

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59478; File No. SR-NYSEALTR-2009-19)

February 27, 2009

Self-Regulatory Organizations; NYSE Alternext US, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Schedule of Fees and Charges for Exchange Services

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 27, 2009, NYSE Alternext US, LLC (“NYSE Amex Options”, “NYSE Amex”, or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the self-regulatory organization. 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 its Schedule of Fees and Charges for Exchange Services. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’s principal office and at the Commission’s Public Reference Room.

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

In conjunction with the migration of the NYSE Amex Options trading floor from 86 Trinity Place to the NYSE facility at 11 Wall Street, NYSE Amex Options is proposing to introduce a new Schedule of Fees and Charges for Exchange Services ("Fee Schedule"). The new Fee Schedule will become operative on the first day of trading on the new NYSE Amex Options trading floor at 11 Wall Street, currently scheduled for March 2, 2009. The Exchange proposes deleting the current NYSE Amex Options Price List in its entirety and replacing it with the Fee Schedule. The proposed fees are generally lower than the current charges, and are allocated equitably to all similarly situated members. A more detailed description of the proposed changes follows.

ATP Trading Participant Rights

The Exchange proposes charging Floor Brokers, Order Routing firms and Clearing firms \$500.00 per month for trading rights on NYSE Amex Options. Prior to the merger with NYSE Euronext on October 1, 2008, participation charges on the American Stock Exchange ("Amex") were based on the cost of a seat membership or seat lease plus additional fees for electronic access and/or access to the trading floor. The Exchange proposes significant reductions to the previous charges for participation. Market Makers will be charged \$1,000.00 per month based on the maximum number of ATPs held by an ATP Holder during the calendar month. The Exchange also proposes charging \$125.00 per month for all registered floor personnel that do not

pay an ATP fee. Specialists, e-Specialists, and Directed Order Market Makers (“DOMM”) will be charged a monthly fee ranging from \$150.00 to \$3000.00 based on the average number of national daily customer contracts executed and prorated according to Specialist, e-Specialist and DOMM volumes in that issue.

#### Options Issue Transfer Fee

The Exchange proposes charging \$100.00 per issue charged to the Specialist that transfers an issue to another Specialist.

#### Options Orientation Fee

The Exchange proposes a \$500.00 Options Orientation Fee. This fee covers the full background investigation, disclosure review, and fingerprinting fee for each individual applicant, along with the administration and maintenance costs associated with the qualification exams.

#### Registration Fees

The Exchange proposes only presentation changes to the Registration Fees section of the Fee Schedule. All fees in this section are identical to the fees currently charged and posted on the NYSE Amex Options Price List. Registration fees will continue to be waived through June 30, 2009 for NYSE member organizations that automatically became member organizations of NYSE Alternext US by operation of NYSE Alternext Equities Rule 2 at the time of relocation of all NYSE Alternext equities trading to the to the NYSE trading facilities and systems located at 11 Wall Street.

#### DEA Fees

The Exchange proposes the following fees for firms for which the Exchange is the Designated Examining Authority (“DEA”). A \$1,000 monthly fee charged to clearing firms engaging in a public business. An exemption from this fee will be granted to any NYSE Amex

Options registered Floor Broker or Market Maker that effects at least 25% of all options transactions, as measured in contract volume, on any options trading facility of NYSE Alternext US, LLC. The Exchange proposes charging \$275.00 per quarter to firms not engaging in a public business, and \$250.00 annually per trader. An exemption from the \$250.00 annual fee per trader will be granted to any NYSE Amex Options registered Floor Broker or Market Maker that effects at least 25% of all options transactions, as measured in contract volume, on any options trading facility of NYSE Alternext US, LLC. The Exchange also proposes a new Regulatory Fee of \$100 charged annually for FOCUS filings to ATP Firms for which the Exchange is the DEA. Previously, the Exchange based its DEA fees on a complicated calculation that charged \$.00040 per dollar gross per quarterly or annual FOCUS report. The Exchange believes this new DEA fee structure significantly simplifies the existing fee structure.

Statutory Disqualification Fees

The Exchange proposes a \$2,000 fee for applications resulting in statutory disqualification proceedings.

Trade Related Charges

Options per contract transaction charges will reflect the following rate schedule:

| <u>Order Type</u>                             | <u>Rate Per Contract</u> |
|---|--------------------------|
| Specialists, eSpecialists                     | \$0.10                   |
| NYSE Amex Options Market Maker – Non Directed | \$0.17                   |
| NYSE Amex Options Market Maker – Directed     | \$0.15                   |
| Broker Dealer & Firm Electronic               | \$0.50                   |
| Broker Dealer & Firm Manual                   | \$0.26                   |
| Non BD Customer Electronic                    | \$0.00                   |

|                            |        |
|----------------------------|--------|
| Non BD Customer Manual     | \$0.00 |
| Firm Facilitation – Manual | \$0.15 |

The Firm Facilitation fee applies to any transaction involving a firm proprietary trading account, that has a customer of that same Firm on the contra side of the transaction.

At this time the Exchange will not charge a cancellation fee. The Exchange intends to charge a cancellation fee in the future via a separate rule filing.

The Exchange proposes a limit of fees on options strategy executions. A \$750 cap will be applied on transaction fees for strategy executions involving (a) reversals and conversions, (b) dividend spreads, (c) box spreads, (d) short stock interest spreads, and (e) merger spreads. The cap applies to each Strategy Execution executed on the same trading day in the same option class. Transaction fees for strategy executions are further capped at \$25,000.00 per month per initiating firm. All Royalty Fees associated with strategy executions on index and exchange traded funds will be passed through to trading participants on the strategy executions on a pro-rata basis. These Royalty Fees will not be included in the calculation of the \$750 per trade cap or the \$25,000 per month strategy fee cap.

The Exchange proposes a Marketing Charge of \$0.65 per contract side on transactions in non Penny Pilot issues where Market Makers trade against all electronic customer orders, and \$0.25 per contract side on transactions in Penny Pilot issues where Market Makers trade against all electronic customer orders. This fee is collected only on electronic customer orders that are executed against a market maker on the contra side. This fee represents a pass-through fee for payment for order flow. The Exchange collects the Marketing Fee from the ATP Holder and passes it through to the Specialist, e-Specialist, or Directed Market Maker for distribution to order flow providers.

The Exchange proposes Royalty Fees reflected in the following schedule:

|   |        |
|---|--------|
| MNX, NDX  | \$0.16 |
| Russell 2000 Index (RUT)  | \$0.15 |
| ISE FX - Foreign Currency Options<br>(BPX, CDD, EUI, YUK, AUX, SFC) | \$0.10 |
| All other premium products, ETFs                                    | \$0.00 |

Royalty Fees will be assessed on a per contract basis for firm, broker/dealer, and Market Maker transactions. Customer volumes will not be subject to any royalty fees, license fees or premium product fees of any type. These fees will not be assessed on the customer side of transactions. Royalty Fees apply to Linkage Orders except for Satisfaction Orders.

#### Floor and Equipment Fees

The Exchange proposes charging a Floor Broker Hand Held fee of \$450.00 per device per month. Hand Held devices are used by Floor Brokers in open outcry trading for order entry and order management.

The Exchange proposes charging a Floor Market Maker Podium Fee of \$90.00 per Podium per month for each Market Maker. A Podium is a table top space provided to a Market Maker on the floor.

The Exchange proposes a Floor Booth fee of \$150.00 per month. Floor Booths are designated space used by Floor Brokers. Previously, an annual fee of \$3,500.00 was charged for a Regular Floor Booth, \$4,500.00 for a Standard Floor Booth, \$6,000 for a Large Floor Booth, and \$7,000.00 for a Machine Floor Booth.

The Exchange proposes charging a Telephone Service Charge of \$0.16 on toll calls billed by vendor of less than \$0.69, and \$0.26 on toll calls of greater than or equal to \$0.69.

The Exchange proposes a Cellular Phone fee of \$20.00 per month plus the cost of the calling plan of the user's choice.

The Exchange proposes a Booth Telephone System Line Charge of \$33.33 per phone number per month, and a \$10.75 charge per month for a single line phone jack and data jack.

### Connectivity Charges

The Exchange proposes Transport Charges of \$150 per month per floor participant connection as required. This fee will be capped at \$500 per month per floor broker firm. The Transport Charge is designed to cover the cost to the Exchange for installing network cabling and rack space for outside data lines, along with the costs of maintaining the data center and hub for the Exchange floor.

The Exchange proposes a Login Fee of \$150 per month per Exchange sponsored broker dealer entry system. The Login Fee is designed to cover the cost per login charged by data vendors for access to the Floor Broker order capture system.

### Report Fees

The Exchange proposes a User Activity Extract Fee of \$0.0075 per trade for clearing data. This fee is in addition to any report development and set-up costs. The Exchange also proposes a \$500 per month Online Data Extract fee that allows unlimited access and downloads of clearing data.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Amex Options. Under this proposal, all similarly situated members and other

Exchange participants of NYSE Amex Options will be charged the same reasonable dues, fees and other charges.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and SEC Rule 19b-4(f)(2) thereunder in that it establishes or changes a due, fee, or other charge imposed only on members by the self-regulatory organization.

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.

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 Number SR-NYSEALTR-2009-19 on the subject line.



Paper comments:

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

All submissions should refer to File Number SR-NYSEALTR-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 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-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.<sup>4</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>4</sup> 17 CFR 200.30-3(a)(12).