

*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-NYSE-2008-123. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2008-123 and should be submitted on or before December 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59027; File No. SR-NYSEALTR-2008-11]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC To Establish the Minimum Price Variation of \$0.0001 for Orders and Quotations in Equity Securities that are Priced Below \$1.00 Per Share

November 28, 2008.

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 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 amend Rule 62-NYSE Alternext Equities to conform with amendments to NYSE Rule 62 recently filed by the New York Stock Exchange LLC ("NYSE").

#### 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 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 change is to amend Rule 62-NYSE Alternext Equities to conform with amendments to NYSE Rule 62 recently 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 U.S. 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 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 ("NYSE Alternext Bonds") that will be operated by the NYSE on behalf of the Exchange (the "Bonds Relocation"). 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. (the "Options Relocation").<sup>6</sup>

<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.

<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)

Continued

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

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

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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 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 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, which will become operative as of the date of the Equities and Bonds Relocations, are substantially identical to the current NYSE Rules 1–1004, subject to such changes as were necessary to apply the rules to the Exchange.<sup>10</sup>

(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).

<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); 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); and SR–NYSEALTR–2008–10

#### *Proposed Amendments to Rule 62–NYSE Alternext Equities*

The Exchange proposes to amend Rule 62–NYSE Alternext Equities to conform to amendments recently filed by the NYSE for its Rule 62.<sup>11</sup>

The Exchange therefore proposes to amend Supplementary Material .10 of Rule 62–NYSE Alternext Equities to include the following table of minimum price variation (MPV) values:

| Price of order or interest  | Minimum price variation |
|-----------------------------|-------------------------|
| Less than \$1.00 .....      | \$ .0001                |
| \$1.00–99,999.99 .....      | .01                     |
| \$100,000 and greater ..... | .10                     |

The Exchange further proposes to amend Supplementary Material .20 of Rule 62–NYSE Alternext Equities to provide that, when an order for a security containing a sub-penny component (*i.e.*, with MPV of \$.0001) is received by the Exchange, the Exchange will round any bid price down to the next round penny and round any offer price up to the next round penny. The order will be sent to the NYSE Alternext Trading Systems and the Consolidated Quotation System with the rounded price, which will be used for all order handling purposes, including routing and execution.

#### *Operative Date*

The Exchange proposes that the operative date of the proposed rule change 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>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to

(formally filed November 26, 2008) (adopting amendments to NYSE Alternext Equities Rules to track changes to corresponding NYSE Rules).

<sup>11</sup> In its rule filing the NYSE proposed, in accordance with SEC Rule 612, to establish a minimum price variation of \$.0001 for orders and quotations in equity securities that are priced below \$1.00 per share in order to enable the NYSE to accept orders in sub-penny increments for those securities. See SR–NYSE–2008–123 (formally filed November 26, 2008). The Exchange understands that the NYSE is in the process of modifying its trading systems to, in addition to accepting sub-penny orders, enable quotation and trading in sub-penny increments on the NYSE. These modifications to the NYSE trading systems will similarly modify the NYSE Alternext Trading Systems, and the Exchange will submit a companion rule filing at the same time the NYSE submits its rule filing for these system modifications.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, 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 proposal also supports the principles of Section 11A(a)(1)<sup>14</sup> of the Act in that it seeks to ensure the economically efficient execution of securities transactions, to make it practicable for brokers to execute investors' orders in the best market, and to provide an opportunity for investors' orders to be executed without the participation of a dealer.

The Exchange believes that the proposed rule change is necessary and appropriate to update the NYSE Alternext Trading Systems in conformity with changes made to the NYSE trading systems on which they are based, and, specifically, to conform Rule 62–NYSE Alternext Equities with the provisions of SEC Rule 612 by establishing the minimum price variation for securities trading on the Exchange below a \$1.00.

#### *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>15</sup> and Rule 19b–4(f)(6) thereunder.<sup>16</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

<sup>14</sup> 15 U.S.C. 78k–1(a)(1).

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

<sup>16</sup> 17 CFR 240.19b–4(f)(6).

this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.<sup>17</sup>

The Exchange 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 harmonize the rules between NYSE and NYSE Alternext in order to facilitate this transition. Moreover, the Exchange believes that this filing is non-controversial because it is consistent with one that was previously submitted by NYSE for immediate effectiveness.<sup>18</sup>

The Commission hereby grants the Exchange's request<sup>19</sup> and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The rule being adopted through this filing is based on a previously established rule of NYSE, and does not appear to raise any novel or significant issues. Furthermore, waiving the operative delay will facilitate the Equities Relocation, which is scheduled to occur on December 1, 2008. Therefore, the Commission designates the proposal operative as of December 1, 2008.

#### 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-2008-11 the subject line.

<sup>17</sup> 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 Commission has determined to waive the five-day pre-filing period in this case.

<sup>18</sup> See Securities Exchange Act Release No. 59025 (November 26, 2008) (SR-NYSE-2008-123).

<sup>19</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).

##### *Paper Comments*

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

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E8-28679 Filed 12-2-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59022; File No. SR-NYSEALTR-2008-10]

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

November 26, 2008.

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

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

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

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