

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59479; File No. SR-NYSE-2009-23)

March 2, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Adopting New NYSE Rule 6A and Amending Existing NYSE Rule 36 Concerning the Use of Personal Portable or Wireless Communication Devices and the Use or Possession of Wireless Trading Devices On and Off the Exchange Trading Floor

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 2, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 proposes to adopt new NYSE Rule 6A (“Trading Floor”) and amend existing NYSE Rule 36 (Communications Between Exchange and Members’ Offices) concerning (i) the use of personal portable or wireless communication devices, and (ii) the use or possession of wireless trading devices on and off the Exchange Trading Floor.

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 15 U.S.C. 78a.

³ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to adopt new NYSE Rule 6A (“Trading Floor”) and amend existing NYSE Rule 36 (Communications Between Exchange and Members’ Offices) concerning (i) the use of personal portable or wireless communication devices, and (ii) the use or possession of wireless trading devices on and off the Exchange Trading Floor.

Background

As described more fully in a related rule filing⁴, the Exchange’s parent company, 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 American Stock Exchange LLC (“Amex”), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC (“NYSE Alternext”), and continues to operate as a national securities exchange registered under Section 6 of the Act.⁵ The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, NYSE Alternext relocated all equities trading conducted on the NYSE Alternext legacy trading systems and facilities located at 86 Trinity Place, New York, New York (the “86 Trinity Trading Systems”), to trading systems

⁴ 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).

⁵ 15 U.S.C. 78f.

and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”).⁶ Similarly, effective March 2, 2009, NYSE Alternext will relocate all options trading conducted on the 86 Trinity Trading Systems to trading systems and facilities located at 11 Wall Street (the “Options Relocation”).⁷

Upon the Options Relocation, the NYSE Alternext Options Trading Floor and the Exchange’s Trading Floor will be located in physically separate, adjacent rooms within the 11 Wall Street building. Access to the Trading Floors is restricted at each entrance by turnstiles and only authorized visitors, members or member firm employees are permitted to enter. Both Trading Floors will be managed and overseen by employees of the Exchange’s and NYSE Alternext’s corporate parent, NYSE Euronext.

Proposed Rule Changes

In order to accommodate the Options Relocation and the presence of the NYSE Alternext Options Trading Floor adjacent to the Exchange’s Trading Floor, the Exchange proposes the following rule changes.

1. New NYSE Rule 6A (“Trading Floor”)

Under NYSE Rule 6, the term “Floor” is defined as “the trading Floor of the Exchange and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings, and also means the telephone facilities available in these locations.” In addition, the Exchange has issued interpretive guidance that the “Floor” also includes the areas outside the “Blue Line”

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

⁷ See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR-NYSEALTR-2008-14) (notice of filing for Options Relocation), as amended.

(member and member organization booths adjacent to the trading Floor) and “any area reserved primarily for members, including the members’ lounges and the members’ bathrooms.”⁸

The current definition of “Floor” under Rule 6 would, upon the Options Relocation, include the NYSE Alternext Options Trading Floor. This could lead to confusion under Exchange Rules when discussing the “Floor” and the “Trading Floor”. The Exchange therefore proposes to adopt a new Rule 6A to define the term “Trading Floor” to make it clear that, within the area of the “Floor” of the Exchange as technically defined by Rule 6, there are distinct, restricted-access areas where trading is conducted by the Exchange on the one hand, and its corporate affiliate NYSE Alternext on the other. Under the new proposed Rule 6A, the term “Trading Floor” means the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the “Main Room” and the “Garage.” The Exchange’s Trading Floor does not include the areas where NYSE Alternext-listed options are traded, commonly known as the “Blue Room” and the “Extended Blue Room”. For the purposes of the Exchange’s Rules, as well as this filing, these areas will be referred to as the “NYSE Alternext Options Trading Floor”.

By adopting this new Rule, the Exchange seeks to prevent any confusion that may arise under Exchange Rules and to provide a more accurate description of the physical areas of the Floor where trading is actually conducted. In addition, as described below, this new Rule would also make it easier for the Exchange to define areas where certain conduct is or is not permitted by its members and member firm employees.

⁸ See NYSE Information Memo 08-66 (December 22, 2008).

2. Use of Personal Portable or Wireless Communication Devices

NYSE Rule 36 currently prohibits, without prior Exchange approval, members and member organizations from establishing or maintaining any telephonic or electronic communication, including the usage of any portable or wireless communication devices (i.e. cellular phone, wireless pager, BlackBerry™, etc.), between the Floor and any other location. Under the Rule, Floor brokers and Registered Competitive Market Makers (“RCMMs”) may use Exchange authorized and issued portable phones on the Floor, subject to certain restrictions (see Rules 36.20 - .22).⁹ Designated Market Makers (DMMs) may not use any portable or wireless communication devices on the Floor although they may, subject to restriction, maintain at their posts telephone lines and wired or wireless devices that are registered with the Exchange (see Rule 36.30). The use of all other portable or wireless communication devices on the Floor is prohibited.¹⁰

Although it would be prohibited under the current framework of Rule 36, to eliminate any potential confusion arising from the Options Relocation, the Exchange proposes to include a provision in Rule 36.23 that expressly prohibits members and member firm employees from

⁹ All members and member firm employees who use an authorized portable phone must execute a written acknowledgement as to the usage of the phone and authorizing the Exchange to receive data and records related to incoming and outgoing calls. See NYSE Information Memos 08-40 (August 14, 2008) and 08-41 (August 14, 2008) (concerning the use of Exchange authorized and issued portable phones on the Floor).

¹⁰ Prior to the implementation of a pilot program in 2003, Rule 36 prohibited, inter alia, the use of portable or wireless communication devices on the Floor of the Exchange. In 2003, the Commission approved a six-month pilot program under NYSE Rule 36 for the use of portable phones by Floor brokers on the Floor of the Exchange, which was subsequently extended several times to June 30, 2008. See footnotes 5 through 7 in Securities Exchange Act Release No. 58068 (June 30, 2008), 73 FR 39363 (July 9, 2008) (SR-NYSE-2008-20). In 2006, the Exchange incorporated RCMMs into the pilot program. See id. footnotes 8 and 9. In July 2008 the Commission approved the Exchange’s proposed amendments to Rule 36, making the pilot program permanent. See id. (order approving the amendments to Rule 36).

using personal portable or wireless communications devices on the NYSE Alternext Options Trading Floor. However, those members and employees of member organizations that are also registered to trade options on NYSE Alternext will be permitted to use personal portable or wireless communications devices while on the NYSE Alternext Options Trading Floor in accordance with applicable NYSE Alternext Options rules and regulations.

The Exchange also proposes corresponding amendments to Rules 36.21 and .22 to provide that Floor brokers and RCMs may not use an Exchange authorized and provided portable phone used to trade equities while on the NYSE Alternext Options Trading Floor, and including other technical changes.

3. Use or Possession of Wireless Trading Devices

Currently, Exchange members and member firm employees are permitted to use their Exchange approved handheld trading devices throughout the Trading Floor of the Exchange.¹¹ Subject to certain exceptions, pursuant to Rules 70 and 117 Floor brokers are required to either cancel or transfer to another Floor broker their agency interest files if they leave the Crowd (as defined under Rule 70.30), and, unless transferred, any open orders will not be represented while the Floor broker is away from the Crowd.¹²

Upon the Options Relocation, the NYSE Alternext Options Trading Floor will be adjacent to the NYSE Trading Floor. Thus, in order to address concerns regarding improper information sharing between the Exchange's Trading Floor and the NYSE Alternext Options

¹¹ The Exchange's Wireless Communications Plan governing the use of wireless handheld trading devices was previously approved by the Commission. See Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR-NYSE-1995-22) and Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR-NYSE-1997-17).

¹² Rule 70.30 defines the "Crowd" as "[t]he rooms on the Exchange Floor that contain active posts/panels where Floor brokers are able to conduct business[.]" This is, essentially, the "Trading Floor" as defined in proposed Rule 6A.

Trading Floor, the Exchange proposes to adopt Rule 36.70 to prohibit Exchange members and member firm employees from (i) using or possessing any wireless trading device that may be used to view or enter orders into the Exchange's trading systems while on the NYSE Alternext Options Trading Floor, and (ii) using or possessing any wireless trading device that may be used to view or enter orders into the NYSE Alternext Options trading systems while on the Exchange's Trading Floor. These prohibitions would apply to any and all wireless trading devices, including devices issued by the Exchange or NYSE Alternext, as well as devices that are proprietary to a member, member organization or other entity.¹³

These proposed amendments would not change the current regulatory framework within which members and member firm employees may use their wireless trading devices. Members and member firm employees would still be limited to using Exchange approved wireless trading devices and would still be required to cancel or transfer their agency interest files in accordance with Rules 70 and 117 if they leave the Crowd/Trading Floor.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934¹⁴ (the "Act"), in that they are designed to prevent fraudulent and manipulative acts and practices, 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

¹³ Proposed Rule 36.70 is based on proposed NYSE Alternext Options Rules 902(g) and (h). See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR-NYSEALTR-2008-14), as amended. NYSE Alternext has proposed similar prohibitions for its Equities members. See SR-NYSEALTR 2009-21 (formally submitted March 2, 2009).

¹⁴ 15 U.S.C. 78f(b)(5).

interest. The proposed rule changes also support the principles of Section 11A(a)(1)¹⁵ of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes will permit the Exchange and NYSE Alternext Options members and member firm employees to, within the existing regulatory framework at the Exchange, efficiently and effectively conduct business on their respective Trading Floors and engage in personal communications while off the Trading Floors consistent with maintaining necessary distinctions between the two self-regulatory organizations. Moreover, the proposed rule changes will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floors of the Exchange and its affiliate NYSE Alternext.

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 has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder¹⁷ because the foregoing proposed rule: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date

¹⁵ 15 U.S.C. 78k-1(a)(1).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹⁸ The Exchange believes that this filing is non-controversial because it is consistent with the NYSE Alternext's filing implementing the Options Relocation,¹⁹ as well as the Exchange's current regulatory controls governing the use of personal portable or wireless communications devices²⁰ and wireless trading devices,²¹ which were approved by the Commission. Accordingly, the Exchange believes that these rule changes are eligible for immediately effective treatment under the Commission's Streamlining Order.²²

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing so that the proposed rule changes may become effective upon filing and operative on the date of the Options Relocation, currently scheduled for March 2, 2009. The Commission hereby grants the Exchange's request.²³ The Commission believes that such action is consistent with the protection of investors and the public interest because the Exchange's proposal would clarify the Exchange's policies governing the

¹⁸ In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹⁹ See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR-NYSEALTR-2008-14), as amended.

²⁰ See Securities Exchange Act Release No. 58068 (June 30, 2008), 73 FR 39363 (July 9, 2008) (SR-NYSE-2008-20).

²¹ See Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR-NYSE-1995-22) and Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR-NYSE-1997-17).

²² See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40143 [sic] (July 11, 2008) (concerning 17 CFR 200 and 241).

²³ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

use of personal portable or wireless communication devices as well as wireless trading devices. This clarification is necessitated by the Options Relocation.

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. Please include File Number SR-NYSE-2009-23 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2009-23. 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-2009-23 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.²⁴

Florence E. Harmon
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).