSE Alternext Equities is a general sponsored access rule that permits a Sponsoring Member Organization to sponsor a Sponsored Participant's access to Exchange systems for the Sponsored Participant's entry and execution of orders on the Exchange. Rule 123B - NYSE Alternext Equities reflects the Exchange's general policy regarding sponsored access to the Exchange, it does not govern access to NYSE Alternext Bonds.<sup>8</sup> NYSE Arca, Inc. and other market centers similarly permit sponsored access to their trading systems.

### RMG

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<sup>6</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

<sup>7</sup> See also Rule 2 - NYSE Alternext Equities.

<sup>8</sup> That is, currently, the provisions of Rule 123B - NYSE Alternext Equities do not apply to Rule 86 - NYSE Alternext Equities as that rule independently contains provisions related to how a user gains sponsored access to the NYSE Alternext Bonds system.

Traditionally, the customers of a member or member organization gave orders to the member or member organization and the member or member organization then submitted those orders to the Exchange on behalf of the customer. By means of sponsored access, a member or member organization will allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the Sponsoring Member Organization acting as an intermediary.

To facilitate the ability of Sponsoring Member Organizations to monitor and oversee the sponsored access activity of their Sponsored Participants, NYXATS will offer an order-verification service to Sponsoring Member Organizations. This service will act as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the Exchange's trading systems for execution. When a Sponsored Participant's order passes through RMG, RMG software determines whether the order complies with order criteria that the Sponsoring Member Organization has established for that Sponsored Participant. The order criteria pertain to such matters as the size of the order (per order or daily quantity limits) or the credit limit (per order or daily value) that the Sponsoring Member Organization has established for the Sponsored Participant. Additional risk filters may also be selected by the Sponsoring Member Organization relating to specific symbols or end users.

If the order is consistent with the parameters set by the Sponsoring Member Organization, then RMG allows the order to continue along its path to the Exchange's trading systems. If the order falls outside of those parameters, then RMG returns the order to the Sponsored Participant. RMG will only return an order to the Sponsored Participant when the order fails to comply with the criteria set by the Sponsoring Member Organization.

RMG software interacts with orders only prior to the orders' entry into the Exchange's trading system for execution. RMG does not have order execution or trade reporting capabilities (though it will allow a Sponsoring Member Organization to monitor the orders of its Sponsored Participants). RMG maintains a record of all messages relating to Sponsored Participants' transactions and supplies a copy of such messages to the applicable Sponsoring Member Organization.

The Sponsoring Member Organization, and not RMG, will have full responsibility for ensuring that Sponsored Participants' sponsored access to the Exchange complies with the Exchange's sponsored access rules. The use of RMG by a Member Organization does not automatically constitute compliance with Exchange rules.

NYXATS will host RMG software on NYXATS' infrastructure. After passing through RMG software, each order will enter the NYSE Common Customer Gateway (CCG)<sup>9</sup> for connectivity to the Exchange's matching engine. In the future NYXATS may integrate RMG into the NYSE CCG for more direct access to the Exchange's matching engine.

The Exchange does not require Sponsoring Member Organizations to use RMG (even when it is integrated into NYSE CCG in the future). Sponsoring Member Organizations are free to use a competing risk-management service or to use none at all. The Exchange will not provide preferential treatment to Sponsoring Member Organizations using RMG.

The Exchange proposes to make RMG available to its members and member organizations pursuant to contractual arrangements. The Exchange believes that RMG will offer its members and member organizations another option in the efficient risk management of its Sponsored Participant's access to the NYSE Alternext Trading Systems.

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<sup>9</sup> The NYSE CCG is a part of the NYSE Alternext Trading Systems, operated on behalf of the Exchange by NYSE.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>11</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that RMG is consistent with all the aforementioned principles because it fosters competition by providing another option in the efficient risk management of trading on the Exchange without the participation of a dealer.

### 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.

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

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 the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEALTR-2008-12 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEALTR-2008-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEALTR-2008-12 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Acting Secretary

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