

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59170; File No. SR-NYSEALTR-2008-19)

December 29, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC to Amend Certain Regulatory Fees Applicable to its Member Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on December 24, 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, 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

NYSE Alternext proposes to (i) continue to waive registered representative fees for New York Stock Exchange (“NYSE”) member organizations that automatically became NYSE Alternext member organizations by operation of NYSE Alternext Equities Rule 2, and (ii) revise the examination fees payable by member organizations for which the Exchange is the Designated Examining Authority (“DEA”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 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

In connection with the acquisition of the American Stock Exchange (renamed NYSE Alternext US at the time of the acquisition) by NYSE Euronext, all equities trading conducted on or through the American Stock Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, was moved on December 1, 2008, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the "NYSE Alternext Trading Systems"), which are operated by the NYSE on behalf of NYSE Alternext (the "Equities Relocation"). At the time of the Equities Relocation, by operation of NYSE Alternext Equities Rule 2, all NYSE member organizations automatically became NYSE Alternext member organizations. By acquiring NYSE Alternext membership, the NYSE member organizations that were not previously NYSE Alternext members would become subject to the NYSE Alternext registration fees for all of their employees who serve as registered representatives. As these NYSE member organizations that had no NYSE Alternext business prior to the Equities Relocation became NYSE Alternext members without any action on their own part, NYSE Alternext waived the application of its registered representative fees to those firms for the month

of December. At that time, NYSE Alternext stated that it expected to submit a filing to adopt a revised registered representative fee commencing January 1, 2009.³ NYSE Alternext has not yet determined how best to revise its registration fees in light of the accession to NYSE Alternext membership of these NYSE member organizations. As such, NYSE Alternext believes that it is appropriate to continue for the present its waiver of registered representative fees payable by member organizations which acquired their membership automatically in connection with the Equities Relocation. NYSE Alternext will submit a filing to the Commission at such time as it wishes to end this waiver. In any event, the current waiver will end by its terms on June 30, 2009, so NYSE Alternext must submit a filing on or prior to that date to either adopt a new fee approach or to further extend the term of the waiver.

NYSE Alternext also proposes to revise its fees payable by member organizations for which the Exchange is the DEA. Currently, this fee is set at \$0.00040 per dollar of gross revenue subject reported on FOCUS Report Form X-17A-5, subject to a minimum quarterly payment of (i) \$250 for member organizations not in engaged in public business and (ii) \$750 for member organizations that are engaged in public business. Going forward, for purposes of establishing minimum DEA fees, the Exchange will no longer distinguish among member organizations on the basis of whether they are engaged in public business and will instead categorize them based on whether or not they are clearing firms. The minimum fee for non-clearing firms will be a monthly fee of \$275 (\$825 per quarter) and the minimum fee for clearing firms will be a monthly fee of \$1,000 (\$3,000 per quarter). The Exchange is also eliminating the provision that member organizations operating additional entities subject to the minimum fees are subject to 50% of these minimum fees for each additional entity. As a consequence, these

³ See Exchange Act Release 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR-NYSEALTR-2008-09).

additional entities will be subject to the full minimum fee going forward. The Exchange is not making any change to the \$0.00040 per dollar of gross revenue charge. The revisions proposed in this filing make the Exchange's DEA fees identical to those charged by the Chicago Board Options Exchange ("CBOE") and more reflective of the costs the Exchange incurs in connection with its role as DEA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6⁴ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as (i) the same DEA fees will be charged to all member organizations and (ii) the waiver of registered representative fees applies only to firms that became Alternext member organizations automatically without any action on their part and in spite of the fact that they did not conduct any Alternext business.

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.

⁴ 15 U.S.C. 78f.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁵ of the Act and Rule 19b-4(f)(2)⁶ thereunder.

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-NYSEALTR-2008-19 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-2008-19. 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

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

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-2008-19 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.⁷

Florence E. Harmon
Acting Secretary

⁷ 17 CFR 200.30-3(a)(12).