

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59468; File No. SR-NYSEALTR-2009-16)

February 27, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Amending Rule 300.10T – NYSE Alternext Equities to Provide a Grace Period Under that Rule for Member Organizations that have Applied for a Trading License to Comply with Certain Exchange Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 24, 2009, NYSE Alternext US, LLC (“NYSE Alternext” or the “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. NYSE Alternext has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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 Rule 300.10T – NYSE Alternext Equities to provide a grace period under that rule for member organizations that have applied for a trading license to comply with certain Exchange rules.

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 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 Exchange proposes to amend Rule 300.10T – NYSE Alternext Equities (“Rule 300.10T”) to provide for a six-month grace period for member organizations that have applied for, but not received a trading license, to comply with certain Exchange rules. The Exchange intended Rule 300.10T to provide holders of a valid permit to trade on the NYSE Alternext systems and facilities located at 86 Trinity Place (“86 Trinity Permit”) seeking to trade equities at the Exchange with a grace period to comply with the Exchange membership requirements under the NYSE Alternext Equities rules. The proposed amendment seeks to clarify the rule to reflect the original purpose of the provision.⁴

Background of Merger

As described more fully in a related rule filing (the “Merger filing”),⁵ 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 and was renamed NYSE Alternext US LLC (“NYSE Alternext” or

⁴ The New York Stock Exchange LLC (“NYSE”) is proposing conforming amendments to its Rule 300.10T. Because NYSE Alternext’s perspective of its member organizations differs from those of the NYSE, the rule text proposed by the NYSE is not identical to that proposed by NYSE Alternext, but is the same in substance. See SR-NYSE-2009-19 (formally submitted on February 24, 2009).

⁵ 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).

the “Exchange”), and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the “Act”).⁶ The effective date of the Merger was October 1, 2008.

As described more fully in the Merger filing, in connection with the Mergers, Amex demutualized by separating all trading rights from equity ownership in Amex. As part of the demutualization, all trading rights appurtenant to the Amex Regular Members’ memberships or Options Principal Members’ (“OPM”) memberships were cancelled. Immediately following the closing of the Mergers, those persons and entities that were authorized to trade on the Amex before the closing of the Mergers were deemed to have satisfied applicable qualification requirements necessary to trade in NYSE Alternext’s demutualized marketplace and were issued 86 Trinity Permits at no cost. The 86 Trinity Permit authorizes owners, lessees or nominees of Amex Regular Members or OPMs, Amex limited trading permit holders, and Amex associate members who were authorized to trade on the Amex immediately before the Mergers to continue to trade at NYSE Alternext’s systems and facilities at 86 Trinity Place, New York, New York (the “86 Trinity Trading Systems”). NYSE Alternext recognizes the former Amex (i) owners, lessees, or nominees of Regular Members or OPMs, (ii) limited trading permit holders, and (iii) associate members as either NYSE Alternext member organizations or members, as applicable.

In connection with the Merger, on December 1, 2008, NYSE Alternext relocated all equities trading conducted on its 86 Trinity Trading Systems to trading systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”). The Exchange’s

⁶ 15 U.S.C. 78f.

equity trading systems and facilities at 11 Wall Street (the “NYSE Alternext Trading Systems”) are operated by the NYSE on behalf of NYSE Alternext.⁷

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems (the “Equities Rule filing”).⁸ The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Similarly, NYSE Alternext will relocate all options trading conducted on the 86 Trinity Trading Systems to new facilities of NYSE Alternext to be located at 11 Wall Street, which facilities will utilize a trading system based on the options trading system used by NYSE Arca, Inc (“NYSE Arca”) (“Options Relocation,” and, together with the Equities Relocation, the “Relocations”).

NYSE Alternext Equities Trading License Requirements

To trade equities on NYSE Alternext Trading Systems, a member organization must meet NYSE Alternext membership qualifications and obtain a trading license pursuant to Rule 300 – NYSE Alternext Equities. As set forth in more detail in the Merger filing, an 86 Trinity Permit

⁷ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

⁸ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106); Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10); and Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11).

holder is eligible to obtain an NYSE Alternext equities trading license or options trading permit (“ATP”) pursuant to an expedited “waive in” process up to the Options Relocation date. After the Equities Relocation, an 86 Trinity Permit entitles holders only to trade products other than those that have relocated to NYSE Alternext Trading Systems. As a result of the Equities Relocation, as well as the discontinuation of Exchange Traded Fund (“ETF”) and bond trading at 86 Trinity Place, 86 Trinity Permits currently only entitle holders to trade listed options on NYSE Alternext. After the Options Relocation, the 86 Trinity Permits will be cancelled.⁹ Stated otherwise, an 86 Trinity Permit may not be used to trade equities on NYSE Alternext Trading Systems and a trading license under Rule 300 – NYSE Alternext Equities must be obtained. Upon the Options Relocation, a former 86 Trinity Permit holder will need an ATP to trade options on NYSE Alternext Trading Systems and the 86 Trinity Permit will no longer entitle the holder to trade any products at NYSE Alternext.

In recognition of the fact that NYSE Alternext member organizations would be subject to different or additional requirements than were previously required under Amex rules, the Exchange adopted Rule 300.10T. As described in the Equities Rule filing, Rule 300.10T provides NYSE Alternext member organizations that exchanged the equities portion of a valid 86 Trinity Permit for an equities trading license under Rule 300 – NYSE Alternext Equities with a six-month grace period within which to comply with NYSE Alternext Equities Rules 2 (defining the terms members and member organizations), 300-308 (governing the admission of members and member organizations), 311 (the formation and approval of member organizations), 312 (changes within member organizations), and 313 (submission of partnership

⁹ 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).

articles and corporate documents) (collectively, the “NYSE Alternext Equities Member Organization Rules”).

Among the differing requirements of the NYSE Alternext Equities Member Organization Rules as compared to the Amex rules that governed trading at 86 Trinity Trading Systems, a member organization must be a member of the Financial Industry Regulatory Authority, Inc. (“FINRA”). In addition, unlike the Amex rules, Rule 313.20 – NYSE Alternext Equities requires member organizations to submit to the Exchange an opinion of counsel that a member corporation’s stock is validly issued and outstanding and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective.

The current six-month grace period under Rule 300.10T begins to run from the date that the member organization receives its NYSE Alternext equities trading license in exchange for the equities portion of a valid 86 Trinity Permit. However, a subset of member organizations that have applied for a trading license are not FINRA members. As a result, the Exchange determined that it cannot issue an equities trading license to such member organizations at this time. Because these member organizations have not been issued a trading license in exchange for the equities portion of an 86 Trinity Permit, the grace period within which to comply with the NYSE Alternext Equities Member Organization Rules has not been triggered.

Proposed Amendment to Rule 300.10T

To reflect the intent of the original adoption of Rule 300.10T, i.e., to provide member organizations with a grace period to comply with the NYSE Alternext Equities Member Organization Rules, the Exchange proposes to amend Rule 300.10T to provide for a six-month

grace period for those member organizations that have applied for, but have not been issued a trading license.

As proposed, to be eligible for the grace period, a member organization must be a holder of a valid 86 Trinity Permit as of the date that it applied for an equities trading license. In other words, once the 86 Trinity Permits are cancelled, i.e., the Options Relocation date, an Exchange member organization would not be eligible to apply for an equities trading license and also benefit from the Rule 300.10T grace period. As proposed, if a member organization meets the amended eligibility threshold, it has six months from the earlier of either receiving the equity trading license (which is the current standard) or the cancellation of the 86 Trinity Permits (the Options Relocation date) within which to comply with the NYSE Alternext Equities Membership Rules, including the FINRA requirement. By adding the cancellation of the 86 Trinity Permits as a trigger for the six-month grace period, the proposed rule provides those member organizations that applied for a trading license, but were not issued a trading license because they are not currently FINRA members, time to meet the NYSE Alternext Equities Member Organization Rule requirements.

In addition, the Exchange proposes deleting subsection (i) of the rule, as that language is not applicable for NYSE Alternext. The intention of Rule 300.10T was to provide a grace period for 86 Trinity Permit holders. This rule was added at the same time that the NYSE added its version of Rule 300.10T, which needed the Rule 2.10 reference. Rule 2.10 provides that NYSE member organizations are deemed approved as NYSE Alternext member organizations. Because NYSE member organizations that were not previously Amex member organizations never received an 86 Trinity Permit, this prerequisite is inapplicable for the purpose of Rule 300.10T.

As is currently part of the rule, if an NYSE Alternext member organization fails to meet the requirements of the NYSE Alternext Equities Member Organization Rules by the close of the grace period applicable to that member organization, the Exchange would either revoke the member organization's approval to trade, if a trading license has already been issued, or not issue a trading license. The Exchange may also commence proceedings to revoke the membership of such member organization.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act¹⁰ which requires the rules of an exchange 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 change also is designed to support the principles of Section 11A(a)(1)¹¹ of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market.

Specifically, the Exchange already permits a holder of a valid 86 Trinity Permit to apply for and receive an equities trading license under Rule 300 – NYSE Alternext Equities. This filing would simply provide those eligible NYSE Alternext member organizations with a valid 86 Trinity Permit additional time to exchange their 86 Trinity Permit for an NYSE equity trading license and to comply with Exchange membership requirements without first without having to apply as a new member organization.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 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 either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Alternext requests that the Commission waive the 30-day operative delay. The Exchange requests the 30-day operative delay because the Options Relocation date is imminent and is currently scheduled for March 2, 2009, and the Exchange needs to immediately implement this rule change so that NYSE Alternext member

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 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. NYSE Alternext has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6).

organizations can meet the new rule requirements. For these reasons, the Commission believes that waiving the 30-day operative delay¹⁶ is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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-2009-16 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEALTR-2009-16. 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

¹⁶ 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).

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-NYSEALTR-2009-16 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.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).