

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59006; File No. SR-NYSEALTR-2008-08)

November 24, 2008

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Managed Fund Share Options

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 November 19, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to revise Commentary .06 to Rule 915 to enable the listing and trading of options on Managed Fund Shares. 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 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 III 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 purpose of the proposed rule change is to revise Commentary .06 to NYSE Alternext Rule 915 to enable the listing and trading of options on managed fund shares (“Managed Fund Shares”) that are listed and traded on a national securities exchange and are considered to be an “NMS Stock” (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934 (the “Act”)).

Managed Fund Shares are represent an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity.<sup>3</sup> Unlike traditional exchange traded funds, Managed Fund Shares are actively managed. Managed Fund Shares, although, based upon a publicly disclosed portfolio of securities, each trade as a single exchange-listed equity security.

Accordingly, rules pertaining to the listing and trading of standard equity options will apply to Managed Fund Shares.

Listing Criteria

The Exchange will consider listing and trading options on Managed Fund Shares provided the Managed Fund Shares that meet (1) the criteria for underlying securities set forth in

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<sup>3</sup> See Securities Exchange Act Release No. 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008)(Amex File No. SR-Amex-2008-02)(order approving the listing and trading of Managed Fund Shares, generally, and the listing and trading specifically of shares of the Bear Stearns Current Yield Fund).

NYSE Alternext Rule 915(a)<sup>4</sup> and (b) and Commentary .01 to Rule 915<sup>5</sup> or (2) the Managed Fund Shares are available for creation and redemption each business day as set forth in Commentary .06(a)(ii) to Rule 915.

The Exchange proposes that Managed Fund Shares deemed appropriate for options trading represent an interest in an open-end management investment company or similar entity, as described below:

- Managed Fund Shares are securities that represents an interest in an Investment Company organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

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<sup>4</sup> See NYSE Alternext Rule 915(a) which states that the underlying securities shall be duly registered and be an "NMS Stock" as defined in Rule 600 of Regulation NMS under the Act.

<sup>5</sup> See Commentary .01(1) through (3) to NYSE Alternext Rule 915 which sets forth minimum requirements for the underlying security which include, but are not limited to, 7,000,000 underlying shares, 2,000 shareholders, and trading volume of 2,400,000 shares over the preceding twelve months.

For the purposes of Commentary .06(iv) to NYSE Alternext Rule 915, Managed Fund Shares are a class of exchange-traded fund shares that are actively managed as defined in NYSE Alternext Equities Rule 1000B(b)(1).<sup>6</sup>

Continued Listing Requirements

Options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and furthermore, the rules pertaining to position and exercise limits<sup>7</sup> or margin<sup>8</sup> shall apply. The current continuing or maintenance listing standards for options traded on NYSE Alternext will continue to apply.

The Exchange will utilize its existing surveillance procedures applicable to options on exchange traded funds (which will include Managed Fund Shares) to monitor trading. In addition, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Managed Fund Shares, including adequate comprehensive surveillance sharing agreements (“CSSA”) with markets trading in non-U.S. components<sup>9</sup>, as applicable. Also, the Exchange may obtain trading information via the

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<sup>6</sup> See supra note 3.

<sup>7</sup> Pursuant to NYSE Alternext Rule 904(a)(i), Managed Fund Shares are subject to the same position limits applicable to options on stocks and Exchange-Traded Fund Shares. NYSE Alternext Rule 905 stipulates that exercise limits for options on stocks and other securities, including Managed Fund Shares, shall be the same as the position limits applicable under NYSE Alternext Rule 904.

<sup>8</sup> See NYSE Alternext Equities Rule 462 regarding margin requirements.

<sup>9</sup> See Commentary .06(b) to Rule 915, the Exchange’s rule governing the applicable CSSA requirements for options on exchange-traded funds. We note that any non-U.S. component securities (including fixed-income) in an index or portfolio of securities on which the Fund Shares are based that are not subject to comprehensive surveillance agreements may in the aggregate represent an amount equal to 50% of the weight of the index or portfolio.

Intermarket Surveillance Group (“ISG”)<sup>10</sup> from other exchanges who are members or affiliates of the ISG. NYSE Alternext represents that these procedures will be adequate to properly monitor Exchange trading of options on these the securities and to deter and detect violations of Exchange rules.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange’s surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 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> A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

### III. 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-2008-08 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-2008-08. 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 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-2008-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission’s Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>13</sup> and, in particular, the requirements of Section 6 of the Act.<sup>14</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which requires, among other things, that the rules of a national securities exchange be designed 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.

Listing and Trading of Options on Managed Fund Shares

As set out above, the Exchange’s proposed rules include requirements regarding initial and continued listing standards, the creation/redemption process for Managed Fund Shares, and trading halts. Managed Fund Shares must be traded through a national securities exchange or through the facilities of a national securities association, and must be “NMS stock” as defined under Rule 600 of Regulation NMS.<sup>16</sup>

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<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f.

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

<sup>16</sup> 17 CFR 242.600(b)(47).

The Commission notes that, pursuant to Commentary .06(a) to NYSE Alternext Rule 915 and Commentary .07 to NYSE Alternext Rule 916, Managed Fund Shares will be subject to the initial and continuing eligibility standards for underlying securities provided in Alternext Rule 915 and 916, as applicable. In particular, to be options eligible, a Managed Fund Share must either meet the criteria and guidelines for underlying securities set forth in Commentary .01 to NYSE Alternext Rule 915, or alternately, the Managed Fund Share must be available for creation or redemption each business day in cash or in kind from the investment company, issuing trust, commodity pool or other entity at a price related to the NAV. In addition, the investment company, issuing trust, commodity pool or other entity shall provide that Managed Fund Shares may be created even though some or all of the securities and/or cash needed to be deposited have not been received by the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the Managed Fund Shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option as described in the prospectus of the Managed Fund Share.

To continue to be eligible to underlie options, the Managed Fund Share must remain an NMS stock listed on a national securities exchange. The Exchange will also consider the suspension of opening transactions in any series of options of the class covering Managed Fund Shares where the Managed Fund Share does not satisfy the requirements set out in Commentary .07 to NYSE Alternext Rule 916. These include: (1) in the case of options on Managed Fund Shares approved pursuant to paragraph (b) under Commentary .06 to NYSE Alternext Rule 915, compliance with paragraphs (1) through (7) of Commentary .01 to NYSE Alternext Rule 916; (2) following the initial twelve-month period, beginning upon the commencement of trading of

the Managed Fund Shares on a national securities exchange and being defined as an "NMS stock", there are fewer than 50 record and/or beneficial holders of such Managed Fund Shares for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments on which the Managed Fund Shares are based is no longer calculated or available. In addition, the Exchange retains discretion to suspend opening transactions in options on Managed Fund Shares where conditions make further dealings in such options inadvisable.

Furthermore, the Exchange represented that options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and that the rules pertaining to position and exercise limits<sup>17</sup> or margin<sup>18</sup> shall apply as well.

#### Surveillance

The Commission notes that the Exchange has represented that it will utilize its existing surveillance procedures applicable to options on exchange traded funds, which would include Managed Fund Shares, to monitor trading. In addition, the Exchange would implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Managed Fund Shares, including adequate comprehensive surveillance sharing agreements ("CSSA") with markets trading in non-U.S. components,<sup>19</sup> as applicable. Also, the Exchange

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<sup>17</sup> See NYSE Alternext Rules 904(a)(i) and 905.

<sup>18</sup> See NYSE Alternext Rule 462.

<sup>19</sup> See Commentary .06(b) to NYSE Alternext Rule 915, supra, note 9.

may obtain trading information via the Intermarket Surveillance Group (“ISG”)<sup>20</sup> from other exchanges who are members or affiliates of the ISG. The Exchange represented that it believes that these procedures will be adequate to properly monitor Exchange trading of options on these securities and to deter and detect violations of Exchange rules. This order is based on these representations.

#### Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission notes this proposed rule change is substantively identical to that of NYSE Arca, Inc. being concurrently approved today, which was published for a 21-day comment period and generated no comments.<sup>22</sup> The Commission does not believe that this proposal raise any new regulatory issues. Therefore, the Commission believes that accelerating approval of this proposal should benefit investors by permitting, without undue delay, options on Managed Fund Shares to trade on NYSE Alternext.

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<sup>20</sup> A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> See Exchange Act Release No. 58799 (October 16, 2008), 73 FR 63534 (October 24, 2008) (SR-NYSEArca-2008-108).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NYSEALTR-2008-08) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

Florence E. Harmon  
Acting Secretary

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<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).