

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59488; File No. SR-NYSEALTR-2009-15)

March 3, 2009

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 123C to Provide the Exchange with the Ability to Temporarily Suspend Certain Exchange Requirements Relating to the Closing of Securities at the Exchange

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 20, 2009, NYSE Alternext US LLC ( “Exchange” or “NYSE Alternext”) 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 self-regulatory organization. On March 2, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 123C to provide the Exchange with the ability to temporarily suspend certain Exchange requirements relating to the closing of securities at the Exchange.

The text of the proposed rule change is available at [www.nyse.com](http://www.nyse.com), the Exchange, and the Commission’s Public Reference Room.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 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 is proposing to amend Rule 123C – NYSE Alternext Equities to provide the Exchange with the ability to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The amendments proposed for Rule 123C – NYSE Alternext Equities are similar in substance [to] current Rule 48 extreme market volatility condition at the close provisions. With this rule filing, the Exchange proposes to delete those provisions from Rule 48 and add them in modified form to Rule 123C. The Exchange also proposes to amend Rule 48(c)(2) to conform the rule to the actual practice of how the Exchange notifies the Commission staff when a Rule 48 condition has been declared.<sup>4</sup>

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<sup>4</sup> The purpose of the proposed rule changes is to amend Rules 48 and 123C – NYSE Alternext Equities to conform with proposed amendments to corresponding NYSE Rules 48 and 123C submitted in a companion filing by the New York Stock Exchange LLC (“NYSE”). See SR-NYSE-2009-18, formally submitted February 19, 2009.

## Background

As described more fully in a related rule filing,<sup>5</sup> 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 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”).<sup>6</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”). The Exchange’s equity trading systems and facilities at 11 Wall Street (the “NYSE Alternext Trading Systems”) are operated by the NYSE on behalf of the Exchange.<sup>7</sup>

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.<sup>8</sup> The NYSE Alternext

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<sup>5</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>6</sup> 15 U.S.C. 78f.

<sup>7</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>8</sup> 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

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.

#### Current Rule 48 – NYSE Alternext Equities

Rule 48 – NYSE Alternext Equities provides the Exchange with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close. This provision of Rule 48 is temporary and will end on March 27, 2009.<sup>9</sup>

Rule 48 now includes the close of trading as a time when a qualified Exchange officer would be permitted to declare an extreme market volatility condition. In such event, the Exchange could temporarily suspend Rules 52 (Hours of Operation) and 123C(1) and (2) (Market on the Close Policy and Expiration Policy), provided that certain requirements are met.

To enable a qualified Exchange officer to declare a Rule 48 condition at the close, Rule 48(c) includes that a qualified Exchange officer may consider the volatility during that day's trading session and evidence of significant order imbalances across the market at the close for purposes of determining whether to declare an extreme market volatility condition at the close. Under Rule 48, an extreme market volatility condition at the close is a separate event and must be considered in light of the facts and circumstances leading to the close. A Rule 48 condition at the open of trading does not extend to the close; a qualified Exchange officer needs to make an

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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).

<sup>9</sup> See Rule 48.10.

independent determination to invoke Rule 48 at the close regardless of whether Rule 48 was invoked at the open. Such a Rule 48 condition at the close must be declared by a qualified Exchange officer before the scheduled close of trading.

Once an extreme market volatility condition at the close has been declared Floor wide, under Rule 48(b)(2)(A), the Exchange may temporarily suspend Rule 52 on a security-by-security basis so that interest can be solicited and entered into Exchange systems to offset an imbalance in a security that may be present after the scheduled close of trading. During an extreme market volatility condition, interest may be solicited – including interest that may not have been present prior to 4:00 p.m. – to offset any imbalance that may exist as of 4:00 p.m. (or earlier, in the case of an earlier scheduled close).<sup>10</sup> If offsetting interest is received in response to such solicitation, rather than have the DMM represent such offsetting interest in the close pursuant to Rule 902, such interest could be entered by the DMM directly into Exchange systems on behalf of the member or member organization representing such interest. Because Exchange systems do not allow for the electronic entry of orders after 4:00 p.m., such interest must be represented manually by a Floor broker in the closing auction process and entered into Exchange systems by the DMM by no later than 4:30 p.m.<sup>11</sup> The entry of any orders after 4:00 p.m. pursuant to the rule must be under the supervision and approval of a Floor Governor.<sup>12</sup>

To ensure a complete audit trail, any offsetting interest entered after 4:00 p.m. during an extreme market volatility condition must also be entered into the Front End Systemic Capture database (“FESC”), as required by Rule 123 – NYSE Alternext Equities. Because such interest may not have been known until after 4:00 p.m., under Rule 48(b)(2)(A)(iii), a Floor broker may

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<sup>10</sup> See Rule 48(b)(2)(A)(i).

<sup>11</sup> See Rule 48(b)(2)(A)(ii).

<sup>12</sup> See Rule 48(b)(2)(A)(iv).

represent such offsetting interest after 4:00 p.m. without first entering the details of the order into FESC, as required by Rule 123, so long as such orders are entered into FESC on an “as of” basis immediately following execution of the order.

During an extreme market volatility condition at the close, the Exchange also has the ability to temporarily suspend, on a security-by-security basis, the Rule 123C(1) and (2) requirements that MOC and LOC orders that are legitimate errors cannot be cancelled or reduced after 3:50 p.m. Under Rule 48(b)(2)(B), only an erroneous MOC or LOC that would cause significant closing price dislocation for a particular security could be considered for cancellation. In other words, an MOC or LOC order that is as a result of a legitimate error that would have no impact on the closing price could not take advantage of the proposed temporary suspension, even in an extreme market volatility condition. If it is determined that such an MOC/LOC legitimate error would significantly dislocate the close, such order can be cancelled or reduced at any time up until that particular security has closed. To further ensure that the ability to cancel an MOC or LOC order after 3:50 is not abused, under Rule 48(b)(2)(B)(iii), such an order can be cancelled or reduced only with the supervision and approval of both an Executive Floor Governor and a qualified Exchange officer. In the event an Executive Floor Governor is not available, a Floor Governor’s approval must be obtained.

#### Proposed Amendments to Rule 123C – NYSE Alternext Equities

The Exchange believes that the temporary provisions to Rule 48 provide the Exchange with invaluable tools to ensure a fair and orderly close during extreme situations. However, the Exchange does not believe that a Floor-wide condition needs to be present in order to warrant the use of these tools. The Exchange therefore proposes to adopt the amendments to Rule 48 on a permanent basis by deleting those provisions from Rule 48 and moving them to Rule 123C –

NYSE Alternext Equities. As part of the amendments to Rule 123C, the Exchange further proposes modifying the terms of the temporary suspensions by permitting the Exchange to invoke such relief on a security-by-security basis without first declaring a Floor-wide extreme market volatility condition and codifying certain practices for the entry of orders after 4 p.m.

A. Relocating Temporary Suspensions to Rule 123C

As noted above, the Rule 48 extreme market volatility at the close conditions are temporary and will end on March 27, 2009. Under current Rule 48, the Exchange must first declare a Floor-wide extreme market volatility condition before it can consider, on a security-by-security basis, whether to temporarily suspend either Rule 52 or Rule 123C(1) or (2). Because the temporary suspensions are already granted on a security-by-security basis, the Exchange does not believe that going forward it needs to first declare a Floor-wide event in order to provide relief on an individual security basis. Indeed, the need for declaring a Floor-wide extreme market volatility condition before 4 p.m. could hamper the ability of the Exchange to invoke the temporary suspensions when they are needed most.

For example, during normal market conditions that would not otherwise warrant a Rule 48 condition at the close, Exchange systems may receive a large market order in a security at 3:59:59 p.m. Such a large order entered so near to the close could cause the type of extreme imbalance that would merit a temporary suspension of Rule 52, yet such relief would be unavailable because overall market conditions did not require a Rule 48 condition. The Exchange therefore believes that the ability to temporarily suspend rules at the close should be part of Rule 123C – NYSE Alternext Equities, which governs the closing process at the

Exchange, and be available on a security-by-security basis, even after 4:00 p.m.<sup>13</sup> The Exchange therefore proposes deleting the extreme market volatility at the close condition from Rule 48.

In deleting the provisions of Rule 48 condition at the close and moving those temporary suspensions to Rule 123C, the Exchange proposes certain modifications to the application of the temporary suspensions. These modifications are designed to provide clarity of how this tool should be used. Namely, the ability to temporarily suspend Exchange rules at the close should be used sparingly and only in extreme situations.

The Exchange therefore proposes to qualify that temporary suspensions under proposed Rule 123C(8) are intended to be used to prevent a closing price dislocation that may result from an order entered into Exchange systems, or represented to a DMM orally at or near the close, that may result in an extreme order imbalance at or near the close.<sup>14</sup> In such case, as with Rule 48, the rules that may be suspended are Rule 52 – NYSE Alternext Equities (Hours of Operation) and Rules 123C(1) and (2) – NYSE Alternext Equities (Market on the Close Policy and Expiration Policy).

#### B. Temporary Suspension of Rule 52 – NYSE Alternext Equities

As with Rule 48, the Exchange proposes to provide for the ability to temporarily suspend Rule 52 for the sole purpose of allowing the entry of orders after 4:00 p.m. to offset an extreme order imbalance at the close. As proposed, the process replaces the more cumbersome Rule 902 process, whereby the DMM represents interest on behalf of a Floor broker in the close on a riskless basis and then enters a coupled order in Crossing Session I to liquidate the DMM position taken on behalf of the Floor broker.<sup>15</sup>

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<sup>13</sup> See proposed Rule 123C(8)(c).

<sup>14</sup> See proposed Rule 123C(8)(a).

<sup>15</sup> See Rules 902(a)(ii)(B) and 903(d)(ii).

With respect to the temporary suspension of Rule 52, the Exchange proposes to adopt without change the language of Rule 48(b)(2)(A)(i) and (iii) (proposed as Rule 123C(8)(a)(1)(i) and (v)). These provisions concern, respectively, the purpose of soliciting orders after 4:00 p.m. and the use of the FESC system on an “as of” basis following execution of an order.

The Exchange proposes to codify as Rule 123C(8)(a)(1)(ii) that when soliciting orders to offset an imbalance in a security that may exist after 4:00 p.m., such interest will be solicited from off-Floor participants directly and via their Floor broker representatives.<sup>16</sup> Such solicitation requests shall be transmitted electronically both off-Floor and on-Floor and shall include, at a minimum, information about the security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time.

As proposed, the order acceptance cut-off time included in the solicitation request would be a time period designated by the Exchange. Because the goal is to close Exchange-listed securities as close to the closing bell as possible, such time period will generally be no longer than five minutes. As in Rule 48(b)(2)(A)(ii), in no event shall the order acceptance cut-off time be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier scheduled close). The Exchange includes this 4:30 p.m. time period as an outside limit and it is not intended to provide a 30-minute window within which to receive offsetting interest, or that the Exchange seeks to close securities at 4:30 p.m. Rather, as proposed, if a solicitation request is transmitted at 4:02 p.m., the Exchange generally would include an order acceptance cut-off time of five minutes, requiring all offsetting interest to be received by 4:07 p.m. so that the DMM can

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<sup>16</sup> Interest is solicited from off-Floor participants via NYSE Trader Update Messages, which is an NYSE product with over 2,000 subscribers that provides a wide range of up-to-the minute notices of particular interest to the professional trading community about both NYSE and NYSE Alternext Equities. NYSE Trader Updates provide messages both via email and on an RSS subscription basis.

close the security on or about 4:07 p.m. In the rare circumstance that a solicitation request is not transmitted until 4:27 p.m., the order acceptance cut-off time would be 4:30 p.m., and not a five-minute period. The 4:30 p.m. end time is therefore included to ensure that this proposed temporary suspension of Rule 52 would not be used to extend the close indefinitely.

The Exchange also proposes adding conditions on the type of order that may be entered in response to such a solicitation request. As proposed in Rule 123C(8)(a)(1)(iii), any offsetting interest received in response to a solicitation request must be a limit order priced no worse than the last sale and irrevocable. Therefore, if there is a buy imbalance, the offsetting interest must be sell orders priced no lower than the last sale price, or if there is a sell imbalance, the offsetting interest must be buy orders priced no higher than the last sale price. The Exchange believes that these conditions are necessary to ensure that the offsetting interest received is simply that interest that is intended to offset the existing imbalance to ensure that the closing price is not too far dislocated from the last sale. The Exchange does not believe that this process should be used to re-open the auction market or to permit the imbalance to swing in the opposite direction.

The Exchange also proposes to add to the rule certain parameters regarding the timing of the closing of a security when such offsetting interest is solicited. As proposed in Rule 123C(8)(a)(1)(iv), in such circumstances, the DMM should close the security the earlier of the order acceptance cut-off time or if the imbalance is paired off at or reasonably contiguous to the last sale price. The Exchange believes that this provision will enable the DMM to arrange for a fair and orderly close that is as close to 4:00 p.m. as possible. For example, if the Exchange receives a limited response to the solicitation request, the DMM would have up to the order acceptance cut-off time for orders to be entered. If, however, the DMM receives sufficient interest before the order acceptance cut-off time to close the security either at the last sale price,

or at a reasonably contiguous price to the last sale price, the DMM could close the security earlier. As proposed, a reasonably contiguous price refers to a price point that is within cents of the last sale price, and would be a price point that during a regular closing auction would not be considered a dislocating closing price as compared to the last sale price. As discussed in more detail below in subsection D, such closings would be subject to approval of either an Executive Floor Governor or qualified NYSE Euronext staff employee and supervision of a qualified Exchange Officer, as defined in Rule 48(d).

The Exchange believes that the parameters on when to close the security are necessary to ensure that securities trading at the Exchange close as near to 4:00 p.m. as possible, notwithstanding the fact that the Exchange seeks additional offsetting interest after 4:00 p.m. In either case, the Exchange proposes that any offsetting interest entered after 4:00 p.m., but before the DMM closes the security, would trade on parity.<sup>17</sup> As discussed in greater detail in the NYSE's proposal to adopt the Next Generation Market Model,<sup>18</sup> under the Exchange's parity model, Exchange systems will divide the size of the executing order by the number of participants. The DMM and each Floor broker are each considered a single participant. A Floor broker that represents multiple orders gets parity for the aggregate of orders. With parity, the total number of shares to be allocated to each participant will be distributed equally among the participants where possible and executions will be allocated in round-lots. In the event the number of shares to be executed at the price point is insufficient to allocate round lots to all the

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<sup>17</sup> The Exchange notes that all MOC and marketable LOC orders entered before 4:00 p.m. that otherwise would have participated in the close will continue to participate in the close. Because the MOC/LOC imbalance dictates the closing price (see Rule 123C(3)), any additional interest solicited after 4:00 p.m. under proposed Rule 123C(8)(a)(1) is simply to ensure that the existing imbalance of MOC and marketable LOC orders can be filled at a price that does not cause a significant price dislocation from the last sale price.

<sup>18</sup> See SEC Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR-NYSE-2008-46).

participants eligible to receive an execution at the price point, the Exchange systems will create an allocation wheel of the eligible participants at the price point and the available shares will be distributed to the participants in turn. If the DMM closes the security before the order acceptance cut-off time, any interest received before closing the security would trade on parity with other interest, including the DMM's interest at the close.

The Exchange also proposes to maintain, as in Rule 48(b)(2)(A)(ii), that any offsetting interest must be represented by a Floor broker. Exchange systems do not have the capability to receive electronic interest after 4:00 p.m. As with any technology, it would be possible to reconfigure Exchange systems to accept orders electronically after 4:00 p.m. However, such technology changes would be costly and would divert resources away from other necessary technology changes that are already scheduled. Therefore, even if the Exchange could make such technology changes, they likely could not be implemented until mid to late 2009, and at great cost.

The benefit, however, to implementing such a technology change would be limited. The temporary suspension of Rule 52 to attract offsetting interest is intended to be used for extreme, and likely rare circumstances where there exists such a large imbalance at the close that the DMM could not close the security without significantly dislocating the price of the security. The Exchange notes that this has been a period of historic market volatility; the Exchange therefore expects that in times of calmer markets, the relief requested would be used in even rarer circumstances.

The Exchange further notes that requiring Floor brokers to represent such offsetting interest does not unfairly discriminate against any market participants. The requirement to use a Floor broker, who would be acting only as an agent, does not deny anyone access to trading at

the Exchange. It simply requires an agent as intermediary. Indeed, during the inherently manual process of closing a security, using a Floor broker to represent offsetting interest will provide customers with the most up-to-date information about the closing process in such a scenario.

Moreover, the imbalance that would warrant such a temporary suspension would likely be of such a size that the type of customers that would be able to meaningfully and timely respond to such a solicitation request are sophisticated market participants who likely already have, or could easily arrange for, a relationship with a Floor broker to represent orders on their behalf. Such sophisticated participants have the wherewithal to enter into arrangements with Floor brokers that are financially competitive with entering orders directly into Exchange systems, e.g., via reduced commissions or pass through of Floor broker rebates.

The Exchange therefore believes that the time and cost that would be necessary to reconfigure Exchange systems to electronically accept orders after 4:00 p.m. for this limited purpose far outweighs any benefit that may accrue from such technology changes. In any event, the Exchange believes that more information is necessary before the Exchange undertakes to implement any such technology change. The Exchange therefore proposes that six months after the approval of this proposed rule change, the Exchange will provide the Commission with information regarding how many times a Rule 52 temporary suspension under proposed Rule 123C(8)(a)(1) has been invoked. At that time, both the Exchange and the Commission can make a more informed decision of whether the benefit in accepting orders electronically after 4:00 p.m. outweighs the costs associated with making such changes. To provide both the Exchange and the Commission with time to evaluate the proposed rule, the Exchange proposes that Rule 123C(8)(a)(1) be approved on a Pilot basis to end six months after the approval date of this filing.

### C. Temporary Suspension of Rule 123C(1) and (2)

The Exchange proposes to adopt permanently the provisions of Rule 48(b)(2)(B) as proposed Rule 123C(8)(a)(2), without any change. Therefore, as with Rule 48, the Exchange would have the ability to temporarily suspend, on a security-by-security basis, the Rule 123C(1) and (2) requirements that MOC and LOC orders that are legitimate errors cannot be cancelled or reduced after 3:50 p.m. The same conditions that were adopted as part of Rule 48 would apply here as well, i.e., that only an erroneous MOC or LOC that would cause significant closing price dislocation for a particular security could be considered for cancellation and that if it is determined that such an MOC/LOC legitimate error would dislocate the close, such order can be cancelled or reduced at any time up until that particular security has closed. As discussed below, the Exchange proposes to move Rule 48(b)(2)(B)(iii) to proposed Rule 123C(8)(b).

### D. Parameters for Obtaining Temporary Rule Suspensions

The Exchange further proposes codifying the practices concerning how a temporary suspension under proposed Rule 123C(8)(a) would be invoked and who should be involved. As proposed in Rule 123C(8)(b), only the DMM assigned to a particular security may request a temporary suspension under proposed section 8(a) of the Rule. The Exchange believes that because the DMM is responsible for facilitating the close of trading of securities registered to that DMM, including supplying liquidity if needed, the DMM is in the unique position to know whether he or she would need additional interest to ensure a fair or orderly close.

To ensure that such temporary suspensions are not invoked indiscriminately, the Exchange further proposes that any such determination, as well as any entry or cancellation of orders or closing of a security under proposed Rule 123C(8)(a), must be approved by either an Executive Floor Governor or a qualified NYSE Euronext employee, as defined in Rule 46(b)(v)

– NYSE Alternext Equities. The Exchange also proposes requiring that any temporary suspensions under proposed Rule 123C(8)(a) should be under the supervision of a qualified Exchange Officer, as defined in Rule 48(d).

These requirements are identical to the requirement under Rule 48(b)(2)(B)(iii), but more stringent than the current requirement under Rule 48(b)(2)(A)(iv), which requires only the supervision of a Floor Governor. The Exchange believes that these heightened approval and supervision requirements will ensure that, as contemplated by the proposed rule, only extreme situations such as when a late-arriving order would cause significant price dislocation at the close would result in a temporary suspension of Exchange rules at the close. To assist the DMM and officials, proposed Rule 123C(8)(b) identifies a number of factors that may be considered when making such a determination. Such factors include, but are not limited to, when the order(s) that impacted the imbalance were entered into Exchange systems or orally represented to the DMM, the impact of such order(s) on the closing price of the security, the volatility of the security during the trading session, and the ability of the DMM to commit capital to dampen the price dislocation.

#### Proposed Amendment to Rule 48(c)(2) – NYSE Alternext Equities

In addition to the above-described amendments, the Exchange also proposes to amend Rule 48(c)(2), which concerns the method by which the Exchange notifies Commission staff when it declares a Rule 48 extreme market volatility condition.

The current rule provides that the qualified Exchange officer will make a reasonable effort to consult with Commission staff before declaring an extreme market volatility condition and granting a suspension of the Exchange rules or procedures. In the event that the qualified

Exchange officer cannot reach the Commission staff, the qualified Exchange officer will, as promptly as practicable in the circumstances, inform the Commission staff of such declaration.

Given the limited relief that can be granted during a Rule 48 condition – certain Floor Official approvals are suspended and mandatory indications can be suspended – the Exchange believes that the requirement to consult with Commission staff before declaring an extreme market volatility condition imposes an undue burden on regulatory resources. Accordingly, the Exchange proposes to amend Rule 48(c)(2) to delete the requirement that the qualified Exchange officer undertake reasonable efforts to consult with Commission staff before declaring an extreme market volatility condition. As required by the rule, the Exchange will continue to inform the Commission staff, as promptly as practicable under the circumstances, when it has declared a Rule 48 extreme market volatility condition.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>19</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. As noted above, the proposed rule is intended to be used in extreme circumstances when a large order imbalance or order entered in error could cause a closing price to be far dislocated from the last sale price. The rule is therefore intended to protect investors and the public interest to ensure that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NYSE consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2009-15 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-2009-15. 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 such filing also will be available for inspection and copying at the principal offices 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-2009-15 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>20</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).