

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58839; File No. SR-NYSEALTR-2008-03]

### Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Relocation of the Trading of Certain Debt Securities Conducted on or Through the Exchange's Legacy Trading Systems and Facilities to an Automated Bond Trading Platform Based on NYSE Bonds<sup>SM</sup>

October 23, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 22, 2008, NYSE Alternext US LLC ("NYSE Alternext" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice 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 adopt NYSE Alternext Equities Rule 86 in order to implement the relocation ("Bonds Relocation") of the trading of certain debt securities conducted on or through the Exchange's legacy trading systems and facilities to an automated bond trading platform based on NYSE Bonds<sup>SM</sup> that will be operated by the New York Stock Exchange LLC ("NYSE") on behalf of NYSE Alternext ("NYSE Alternext Bonds"). The Bonds Relocation is being implemented in connection with the recent acquisition of The Amex Membership Corporation ("AMC") by NYSE Euronext. This proposal also includes non-substantive and technical changes to other NYSE Alternext Equities Rules that relate to bond trading at the Exchange. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com/equities/nysealternextequities>, at the Exchange's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the 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

The purpose of the proposed rule change is to amend the NYSE Alternext Equities Rules as needed and to adopt, subject to such changes as are necessary to apply the rule to the Exchange, NYSE Rule 86, which governs trading on the NYSE Bonds platform that NYSE Alternext Bonds is based on.

###### Background

As described more fully in a related rule filing, NYSE Euronext acquired 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 Securities Exchange Act of 1934, as amended (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 systems and facilities at 11 Wall Street (the "NYSE Alternext Trading Systems") will be operated by the NYSE on behalf of the Exchange. Similarly, the Exchange will 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>5</sup> After the Equities Relocation, the Exchange will trade all equities securities currently listed on the Exchange on the NYSE Alternext Trading Systems.

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 an NYSE Alternext equities trading license or options trading permit upon the Equities or Options Relocation, as applicable.<sup>6</sup> In addition, pursuant to the Merger, all NYSE Alternext members and member organizations that apply for an NYSE Alternext equities trading license are automatically waived in as NYSE members and member organizations.<sup>7</sup> Similarly, all NYSE members and member organizations are automatically waived in as NYSE

<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). 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>6</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).

<sup>7</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. If a member organization fails to meet those requirements by the close of the grace period, both the NYSE and NYSE Alternext will revoke trading approvals on their respective exchanges. See NYSE Rule 300.10T and NYSE Alternext Equities Rule 300.10T. See also Securities Exchange Act Release No. 58706 (October 1, 2008), 73 FR 59019 (October 8, 2008) (SR-NYSE-2008-70) (describing and approving membership issues related to the Merger); Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (including discussion of membership issues).

<sup>1</sup> 15 USC. 78s(b)(1).

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

<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). As noted, Amex was renamed NYSE Alternext US LLC and will be referred to as NYSE Alternext or the Exchange for all purposes throughout this rule filing. For the avoidance of doubt, NYSE Alternext US LLC will be a self regulatory organization distinct from NYSE Euronext's European-market subsidiary, NYSE Alternext.

<sup>4</sup> 15 USC. 78f.

Alternext members and member organizations.<sup>8</sup>

#### The Bonds Relocation

As with the Equities and Options Relocations, the Exchange now proposes to relocate the trading of certain debt securities currently conducted on the 86 Trinity Trading Systems<sup>9</sup> to NYSE Alternext Bonds.<sup>10</sup> The Exchange believes that the NYSE Alternext Bonds platform is technologically superior to the 86 Trinity Trading Systems and the Exchange believes that the use and implementation of NYSE Alternext Bonds will promote increased market activity in debt securities trading at the Exchange.

Although they will be traded on a new technological platform, the Exchange will maintain the listings of the securities involved in the Bond Relocation in accordance with its listing standards. The Exchange will not cross-list any NYSE-listed securities on the Exchange and will not cross-list any Exchange-listed securities on the NYSE. The Exchange understands that NYSE does not currently trade any debt securities on a UTP basis, and the Exchange does not intend to trade any securities on NYSE Alternext Bonds on a UTP basis. Moreover, neither the Exchange nor NYSE will trade debt securities listed on their respective exchanges on a UTP basis.

The Exchange anticipates that the Bonds Relocation will occur as soon as reasonably practicable following the date of the Merger, concurrent with the Equities Relocation.

#### Proposed NYSE Alternext Bond Trading Rules

The Exchange proposes to adopt NYSE Rule 86 as NYSE Alternext Equities Rule 86, and to make conforming amendments to other NYSE Alternext Equities Rules.<sup>11</sup> The

<sup>8</sup> See NYSE Alternext Equities Rules 2.10 and .20. See also Securities Exchange Act Release No. 58706 (October 1, 2008), 73 FR 59019 (October 8, 2008) (SR-NYSE-2008-70); Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63).

<sup>9</sup> See Exhibit 3A for a list of the securities involved in the Bonds Relocation.

<sup>10</sup> In the filing governing the Equities Relocation, the Exchange noted that it expected to delist certain debt securities and that those securities would subsequently be listed and traded on NYSE Bonds. See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63). In the interim period since that filing was submitted to the Commission, the Exchange has determined that it will retain the listing of these debt securities while adopting and using the advanced technology of NYSE Alternext Bonds to trade them.

<sup>11</sup> The Commission approved NYSE Rule 86 in March 2007 after full notice and comment. See Securities Exchange Act Release No. 55496 (March

adoption of these rules is necessary in order to trade debt securities on NYSE Alternext Bonds. Following the Bonds Relocation, NYSE Alternext Equities Rule 86 and the related rules will govern all debt securities transactions conducted on NYSE Alternext Bonds.<sup>12</sup>

Because NYSE Alternext Bonds will be operated by the NYSE on behalf of the Exchange, NYSE Alternext Equities Rule 86 and the related rules will be substantially identical to the existing NYSE Rules, subject to certain minor changes necessary to apply these rules to the Exchange. The Exchange's bond market structure will be identical to the NYSE's and they will have the same rules governing, among other things, (i) the processing and trading of debt securities, including receipt, execution and reporting of transactions, (ii) the types of market participants, (iii) clearly erroneous executions, and (iv) trading halts.

#### Rule Modifications Relating to NYSE Alternext

As noted above, the Exchange proposes to adopt NYSE Rule 86 as NYSE Alternext Equities Rule 86, subject to a few minor modifications. This filing conforms with amendments to NYSE Rule 86 that were recently filed by the NYSE.<sup>13</sup>

In order to facilitate trading on NYSE Alternext Bonds, the Exchange proposes that NYSE Alternext Equities Rule 86 provide that all NYSE Alternext members and member organizations will be automatically eligible to access NYSE Alternext Bonds.<sup>14</sup> By providing that all NYSE Alternext members and member organizations, which, as described above, includes by cross-designation all NYSE members and member organizations, are automatically eligible to access NYSE Alternext Bonds without any further requirements, both NYSE and NYSE Alternext members and member organizations will be able to trade on NYSE Alternext Bonds. The Exchange believes that these modifications will maximize participation, increase liquidity and improve pricing, which benefits all market participants.

<sup>12</sup> See NYSE Alternext Equities Rule 86, 72 FR 14631 (March 28, 2007) (SR-NYSE-2006-37) (approving NYSE Bonds).

<sup>13</sup> See Amex Rule 0 and NYSE Alternext Equities Rule 0. Together these rules prescribe that all trading conducted on the systems and facilities operated by NYSE on behalf of the Exchange, including the NYSE Alternext Bonds trading platform, shall be governed solely by the NYSE Alternext Equities Rules unless otherwise specifically designated.

<sup>14</sup> See SR-NYSE-2008-106.

<sup>15</sup> See proposed NYSE Alternext Equities Rule 86(o).

Similar to the manner in which NYSE designates the securities it trades on NYSE Bonds, the Exchange will indicate on the NYSE Alternext Bonds website which securities are listed with the NYSE and which are listed with NYSE Alternext. Executions of NYSE Alternext-listed securities will be designated with an "A" indicator and executions of NYSE-listed securities will be designated with an "N" indicator.<sup>15</sup>

#### Regulation of Trading on NYSE Alternext Bonds

Trading on NYSE Alternext Bonds and maintenance of the applicable listing standards will be regulated by NYSE Regulation Inc. ("NYSER") in accordance with the terms and conditions of the Regulatory Services Agreement the Exchange entered into with NYSER pursuant to the Merger, effective October 1, 2008.

#### Proposed Amendments to Related NYSE Alternext Equities Rules

The Exchange proposes conforming amendments to NYSE Alternext Equities Rules 13, 51, 55, 61, 72, 76, 79A, 123D and 342 to accommodate the trading of debt securities on NYSE Alternext Bonds. The Exchange also proposes to adopt NYSE Rule 119 as NYSE Alternext Equities Rule 119, which prescribes the procedures for canceling an order in NYSE Alternext Bonds when there is a change in the basis of bonds trading from "and interest" to "flat" as determined by the Exchange.

#### Operative Date

The Exchange proposes that the operative date of the proposed rule changes be the date of the Equities and Bonds Relocations.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>17</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

<sup>15</sup> Pursuant to an SEC Exemptive Order for NYSE Bonds, NYSE is permitted to trade certain unregistered and unlisted securities on NYSE Bonds. See Securities Exchange Act Release No. 54766 (November 16, 2006), 71 FR 67657 (November 22, 2006) (S7-06-05). See also NYSE Rules 1400-1401. Executions of these securities on NYSE Bonds are designated with a "U" indicator. The securities included in the Bonds Relocation (listed in Exhibit 3A) are not subject to the SEC's Exemptive Order and thus the Exchange will not need the "U" indicator for any securities traded on NYSE Alternext Bonds.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

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 supports the principles of Section 11A(a)(1)<sup>18</sup> of the Act in that it seeks to ensure economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed adoption of NYSE Alternext Rule 86 and other rule amendments will enhance the efficient execution of transactions and fair competition among broker-dealers and markets and provide increased bond market activity for the benefit of all market participants

#### *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>19</sup> and Rule 19b-4(f)(6)<sup>20</sup> thereunder. 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.<sup>21</sup>

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 NYSE Bonds platform, the relocation of

equities trading on NYSE Alternext, and recent amendments to NYSE Rule 86, upon which this filing is modeled.<sup>22</sup> As described above, this proposal seeks only to implement NYSE Alternext Bonds, which is based on the existing NYSE Bonds platform, and to adopt the related rules (subject to minor modifications to apply them to the Exchange), to govern the trading of debt securities on NYSE Alternext.

The operative date of the proposed rule changes is the date of the Equities and Bonds Relocations.

### **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-2008-03 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-2008-03. 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 a.m. and 3 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-2008-03 and should be submitted on or before November 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58855; File No. SR-NYSEArca-2008-111]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposing To Amend NYSE Arca Equities Rule 5.2(j)(6)(v) in Order To Add the CBOE Volatility Index® (VIX®) Futures ("VIX Futures") to the Definition of Futures Reference Asset**

October 24, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 17, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 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**

NYSE Arca, Inc. ("NYSE Arca" or the "Exchange"), through its wholly-owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), is proposing to amend NYSE Arca Equities Rule 5.2(j)(6)(v) in order to add the CBOE Volatility Index® (VIX®) Futures ("VIX Futures") to the definition of Futures Reference Asset.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78A.

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

<sup>18</sup> 15 U.S.C. 78k-1(a)(1).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 complied with this requirement.

<sup>22</sup> See Securities Exchange Act Release No. 55496 (March 20, 2007), 72 FR 14631 (March 28, 2007) (SR-NYSE-2006-37); Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63); SR-NYSE-2008-106.