

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58824; File No. SR-NYSEALTR-2008-02)

October 21, 2008

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC to Amend NYSE Alternext Equities Rule 123D(4) to Expand that Rule's Trading Halt Condition to Cover All Structured Products

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 October 17, 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 proposes to amend NYSE Alternext Equities Rule 123D(4) to expand the application of the trading halt condition provided by that rule to include all NYSE Alternext listed structured products. The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange's Office of the Secretary, 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 received on the proposed rule change. The text of these statements may be examined at the

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

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

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.

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

1. Purpose

On September 30, 2008, NYSE Euronext (the parent company of two other exchanges -- New York Stock Exchange LLC (“NYSE”) and NYSE Arca, Inc.), completed its acquisition of the Exchange (the “Merger”). In connection with the Merger, 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 facilities and systems 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”). In anticipation of the Equities Relocation, the Exchange has adopted the NYSE’s trading rules as the “NYSE Alternext Equities Rules,” to be implemented at the time of the Equities Relocation.<sup>3</sup>

NYSE Euronext has made a business decision to discontinue the listing and trading of exchange traded funds (“ETFs”) and structured products on the Exchange at the time of the Equities Relocation and to encourage the issuers of those securities to transfer their listings to NYSE Arca. As such, the NYSE Alternext Equities Rules do not provide for the trading of ETFs and structured products and the NYSE Alternext Trading Systems will not be equipped for such trading. However, some of the issuers of ETFs and structured products may not have completed the transfer of their listed securities to NYSE Arca prior to the Equities Relocation. It would be

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<sup>3</sup> Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63).

prohibitively expensive to keep open the trading floor at 86 Trinity Place to facilitate the trading of a limited number of ETFs and structured products pending their transfer to NYSE Arca. To address this problem as it relates to ETFs, the Exchange included Rule 123D(4) in the NYSE Alternext Equities Rules. Rule 123D(4) provides for a non-regulatory trading halt condition to permit the halting of trading of ETFs on the Exchange to facilitate the closing of the 86 Trinity Place trading floor in connection with the Equities Relocation. Orders in ETFs subject to the trading halt condition are to be routed to NYSE Arca for execution.

Rule 123D(4) as adopted does not apply to structured products that remain listed on the Exchange at the time of the Equities Relocation. As the same problem arises in connection with the continued trading of structured products on the Exchange after the Equities Relocation as arises with ETFs, the Exchange proposes to extend the application of Rule 123D(4) to any structured products that remain listed at that time. In order for Rule 123D(4) to comprehensively apply to all ETFs and structured products, the Exchange proposes to extend its application to securities listed pursuant to Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants), or 107 (Other Securities) of the Exchange's Company Guide or pursuant to Exchange Rules 1000-AEMI and 1001 et seq. (Portfolio Depositary Receipts), 1000A-AEMI and 1001A et seq. (Index Fund Shares), 1000B et seq. (Managed Fund Shares), 1200-AEMI and 1201 et seq. (Trading of Trust Issued Receipts), 1200A-AEMI and 1201A et seq. (Commodity-Based Trust Shares), 1400 et seq. (Trading of Paired Trust Shares), 1500-AEMI and 1501 et seq. (Trading of Partnership Units), and 1600 et seq. (Trading of Trust Units).

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</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. In particular, the Exchange believes that the proposed amendment facilitates transactions in securities because it will make it easier for issuers of structured products listed on the Exchange to ensure the continuity of trading of their securities after the closing of the Exchange's trading floor at 86 Trinity Place and pending transfer of the listing of those securities to NYSE Arca.

### 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>5</sup>

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing, or such

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<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change is noncontroversial because it will make it easier for issuers of structured products listed on the Exchange to ensure the continuity of trading of their securities after the closing of the 86 Trinity Place trading floor and pending transfer of the listing of those securities to NYSE Arca. The Exchange believes that the proposed amendment to Rule 123D(4) does not raise any novel regulatory issues as it simply extends the trading halt condition to structured products under the same circumstances in which it applies to ETFs.

The Exchange provided the Commission with written 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 the filing of the proposed rule change as required by Rule 19b-4(f)(6).<sup>6</sup>

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:

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<sup>6</sup> 17 C.F.R. 240.19b-4(f)(6).

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-2008-02 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEALTR-2008-02. 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 the 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-2008-02 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>7</sup>

Florence E. Harmon  
Acting Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).