

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59469; File No. SR-NYSE-2009-19)

February 27, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 300.10T to Provide a Grace Period Under that Rule for NYSE Alternext US LLC Member Organizations that have Applied for a Trading License to Comply with Certain Exchange Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 24, 2009, the New York Stock Exchange, LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. NYSE has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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 proposes to amend Rule 300.10T to provide a grace period under that rule for NYSE Alternext US LLC member organizations that have applied for a trading license to comply with certain Exchange rules.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Exchange proposes to amend NYSE Rule 300.10T to provide for a six-month grace period for NYSE Alternext US LLC (“NYSE Alternext”) member organizations that have applied for, but not received a trading license, to comply with certain Exchange rules. The Exchange adopted Rule 300.10T to provide a grace period for certain NYSE Alternext member organizations seeking to trade equities at the Exchange to comply with the Exchange membership requirements. The proposed amendment seeks to clarify the rule to reflect the original purpose of the provision. The Exchange is submitting this proposed filing to conform NYSE Rule 300.10T to corresponding changes to Rule 300.10T – NYSE Alternext Equities, as proposed by NYSE Alternext.⁴

Background of Merger

As described more fully in a filing submitted by the American Stock Exchange LLC (“Amex”) (the “Merger filing”),⁵ 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, Amex, a subsidiary of AMC, became a subsidiary of NYSE

⁴ See SR-NYSEALTR-2009-16 (formally submitted on February 24, 2009). Because NYSE Alternext’s perspective of its member organizations differs from those of the NYSE, the rule text proposed by the NYSE is not identical to that proposed by NYSE Alternext, but is the same in substance.

⁵ 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).

Euronext and was renamed 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”).⁶ The effective date of the Merger was October 1, 2008.

As described more fully in the Merger filing, in connection with the Mergers, Amex demutualized by separating all trading rights from equity ownership in Amex. As part of the demutualization, all trading rights appurtenant to the Amex Regular Members’ memberships or Options Principal Members’ (“OPM”) memberships were cancelled. Immediately following the closing of the Mergers, those persons and entities that were authorized to trade on the Amex before the closing of the Mergers were deemed to have satisfied applicable qualification requirements necessary to trade in NYSE Alternext’s demutualized marketplace and were issued a permit at no cost to trade on NYSE Alternext (“86 Trinity Permit”). The 86 Trinity Permit authorizes owners, lessees or nominees of Amex Regular Members or OPMs, Amex limited trading permit holders, and Amex associate members who were authorized to trade on the Amex immediately before the Mergers to continue to trade at NYSE Alternext’s systems and facilities at 86 Trinity Place, New York, New York (the “86 Trinity Trading Systems”). NYSE Alternext recognizes the former Amex (i) owners, lessees, or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members as either NYSE Alternext member organizations or members, as applicable.

In connection with the Merger, on December 1, 2008, NYSE Alternext relocated all equities trading conducted on its 86 Trinity Trading Systems to trading systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”). The Exchange’s

⁶ 15 U.S.C. 78f.

equity trading systems and facilities at 11 Wall Street (the “NYSE Alternext Trading Systems”) are operated by the NYSE on behalf of NYSE Alternext.⁷

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to NYSE Alternext, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems (the “Equities Rule filing”).⁸ The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and NYSE Alternext continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Similarly, NYSE Alternext will relocate all options trading conducted on the 86 Trinity Trading Systems to new facilities of NYSE Alternext to be located at 11 Wall Street, which facilities will utilize a trading system based on the options trading system used by NYSE Arca, Inc (“NYSE Arca”) (“Options Relocation,” and, together with the Equities Relocation, the “Relocations”). After the Options Relocation, no products will trade on 86 Trinity Trading Systems.

As set forth in more detail in the Merger filing, an 86 Trinity Permit holder is eligible to obtain an NYSE Alternext equities trading license or options trading permit (“ATP”) pursuant to an expedited “waive in” process up to the Options Relocation date. After the Equities

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

⁸ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106); Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10); and Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11).

Relocation, an 86 Trinity Permit entitles holders only to trade products other than those that have relocated to NYSE Alternext Trading Systems. As a result of the Equities Relocation, as well as the discontinuation of Exchange Traded Fund (“ETF”) and bond trading at 86 Trinity Place, 86 Trinity Permits currently only entitle holders to trade listed options on NYSE Alternext. After the Options Relocation, the 86 Trinity Permits will be cancelled.⁹ Stated otherwise, an 86 Trinity Permit may not be used to trade equities on NYSE Alternext Trading Systems and a trading license under Rule 300 – NYSE Alternext Equities must be obtained. Upon the Options Relocation, a former 86 Trinity Permit holder will need an ATP to trade options on NYSE Alternext Trading Systems and the 86 Trinity Permit will no longer entitle the holder to trade any products at NYSE Alternext.

NYSE Trading License Requirements

To trade at the Exchange, a broker dealer must be an NYSE member organization and obtain a trading license pursuant to NYSE Rule 300. Because the rules governing membership for NYSE Alternext Equities are identical to Exchange rules, pursuant to NYSE Rule 2.10, an NYSE Alternext member organization approved under Rule 2(b) – NYSE Alternext Equities is deemed approved as an Exchange member organization. If an 86 Trinity Permit holder seeks an equities trading license under Rule 300 –NYSE Alternext Equities, such 86 Trinity Permit holder is deemed approved under Rule 2(b) – NYSE Alternext Equities, and thus under NYSE Rule 2.10, is deemed approved as an NYSE member organization. If an 86 Trinity Permit holder does not apply for an equities trading license under Rule 300 – NYSE Alternext Equities, neither the NYSE or NYSE Alternext Equities member organization requirements are triggered.

⁹ 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).

Pursuant to Rule 300.10T –NYSE Alternext Equities, an NYSE Alternext member organization that applies for an equities trading license under Rule 300 – NYSE Alternext Equities has a six-month grace period within which to comply with NYSE Alternext Equities membership requirements. Similarly, NYSE Rule 300.10T provides a six-month grace period for those NYSE Alternext member organizations that are deemed approved as an NYSE member organization under NYSE Rule 2.10 and were a valid 86 Trinity Permit holder to comply with Exchange membership requirements.

As described in more detail in the rule filing adopting Rule 300.10T,¹⁰ the six-month grace period provides time for NYSE Alternext member organizations to comply with NYSE Rules 2 (defining the terms members and member organizations), 300-308 (governing the admission of members and member organizations), 311 (the formation and approval of member organizations), 312 (changes within member organizations), and 313 (submission of partnership articles and corporate documents) (collectively, the “NYSE Member Organization Rules”).

Among the differing requirements of the NYSE Member Organization Rules as compared to the Amex rules that governed membership at the Amex before the Merger, an Exchange member organization must be a member of the Financial Industry Regulatory Authority, Inc. (“FINRA”). In addition, unlike the Amex rules, NYSE Rule 313.20 requires member organizations to submit to the Exchange an opinion of counsel that a member corporation’s 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.

¹⁰ See Securities Exchange Act Release No. 58706 (Oct. 1, 2008), 73 FR 59019 (Oct. 8, 2008) (SR-NYSE-2008-70).

The current six-month grace period under Rule 300.10T begins to run from the date that an NYSE Alternext member organization receives its equities trading license in exchange for the equities portion of a valid 86 Trinity Permit. However, a subset of NYSE Alternext member organizations that have applied for a trading license are not FINRA members. As a result, such NYSE Alternext member organizations were not issued a trading license. Because these NYSE Alternext member organizations have not been issued a trading license, the grace period within which to comply with the NYSE Member Organization Rules has not been triggered.

Proposed Amendment to Rule 300.10T

To reflect the intent of the original adoption of Rule 300.10T, i.e., to provide a grace period for NYSE Alternext member organizations seeking to obtain a trading license to trade securities listed on the Exchange to comply with the NYSE Member Organization Rules, the Exchange proposes to amend Rule 300.10T to also provide for a six-month grace period for those NYSE Alternext member organizations that have applied for, but have not been issued a trading license.

As proposed, to be eligible for the grace period, an NYSE Alternext member organization must be a holder of a valid 86 Trinity Permit as of the date that it applied for an equities trading license. In other words, once the 86 Trinity Permits are cancelled, i.e., the Options Relocation date, an NYSE Alternext member organization would not be eligible for a Rule 300.10T grace period. The current rule requires that the NYSE Alternext member organization has been approved as an Exchange member organization. Because the trigger for Exchange membership is obtaining an NYSE Alternext equities trading license, the Exchange proposes to add that an NYSE Alternext member organization that seeks to become an Exchange member organization by applying for a trading license would also be eligible, so long as such NYSE Alternext

member organization held a valid 86 Trinity Permit at the time it applied for an equities trading license.

As proposed, if a member organization meets the amended eligibility threshold, it has six months from the earlier of either receiving the equity trading license (which is the current standard) or the cancellation of the 86 Trinity Permits (the Options Relocation date) within which to comply with the NYSE Membership Rules, including the FINRA requirement. By adding the cancellation of the 86 Trinity Permits as a trigger for the six-month grace period, the proposed rule provides those NYSE Alternext member organizations that applied for a trading license, but were not issued a trading license because they are not currently FINRA members, time to meet the NYSE Member Organization Rule requirements. This proposed amended rule conforms to the rule amendments proposed by NYSE Alternext in its companion filing.

As is currently part of the rule, if an NYSE Alternext member organization that has been issued a trading license, or which applied for a trading license, fails to meet the requirements of the NYSE Member Organization Rules by the close of the grace period applicable to that member organization, the Exchange would either revoke the member organization's approval to trade, if a trading license has already been issued, or not issue a trading license.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act¹¹ which requires the rules of an exchange 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

¹¹ 15 U.S.C. 78f(b)(5).

also is designed to support the principles of Section 11A(a)(1)¹² of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market.

Specifically, the Exchange already permits an NYSE Alternext member organization to be automatically deemed approved as an NYSE member organization. Moreover, the Exchange permitted NYSE Alternext member organizations with a valid 86 Trinity Permit to exchange such permit for both an NYSE Alternext and NYSE equity trading license. This filing would simply provide those eligible NYSE Alternext member organizations with a valid 86 Trinity Permit additional time to exchange their 86 Trinity Permit for an NYSE equity trading license and to comply with Exchange membership requirements without first without having to apply as a new member organization.

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

The Exchange does not believe that the proposed rule change will result in 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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

¹² 15 U.S.C. 78k-1(a)(1).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Options Relocation date is imminent and is currently scheduled for March 2, 2009, and the Exchange needs to immediately implement this rule change so that NYSE Alternext member organizations can meet the new rule requirements. For these reasons, the Commission believes that waiving the 30-day operative delay¹⁷ is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2009-19 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2009-19. 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-19 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).