

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59045; File No. SR-NYSEALTR-2008-09]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC To Adopt a Price List for Equity Transactions after the Relocation of NYSE Alternext Equities Trading and To Establish Certain Other Fees**

December 3, 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 28, 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, II, and III 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 a new equities pricing schedule applicable to NYSE Alternext members after the relocation of all equities trading currently conducted on or through the American Stock Exchange legacy trading systems and facilities located at 86 Trinity Place, New York,

New York, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the "NYSE Alternext Trading Systems"), which will be operated by the NYSE on behalf of NYSE Alternext (the "Equities Relocation") and to make changes to the NYSE Alternext U.S. Price List to reflect the fact that it will relate only to options trading after the Equities Relocation (to be renamed the "NYSE Alternext Options Price List"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange's Office of the Secretary, 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**

NYSE Alternext proposes to adopt a new pricing schedule (the "NYSE

Alternext Equities Price List") applicable to Exchange members engaging in equities transactions after the Equities Relocation and to make changes to the NYSE Alternext U.S. Price List to reflect the fact that it will relate only to options trading after the Equities Relocation and will be renamed the NYSE Alternext Options Price List.

While the specific amounts of the transaction fees and credits are different on the proposed NYSE Alternext Equities Price List from those on the NYSE price list, the proposed NYSE Alternext Equities Price List has been structured so as to be generally similar to the NYSE Price List. This is particularly appropriate because member organizations of NYSE Alternext that trade equities after the Equities Relocation and NYSE member organizations will all become member organizations of both exchanges at the time of the Equities Relocation. This dual membership structure will allow all member organizations to trade on both exchanges and makes it desirable to harmonize the pricing structures of the two exchanges as much as possible.

**Equity Transaction Fees**

Member organizations other than Designated Market Makers ("DMMs") will be subject to the following schedule of fees and rebates with respect to transactions in equity securities<sup>3</sup> with a trading price of \$1.00 or more:

Equity per Share Credit—per transaction—when adding liquidity .....	\$0.0015.
Agency cross trades (i.e., a trade where a Member Organization has customer orders to buy and sell an equivalent amount of the same security) of 10,000 shares or more.	No Charge.
Non-electronic agency transactions of 10,000 shares or more between floor brokers in the crowd.	No Charge.
At the opening or at the opening only orders .....	No Charge.
Equity per Share Charge—per transaction (charged to both sides)—for all odd lot transactions (including the odd lot portions of partial round lots).	\$0.0010.
Equity per Share charge—market at-the-close and limit at-the-close orders .....	\$0.0005.
Equity per Share Charge—Agency cross trades of less than 10,000 shares .....	\$0.0005.
Equity per Share Charge for all other transactions (i.e., when taking liquidity from the Exchange)—per transaction.	\$0.0025.
Routing Fee <sup>4</sup> —per share (except floor brokers) .....	\$0.0030.
Routing Fee—per share (floor brokers) .....	\$0.0029.

Member organizations other than DMMs will be subject to the following

schedule of fees and rebates with respect to transactions in equity

securities with a trading price less than \$1.00:

Equity per Share Charge when adding liquidity to the Exchange .....	No Charge.
Equity per Share Charge when taking liquidity from the Exchange—per transaction.	0.25% of total dollar value of the transaction.

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

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

<sup>3</sup> Equity transaction fees apply to transactions in rights, warrants and closed end funds.

<sup>4</sup> All routing fees set forth in the NYSE Alternext Equities Price List apply to all orders routed from

NYSE Alternext and executed in another market. Routing Fees are in lieu of NYSE Alternext transaction charges.

Equity per Share Charge—Market at the Close and Limit at the Close Orders ...	The lesser of (i) \$0.0005 per share, and (ii) 0.25% of the total dollar value of the transaction.
Equity per Share Charge—per transaction (charged to both sides)—for all odd lot transactions (including the odd lot portions of partial round lots).	The lesser of (i) \$0.0010 per share, and (ii) 0.25% of the total dollar value of the transaction.
Routing Fee—per share .....	0.3% of the total dollar value of the transaction.

DMMs will be subject to the following securities with a trading price of \$1.00 schedule of fees and rebates with or more: respect to transactions in equity

Equity per Share Charge when taking liquidity from the Exchange .....	\$0.0015.
Equity per Share Credit <sup>5</sup> when adding liquidity to the Exchange .....	\$0.0035.
Executions at the opening .....	No Charge.
Equity per Share Credit—per transaction—for all odd lot transactions (including the odd lot portions of partial round lots).	\$0.0005.
Equity per Share Credit for executions at the close .....	\$0.0005.
Routing Fee—per Share Charge .....	\$0.0030.

DMMs will be subject to the following securities with a trading price less than schedule of fees and rebates with \$1.00: respect to transactions in equity

Equity per Share Charge when taking liquidity from the Exchange .....	No Charge.
Equity per Share Credit when adding liquidity to the Exchange .....	0.15% of the total dollar value of the transaction.
Routing Fee—per Share Charge .....	0.3% of the total dollar value of the transaction.

Each DMM will receive all of the market data quote revenue (the “Quoting Share”) received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any security (with a trading price either above or below \$1.00) in any month in which the DMM

meets the quoting requirement of Rule 104(a)(1)(A) for that specific security. However the DMM quoting requirement for securities trading below \$1.00 will not come into effect until after the first two months of operation. *Crossing sessions.* There will be no fees with respect to transactions in

Crossing Session I (single stocks) or Crossing Session II (portfolios). NYSE Alternext Bonds System Transactions on the NYSE Alternext Bonds System will be subject to the following fee schedule:

Exchange-Sponsored Graphic User Interface “GUI” .....	\$5,000.00 per year.
Execution Fee per bond for orders that take liquidity from the NYSE Alternext Bonds Book (effective through December 31, 2008):	
Orders of one to ten (10) bonds .....	\$0.50 per bond.
Orders of eleven (11) to twenty-five (25) bonds .....	\$0.20 per bond.
Orders of twenty-six (26) bonds or more .....	\$0.10 per bond.

Transaction fees on bond transactions are subject to a \$100.00 maximum fee per transaction (through December 31, 2008).

**Floor Fees**  
As NYSE Alternext equities trading will take place in the NYSE trading facilities after the Equities Relocation, NYSE Alternext member organizations conducting an equities trading business

will pay the same fees as NYSE member organizations in relation to their employees working on the trading floor and equipment used on the trading floor. The applicable charges are as follows:

Clerk Badge Fee:	
Annual Fee per Clerk .....	\$1,000.00.
Radio Paging Service:	
Base charge (unit and first channel) .....	\$408.50.
Each additional channel .....	\$139.75.
Financial Vendor Services:	
Administrative Fee Per ITPN User <sup>6</sup> .....	\$480.00.
Various Products .....	Direct Pass Through. <sup>7</sup>
Member Telephone Service:	
Toll call amount billed by Verizon plus a per call surcharge on:	
Toll calls \$0.69 and below .....	\$0.16.
Toll calls greater than \$0.69 .....	\$0.26.
Cellular Phones:	

<sup>5</sup> Rebates will be applied when (i) Posting displayed and non-displayed orders on Display Book, including s-quote and s-quote reserve orders; (ii) when providing liquidity on non-displayed interest using the Capital Commitment Schedule;

or, prior to the implementation of the Capital Commitment Schedule, using the following message activities: Price improvement, size improvement (PRIN FILL), matching away market quotes; (iii) when executing trades in the crowd and

at Liquidity Replenishment Points; and (iv) when providing liquidity on market-at-the-close and limit-at-the-close transactions. Rebates will not apply to executions at the open.

Phone and Headset .....	No Charge.
Ongoing Maintenance—per phone .....	\$240.00. <sup>8</sup>
Booth Telephone System:	
Annual Telephone Line Charge .....	\$400.00 per phone number.
Single line phone, jack, and data jack .....	\$129.00.
Service Charges <sup>9</sup> :	
Install single jack (voice or data) .....	\$161.25.
Relocate jack .....	\$107.50.
Remove jack .....	\$53.75.
Install voice or data line .....	\$107.50.
Disconnect data line .....	\$53.75.
Change phone line subscriber .....	\$53.75.
Miscellaneous telephone charges <sup>10</sup>	
Broker Subscriber Service:	
e-Broker Hand Held Device (annual charge per handheld device) .....	\$5,000.00.
System Processing Fees	
Online Comparison System (OCS):	
Transaction Fees:	
Next Day Submission (Adds or Adjustments) and Questioned Trade:	
Charge—per submission or questioned trade .....	\$0.50.
Step Out Charge (Adds or Adjustments)—per transaction .....	\$0.25.
Transactions submitted to the Exchange for trade date comparison (Adds)—per submission.	\$0.10.
Merged Order Report:	
Charge per copy (other than first copy):	
Machine Readable Output and Print Image Transmission .....	\$3.00 per 1,000 records.
Hard Copy .....	\$4.50 per 1,000 lines.

### Other Changes

The sections of the NYSE Alternext U.S. Price List in place prior to the Equities Relocation that set forth the Network B market data fees and the equity listing fees are included in the proposed NYSE Alternext Equities Price List. No changes are being made to any of these fees in this filing. Pricing for Exchange publications, including copies of the Exchange's Rule Book and Company Guide, will be included in both the equities and options price lists going forward.

### Options Price List

The NYSE Alternext U.S. Price List in effect prior to the Equities Relocation is being renamed the NYSE Alternext Options Price List. All pricing information relating to the trading of securities other than options is being deleted and either (i) moved to the NYSE Alternext Equities Price List or replaced with new fees as discussed above or (ii) eliminated as no longer relevant.<sup>11</sup>

<sup>6</sup> ITPN "User" is a member or person associated with a member, who has been entitled to receive one or more third party market data vendor service offerings via the Exchange's Integrated Technology Program Network.

<sup>7</sup> Plus appropriate sales tax where applicable.

<sup>8</sup> Plus sales tax.

<sup>9</sup> The Exchange will make all efforts to perform services during hours covered by the maintenance contract; however, tasks performed during overtime hours will be billed at a rate of 25% above the normal service charge.

<sup>10</sup> To be billed at \$106 per hour in 15 minute increments.

<sup>11</sup> Pricing for Exchange Traded Fund and Exchange Traded Notes is eliminated because those securities will not be traded on the Exchange after

### Regulatory Fees

NYSE Alternext Equities Rule 2 provides that, at the time of the Equities Relocation, all NYSE member organizations will automatically become NYSE Alternext member organizations. By acquiring NYSE Alternext membership, the NYSE member organizations that were not previously NYSE Alternext members would become subject to the NYSE Alternext registration fees for all of their employees who serve as registered representatives. As these NYSE member organizations that have no NYSE Alternext business prior to the Equities Relocation will become NYSE Alternext members without any action on their own part, NYSE Alternext will waive the application of its registered representative fees to those firms for the month of December. NYSE Alternext expects to submit a filing to adopt a revised registered representative fee commencing January 1, 2009.

### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>12</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons

the Relocation. Similarly, the Exchange will not facilitate UTP trading after the Relocation, so the pricing for the New UTP Trading Platform is no longer relevant. Consistent with the NYSE Price List, the NYSE Alternext U.S. Equities Price List will not make reference to Section 31 fees collected by the Exchange for payment to the Commission.

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

using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as the same fees will be charged to all member organizations.

### 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and Rule 19b-4(f)(2)<sup>14</sup> thereunder.

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.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

#### 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-2008-09 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-2008-09. 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-2008-09 and should be submitted on or before December 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59049; File No. SR-NYSEArca-2008-132]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer a New Order Type Known as the Adding Liquidity Only Order

December 3, 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 21, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 NYSE Arca. NYSE Arca filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 7.31 in order to offer a new order type known as the Adding Liquidity Only order. The text of the proposed rule change is attached as Exhibit 5. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, 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, NYSE Arca 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 Arca 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

In order to provide additional flexibility and increased functionality to its system and its Users,<sup>5</sup> the Exchange proposes to add NYSE Arca Equities Rule 7.31(nn) in order to offer an additional order type known as the Adding Liquidity Only ("ALO") order.

The ALO is a limit order that is posted to the NYSE Arca book only in the event that the order adds liquidity. If the order received is marketable (at or outside of the NBBO) at the time of entry, the entire order will be rejected. Any order at the time of entry that will lock or cross the market will be rejected. ALO orders that, at the time of entry, would otherwise interact with un-displayed orders will be rejected.

Once accepted and placed in the NYSE Arca book, ALO orders will not route to an away market center. Also, once an ALO order posts to the NYSE Arca book, if the market moves and thereby causes either a locked or crossed market, the ALO will stand its ground.

ALO Orders are designed to encourage displayed liquidity and offer NYSE Arca Users greater discretion and flexibility to post liquidity on NYSE Arca.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>7</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the ALO order is designed to encourage displayed

<sup>15</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.

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

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

<sup>5</sup> See NYSE Arca Rule 1.1(yy) for the definition of "User."

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).