

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 such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASDAQ-2008-090 and should be submitted on or before December 29, 2008.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59019; File No. SR-NYSEALTR-2008-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Alternext US LLC To Implement a Previously Adopted Revenue Sharing Program for ETF Quoting Participants on the Exchange

November 26, 2008.

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 November 14, 2008, NYSE Alternext US LLC (the "Exchange" or "NYSE Alternext") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 restore a previously adopted revenue sharing program for ETF quoting participants on the Exchange. The text of the proposed rule change is available at NYSE Alternext, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these 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 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 Exchange proposes to restore a revenue sharing program (RSP) for ETF quoting participants on the Exchange. The RSP was first put in place by the Exchange for ETF specialists and registered traders effective July 1, 2007, and was to last through December 31, 2007, unless otherwise extended.<sup>4</sup> The RSP was subsequently extended through the end of September 2008.<sup>5</sup> The RSP was inadvertently allowed to lapse on September 30, 2008, without the Exchange filing to extend it, so the purpose of the instant filing is to restore the RSP on the terms described below on a prospective basis, effective immediately, through November 30, 2008, by which point the trading of ETFs currently listed on the Exchange is

<sup>4</sup> Securities Exchange Act Release No. 55983 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68). The RSP was subsequently extended to Designated Amex Remote Traders, now known as Designated NYSE Alternext Remote Traders (DARTs). Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR-Amex-2008-23).

<sup>5</sup> Securities Exchange Act Release No. 57541 (March 20, 2008), 73 FR 16400 (March 27, 2008) (SR-Amex-2008-25) (prospectively extending RSP from March 18, 2008, through end of September 2008). See also Securities Exchange Act Release No. 57794 (May 7, 2008), 73 FR 27582 (May 13, 2008) (SR-Amex-2008-34) (retroactively extending RSP from January 1, 2008, through March 17, 2008).

expected to terminate in favor of having willing issuers list and trade such products on NYSE Alternext's sister exchange NYSE Arca, Inc. (the "ETF Transfer").<sup>6</sup> The Exchange is making a separate filing to request retroactive application of the RSP for the period October 1, 2008, through November 13, 2008.

RSP payments will be made from the Exchange's general revenues and will not be limited to a particular revenue source. In order to continue to provide ETF quoting participants (ETF specialists, registered traders, and DARTs) with a source of payments to provide incentives to quote aggressively in Exchange-traded shares up until the ETF Transfer, the Exchange proposes to distribute revenue to quoting participants as outlined below:

- ETF specialists may receive an aggregate RSP payment (calculated monthly) of as much as \$0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or sells his specialty ETF on the Exchange and is a provider of liquidity in that transaction (e.g., whose quote is traded against or who offsets an order imbalance as part of an opening or closing transaction). The RSP payment is comprised of \$0.0004 per share (or 4 cents per 100 shares) for all shares executed on the Exchange in their specialty ETF (irrespective of whether the specialist is the provider of liquidity), plus another \$0.0020 (or 20 cents per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the RSP payment is limited to \$0.0004 per share executed on the Exchange in their specialty ETF.

- Registered traders in ETFs will receive an RSP payment of \$0.0010 per share (or 10 cents per 100 shares) whenever the registered trader either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.

- DARTs will receive an RSP payment of \$0.0015 per share (or 15 cents per 100 shares) whenever the DART either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.

No ETF quoting participant will receive an RSP payment when they are contra-parties to the same transaction. Further, RSP payments will only be made on transactions in securities trading at less than \$1.00 in amounts proportionate to the amount on which the Exchange collects revenue. Finally, as customer transaction charges are capped at \$100 per transaction, meaning that transaction charges are assessed on only the first 43,478 shares executed, ETF quoting participants will only

<sup>6</sup> Securities Exchange Act Release No. 58364 (August 14, 2008), 73 FR 49508 (August 21, 2008) (SR-Amex-2008-65) (describing process by which issuers of ETFs and structured products on the Exchange would voluntarily delist and transfer such listings to NYSE Arca).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<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.

receive RSP payments based on the first 43,478 shares executed.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is extending a revenue sharing program to maintain incentives for an increase in order flow, up until the ETF Transfer.

### 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 foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

## 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-2008-04 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-2008-04. 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 self-regulatory organization. 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-2008-04 and should be submitted on or before December 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59020; File No. SR-NYSEALTR-2008-06]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by NYSE Alternext US LLC for Retroactive Application of a Previously Adopted Revenue Sharing Program for ETF Quoting Participants on the Exchange

November 26, 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 November 17, 2008, NYSE Alternext US LLC (the "Exchange" or "NYSE Alternext") 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 and to grant approval of the proposal on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes retroactive application of a previously adopted revenue sharing program for ETF quoting participants on the Exchange. The text of the proposed rule change is available at NYSE Alternext, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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