

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59022; File No. SR-NYSEALTR-2008-10)

November 26, 2008

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Conform Its Rules With Those of the New York Stock Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 26, 2008, NYSE Alternext US LLC (the “Exchange” or “NYSE Alternext”) 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 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 certain NYSE Alternext Equities Rules to conform with amendments to certain NYSE Rules filed by the New York Stock Exchange LLC (“NYSE”), and also additional technical amendments.

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 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. The text of the proposed rule change is

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

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

available on the Exchange's web site, at the Exchange's principal office, and at the Commission's Public Reference Room.

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 amend certain NYSE Alternext Equities Rules to conform with amendments to certain NYSE Rules filed by the NYSE.

Background

As described more fully in a related rule filing, 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 Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC<sup>3</sup>, and will continue to operate as a national securities exchange registered under Section 6 of the Act.<sup>4</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, the Exchange will relocate all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York (the "86 Trinity Trading Systems"), to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's equity trading

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<sup>3</sup> 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).

<sup>4</sup> 15 U.S.C. 78f.

systems and facilities at 11 Wall Street (the “NYSE Alternext Trading Systems”) will be operated by the NYSE on behalf of the Exchange.<sup>5</sup>

Similarly, the Exchange will relocate the trading of certain debt securities currently conducted on the 86 Trinity Trading Systems to an automated bond trading system (the “Bonds Relocation”) that will be operated by the NYSE on behalf of the Exchange (“NYSE Alternext Bonds”). The Exchange will also relocate all options trading currently conducted on the 86 Trinity Trading Systems to new facilities of the Exchange to be located at 11 Wall Street, which will use a trading system based on the options trading system used by NYSE Arca, Inc. (“NYSE Arca”) (the “Options Relocation”).<sup>6</sup>

Post-Merger, all Exchange members and member organizations that were authorized to trade on the Exchange before the Merger will receive trading permits (referred to as “86 Trinity Permits”) that authorize continued trading on the 86 Trinity Trading Systems. Holders of the 86 Trinity Permits are eligible to apply for NYSE Alternext equities trading licenses or options trading permits upon the Equities or Options Relocation, as applicable.<sup>7</sup> In addition, pursuant to the Merger, all NYSE Alternext members and member organizations that apply for NYSE Alternext equities trading licenses are automatically waived in as NYSE members and member

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<sup>5</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

<sup>6</sup> See Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03) (together, approving the Bonds Relocation). The Exchange will submit a separate rule filing to adopt a new rule set to govern NYSE Alternext options trading following the Options Relocation.

<sup>7</sup> See Securities Exchange Act Release No. 58706 (October 1, 2008), 73 FR 59019 (October 8, 2008) (SR-NYSE-2008-70) (describing and approving membership rule changes related to the Merger); Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

organizations.<sup>8</sup> Similarly, all NYSE members and member organizations are automatically waived in as NYSE Alternext members and member organizations.<sup>9</sup>

#### The NYSE Alternext Equities Rules

In order to implement the Equities and Bonds Relocations, the Exchange adopted NYSE Rules 1-1004 as the NYSE Alternext Equities Rules to govern all equities trading on the NYSE Alternext Trading Systems and NYSE Alternext Bonds. Because the NYSE Alternext Trading Systems and NYSE Alternext Bonds will be operated by the NYSE on behalf of the Exchange, the NYSE Alternext Equities Rules are substantially identical to the existing NYSE Rules, subject to such changes as were necessary to apply the rules to the Exchange. The NYSE Alternext Equities Rules are based on the NYSE Rules in their form as of July 18, 2008. NYSE Alternext Equities Rule 86, which is the principal rule governing trading on NYSE Alternext Bonds, is based on NYSE Rule 86 in the form it existed as of October 1, 2008.<sup>10</sup>

#### Proposed Amendments to NYSE Alternext Equities Rules

The NYSE Alternext Equities Rules will become operative as of the date of the Equities and Bonds Relocations. In the interim period since the filing and approval of the Equities Relocation, the NYSE has filed rule changes to some of its rules governing trading on its trading systems that would also impact trading on the NYSE Alternext Trading Systems and NYSE

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<sup>8</sup> See NYSE Rules 2.10 and 2.20. NYSE Alternext members and member organizations will have a six-month grace period within which to meet NYSE and NYSE Alternext Equities membership requirements. See NYSE Rule 300.10T and NYSE Alternext Equities Rule 300.10T.

<sup>9</sup> See NYSE Alternext Equities Rules 2.10 and .20.

<sup>10</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation). See also Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03) (together, approving the Bonds Relocation).

Alternext Bonds. The Exchange therefore proposes to amend the NYSE Alternext Equities Rules to conform to these rule changes, subject to such minor, technical changes as are necessary to apply the amended rules to the Exchange. Unless specifically noted, NYSE Alternext is proposing no substantive changes in this filing from the rule text approved for NYSE by the Commission or adopted pursuant to an immediately effective filing. The changes are summarized broadly below:

- Revisions and amendments to various NYSE Alternext and NYSE Alternext Equities rules necessary to implement the “New Market Model” adopted by the NYSE (“NMM”);<sup>11</sup>
- Revision of Rule 98 – NYSE Alternext Equities and amendments to related rules (including the deletion of Rule 102 – NYSE Alternext Equities) concerning the structure

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<sup>11</sup> In adopting what it calls the “New Market Model”, the NYSE proposed a number of changes to its marketplace, including (i) providing market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) creating a Designated Market Maker (“DMM”) and phasing out the NYSE specialist; and (iii) enhancing the speed of execution through technological enhancements and a reduction in message traffic between NYSE trading systems and its DMMs. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (adopting NMM). See also Securities Exchange Act Release No. 58971 (November 17, 2008), 73 FR 71070 (November 24, 2008) (SR-NYSE-2008-115) (amendments thereto).

With the exception of the DMM net capital requirements (addressed separately in this filing), NYSE Alternext is not proposing any additional substantive changes in this filing different from the rule text approved for NYSE by the Commission or adopted pursuant to an immediately effective filing, although it is including corresponding technical rule changes to change references to “specialists” or internal cross-references that were incorrect or not included in the original NYSE filings (see Rules 2A(c)-, 15(b)-, 70.25-, 92(d)-, 98(c)-, 123(g)-, 123E(f)-, 124(f)-, 325-, 431-, 440G.10- and 900- (chart of rules) – NYSE Alternext Equities).

and operation of member organization specialist (now known as “DMMs”) units and risk management;<sup>12</sup>

- Revisions to Rules 103A – NYSE Alternext Equities and 103B – NYSE Alternext Equities, Non-NYSE Alternext Equities Rule 476A, and amendments to related rules (including the deletion of Rule 106 – NYSE Alternext Equities) concerning the allocation of registered securities to DMMs;<sup>13</sup>

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<sup>12</sup> The NYSE revised the regulatory requirements under its Rule 98 concerning how member organizations structure their DMM operations and manage their risks, including: (i) redefining the persons to whom NYSE Rule 98 would apply; (ii) allowing DMM operations to be integrated into better capitalized member organizations; (iii) permitting a DMM unit to share nontrading-related services with its parent member organization or approved persons; and (iv) providing flexibility to member organizations and their approved persons in how to conduct risk management of DMM operations. In addition the NYSE also made conforming amendments to other NYSE rules that rely on NYSE Rule 98 exemptions for approved persons. See Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR-NYSE-2008-45).

NYSE Alternext is proposing no substantive changes in this filing from the rule text approved for NYSE by the Commission or adopted pursuant to an immediately effective filing, except to the extent that proposed Rule 98 (Former) – NYSE Alternext Equities is based on legacy Amex Rule 193. At the time NYSE Alternext Equities Rules were initially adopted, the Exchange adopted legacy Amex Rule 193 in place of NYSE Rules 98 and 98A. See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63). Thus, the proposed amendments to create Rule 98 (Former) – NYSE Alternext Equities differ in form, though not in substance, from those proposed to create NYSE Rule 98 (Former).

<sup>13</sup> The NYSE modified its Allocation Policy to (i) discontinue the use of the Specialist Performance Evaluation Questionnaire (“SPEQ”), (ii) establish a single quantifiable objective measure to determine a DMM unit’s eligibility to participate in the allocation process, and (iii) provide issuers with more choice in the selection of their DMM unit. As part of these modifications, the NYSE eliminated its Allocation Committee as the overseer of the allocation process and the Allocation Panel from which the Allocation Committee members were selected. The NYSE also eliminated its Market Performance Committee as the entity that responsible for reallocating securities. See Securities Exchange Act Release No. 58857 (October 24, 2008), 73 FR 65435 (November 3, 2008) (SR-NYSE-2008-52). The NYSE filing specified that at least three DMM units (out of six) shall be presented for selection by issuers. Because NYSE Alternext has fewer DMM units (four, instead of six), NYSE Alternext is proposing to change the number of DMM units presented to two. If three of the four firms are not eligible to receive new allocations under the Allocation rules (e.g., if they have not complied with the mandatory

- Amendments to various member firm conduct rules that are “Common Rules” shared with NYSE and the Financial Industry Regulatory Authority (“FINRA”) to conform with changes made by FINRA to its versions of these rules;<sup>14</sup>

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quoting requirements for new allocations), then the remaining eligible firm shall be required to apply for the allocation.

In addition, the Exchange proposes to modify Sections IV(A) and VI(F) of Rule 103B – NYSE Alternext Equities to eliminate cross-references to other NYSE Rules that are inapplicable to NYSE Alternext. Specifically, in Section IV(A), the Exchange removed cross-references to Rule 806.01 of the NYSE Listed Company Manual, which concerns the reallocation of a security at the issuer’s request. The Exchange instead proposes to cross-reference and add supplementary Rule 103B.10 – NYSE Alternext Equities, which will track NYSE Listed Company Manual Rule 806.01. The NYSE Rule was adopted as immediately effective. See Securities Exchange Act Release No. 57232 (January 30, 2008), 73 FR 6755 (February 5, 2008) (SR-NYSE-2008-08). In Section VI(F) the Exchange proposes to change the cross-reference to Rule 102 of the NYSE Listed Company Manual to Section 101 of the NYSE Alternext Company Guide.

<sup>14</sup> The amendments made by FINRA (and NYSE) include: (i) replacing the term “allied member” with the newly defined category of “principal executive”; (ii) repositioning and consolidating all “Buy-In” requirements and procedures (see Rules 283, 285-290 – NYSE Alternext Equities) into one rule (Rule 282 – NYSE Alternext Equities); (iii) moving certain provisions of Common Rules to other Common Rules; (iv) deleting Common Rules that are obsolete or no longer applicable; (v) eliminating certain provisions of Common Rules that do not have a corresponding NASD equivalent and therefore are unnecessary; (vi) amendments to further harmonize certain NYSE and NASD Rules; (vii) deleting Common Rules that are substantively duplicative of existing NASD Rules and procedures; (viii) limiting application of Common Rule 345(a) to securities lending representatives and supervisors only; and (ix) making corresponding technical changes to other rules as needed. See Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR-NYSE-2008-80).

NYSE Alternext is not proposing any substantive changes in this filing different from the rule text approved for NYSE by the Commission or adopted pursuant to an immediately effective filing, although it is including corresponding technical changes to other rules not included in the original FINRA filing since they are not Common Rules subject to FINRA’s review (see Rules 17, 22, 25, 91, 93, 96, 99 (Former), 104T, 105, 112, 113 (Former), 122-123, 123G, 304-304A, 308-309, 410A, 422, 456-460 – NYSE Alternext Equities and Non-NYSE Alternext Equities Rules 475-476A). In addition, FINRA did not make corresponding amendments to NYSE Rules 344 and 350 even though they are Common Rules. NYSE Alternext has included its version of these rules in its amendments.

- Amendments to Rule 48 – NYSE Alternext Equities concerning extremely volatile market conditions and closing procedures;<sup>15</sup>
- Adoption of Rule 123B.30 – NYSE Alternext Equities to provide for a standard sponsored access provision for the Exchange;<sup>16</sup>
- Amendments to Rule 123D – NYSE Alternext Equities regarding the elimination of the provision governing sub-penny trading halts;<sup>17</sup>
- Modification of Rule 1000 – NYSE Alternext Equities to change the Liquidity Replenishment Point (“LRP”) values;<sup>18</sup>

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<sup>15</sup> The NYSE amended its Rule 48 to provide it with the ability to suspend certain requirements at the closing when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close. See Securities Exchange Act Release No. 58743 (October 7, 2008), 73 FR 60742 (October 14, 2008) (SR-NYSE-2008-102).

<sup>16</sup> See Securities Exchange Release No. 58429 (August 27, 2008), 73 FR 51676 (September 4, 2008) (SR-NYSE-2008-71) and Securities Exchange Act Release No. 58758 (October 8, 2008), 73 FR 62352 (October 20, 2008) (SR-NYSE-2008-100).

<sup>17</sup> At the time Regulation NMS was originally implemented, the NYSE’s trading systems were not able to accommodate sub-penny executions on orders routed to better-priced protected quotations and could not recognize a quote disseminated by another market center if such quote had a sub-penny component. To prevent its systems from inadvertently trading through better protected quotations, the NYSE adopted Rule 123D(3), which provided that trading would be halted in any security whose price was about to fall below \$1.00 and to route any subsequent orders received for that security to NYSE Arca, Inc. The NYSE now has the technical capability to recognize protected quotations with a sub-penny component in its round-lot market and to accommodate away market executions in sub-pennies in compliance with Regulation NMS and so it removed Rule 123D(3). See Securities Exchange Act Release No. 58936 (November 13, 2008), 73 FR 69704 (November 19, 2008) (SR-NYSE-2008-117).

<sup>18</sup> The NYSE amended its Rule 1000 to double the current LRP ranges in order to limit the number of times that an LRP is reached and the total number of times during the trading day that automatic execution is suspended as a result of an LRP being triggered. See Securities Exchange Act Release No. 58629 (September 24, 2008), 73 FR 57183 (October 1, 2008) (SR-NYSE-2008-85).



- Amendments to Rule 431 – NYSE Alternext Equities to codify the portfolio margin program set forth in paragraph (g) regarding (i) monitoring concentrated equity positions and (ii) timing of day trading margin calls;<sup>19</sup>
- Adoption of an operative date of March 31, 2009, for Rule 92(c)(3) – Alternext Equities, to correspond with the operative date of NYSE Rule 92(c)(3);<sup>20</sup> and
- Technical amendments to Rule 17 – NYSE Alternext Equities.<sup>21</sup>

As noted in footnote 11, NYSE Alternext is retaining the net capital requirements it adopted with the NYSE Alternext Equities Rules (see current Rule 104.20, .23 and .24 – NYSE Alternext Equities) but it will move them to new Rules 103.20 and .21 – NYSE Alternext Equities to track the rule organization adopted by the NYSE. The Exchange is also adding provisions in 103.20(a)(i) and (ii) to provide that any Structured Products that are not subject to a trading halt pursuant to Rule 123D(4) – NYSE Alternext Equities as of the date of the Equities

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<sup>19</sup> The NYSE amended its Common Rule 431 to conform with amendments made by FINRA to its version of the rule. See Securities Exchange Act Release Nos. 58261 and 58269 (July 30, 2008), 73 FR 46114 and 46116 (August 7, 2008) (SR-NYSE-2008-65 and -66).

<sup>20</sup> In July 2007, in connection with the on-going harmonization of NYSE Rule 92 with FINRA’s Manning Rule (NASD Rule 2111 and IM-2110-2), the NYSE amended Rule 92(c)(3) to require member firms to submit order execution reports to the NYSE’s Front End Systemic Capture (“FESC”) database when executing riskless principal transactions. Because the rule change has required both the NYSE and member firms to make certain technological changes to their trading and order management systems, and to provide additional time for NYSE and FINRA to fully harmonize NYSE Rule 92 and FINRA’s Manning Rule, the NYSE proposed delaying the operative date for implementation of NYSE Rule 92(c)(3) until March 31, 2009. See Securities Exchange Act Release No. 57682 (April 17, 2008), 73 FR 22193 (April 24, 2008) (SR-NYSE-2008-29).

<sup>21</sup> See Securities Exchange Act Release No. 58137 (July 10, 2008), 73 FR 41145 (July 17, 2008) (SR-NYSE-2008-55).

Relocation will be eligible to be allocated to a DMM if necessary until the security is halted and traded on NYSE Arca in accordance with that rule.<sup>22</sup>

The Exchange is also adding provisions (vii) through (x) to 103.20(a) – NYSE Alternext Equities. These provisions address DMM net capital issues, including the use of financing to meet net capital requirements, the requirement that a DMM meet the net capital requirements without including an investment account and the so-called “early warning” requirements. These provisions were supposed to have been included in the original NYSE Alternext Equities filing but were mistakenly not included.<sup>23</sup>

In addition, the Exchange proposes to amend Rule 440H – NYSE Alternext Equities concerning accumulated Section 31 fees held by the Exchange and its members and member organizations. In May 2008, the Commission approved Amex’s (the Exchange’s predecessor) adoption of Commentary .01 to Rule 393, which allows firms, on a one-time-only basis, to voluntarily remit to the Exchange historically accumulated Section 31 funds, which may be used to pay the Exchange’s current Section 31 fees. In addition, a member or member organization may designate all or part of the accumulated fees held by the Exchange and allocated to such member to be used by the Exchange in accordance with the Rule. To the extent the payment of these historically accumulated funds or Exchange accumulated funds is in excess of the Section

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<sup>22</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation). The new language included in 103.20(a)(i) and (ii) was approved in the filing for the NMM submitted by the NYSE. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (adopting NMM).

<sup>23</sup> See Non-NYSE Alternext Equities Rule 171, Commentaries .01, .03, .06 and .07. These provisions were filed and approved by the Commission. See, e.g., Securities Exchange Act Release No. 47703 (April 18, 2003), 68 FR 22425 (April 28, 2003) (SR-AMEX-2002-104).

31 fees due the Commission from the Exchange, such surplus shall be used by the Exchange to offset regulatory costs. The Exchange recently filed to extend the provisions of Commentary .01 to Rule 393 until January 13, 2009, and proposes amendments to Rule 440H-NYSE Alternext Equities to accommodate the extension and to ensure its applicability to Exchange members and member organizations operating under the NYSE Alternext Equities Rules after the Equities Relocation.<sup>24</sup>

The Exchange also proposes to adopt a new Rule 128 – NYSE Alternext Equities concerning clearly erroneous executions, which will be operative until January 9, 2009. As described in the related rule filing, at the time the Exchange adopted the NYSE Alternext Equities Rules, it did not import the NYSE’s rule governing clearly erroneous executions (NYSE Rule 128) because it was under review and was anticipated that it would be amended prior to the date of the Equities Relocation. However, that has not happened and the Exchange now proposes to delete the current Rule 128 – NYSE Alternext Equities and adopt a new Rule 128 – NYSE Alternext Equities that is based on the NYSE’s current Rule 128. In this way the two exchanges will have the same clearly erroneous execution procedures that are operative during the same time frame.<sup>25</sup>

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<sup>24</sup> See Securities Exchange Act Release No. 58933 (November 12, 2008), 73 FR 69712 (November 19, 2008) (SR-NYSEALT-2008-05)(proposed extension of Commentary .01 to Rule 393 concerning accumulated Section 31 fees). See also Securities Exchange Act Release No. 58108 (July 7, 2008), 73 FR 40413 (July 14, 2008) (SR-NYSE-2007-64)(approving similar amendments to NYSE Rule 440H).

<sup>25</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation). The NYSE’s current version of its Rule 128 was approved by the Commission in February 2008 and is operative until January 9, 2009. See Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR-NYSE-2008-09) (adopting NYSE Rule 128); Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR-NYSE-2008-99) (extending the sunset provision of the rule).

Finally, the Exchange proposes additional technical amendments to Rules 51-, 55-, 61-, 72-, 79A-, 86- and 123D - NYSE Alternext Equities to reflect proper internal cross-references to other NYSE Alternext Equities rules and to Rules 342.16 - .19 – NYSE Alternext Equities to add text inadvertently left out of the NYSE Alternext Equities rule set when it was adopted.<sup>26</sup>

### Operative Date

The Exchange proposes that the operative date of the proposed rule changes be the date of the Equities and Bonds Relocations, currently scheduled for December 1, 2008.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>27</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>28</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 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 changes also support the principles of Section 11A(a)(1)<sup>29</sup> 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 are necessary and appropriate to reflect the recent changes to the NYSE Alternext market, the NYSE Alternext Trading Systems and the member conduct rules that govern NYSE Alternext members and member organizations

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<sup>26</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78k-1(a)(1).

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 Exchange believes that this proposal qualifies for immediate effectiveness upon filing as a non-controversial rule change pursuant to Section 19(b)(3)(A) of the Act<sup>30</sup> and Rule 19b-4(f)(6) thereunder.<sup>31</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) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.<sup>32</sup>

NYSE Alternext has requested that the Commission waive the 30-day operative delay and designate the proposal as operative as of December 1, 2008. NYSE Alternext notes that it has previously announced its intention to relocate its equities and bonds trading from the 86 Trinity Trading Systems to the NYSE Alternext Trading Systems and NYSE Alternext Bonds on December 1, 2008, and has previously advised the Commission staff of its intention to

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4(f)(6).

<sup>32</sup> 17 C.F.R. 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. The Exchange has satisfied this requirement.

harmonize the rules between NYSE and NYSE Alternext in order to facilitate this transition. NYSE Alternext further notes that relocating the trading is a complex operation that involves numerous simultaneous actions. NYSE Alternext argues that the 30-day waiting period would make it impossible for NYSE Alternext to meet the December 1, 2008 relocation deadline, which would adversely affect the competitiveness of the Exchange and its members, and would impair the ability to investors and public customers of those members to effectively trade their securities.

Moreover, the Exchange believes that this filing is non-controversial because it raises no novel issues and is consistent with the Commission's prior approvals of the rule filings upon which this filing is modeled.<sup>33</sup> As noted above, the proposed rule change is based on rule text that was previously approved by the Commission for NYSE or previously submitted by NYSE for immediate effectiveness. Except as specifically noted, and subject to such minor technical changes as are necessary to apply the rules to the Exchange, NYSE Alternext is adopting the NYSE rules in the form that they were approved by the Commission for NYSE.

The Commission hereby grants the Exchange's request<sup>34</sup> and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The rules being adopted through this filing are based on previously established rules of NYSE (or in a few cases Amex), and they do not appear to raise any novel or significant issues. Furthermore, waiving the operative delay will facilitate the Equities and Bonds Relocations, which are scheduled to occur on December 1, 2008. Therefore, the Commission designates the proposal operative as of December 1, 2008.

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<sup>33</sup> See supra footnotes 12-27 for a list of all relevant filings.

<sup>34</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEALTR-2008-10 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-2008-10. 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-2008-10 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>35</sup>

Florence E. Harmon  
Acting Secretary

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<sup>35</sup> 17 CFR 200.30-3(a)(12).