

Copies of such 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-2008-14 and should be submitted on or before January 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59144; File No. SR-NYSEALTR-2008-12]

### Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing of Proposed Rule Change To Establish Its New Risk Management Gateway Service

December 22, 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 December 12, 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, 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, formerly the American Stock Exchange LLC, is proposing to establish its new Risk Management Gateway (“RMG”) service.

#### 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 Alternext 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 Exchange proposes to offer, through NYSE Euronext Advanced Trading Solutions, Inc., the RMG service to NYSE Alternext members and member organizations. NYSE Transact Tools, Inc, a division of the NYSE Euronext Advanced Trading Solutions Group (“NYXATS”), owns RMG. RMG is a part of the NYSE Alternext Trading Systems (defined below) operated on behalf of the Exchange by New York Stock Exchange LLC (“NYSE”).<sup>3</sup>

##### Background

As described more fully in a related rule filing,<sup>4</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 called NYSE Alternext US LLC, 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>5</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 (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 trading systems and facilities at 11 Wall Street (the “NYSE Alternext Trading Systems”) are operated by the NYSE on behalf of the Exchange.<sup>6</sup>

<sup>3</sup> NYXATS similarly seeks to offer the same services to the NYSE through a separate filing, SR-NYSE-2008-101.

<sup>4</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>5</sup> 15 U.S.C. 78f.

<sup>6</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008)

In order to implement the Equities Relocation, the Exchange adopted NYSE Rules 1-1004 as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems. Rule 54—NYSE Alternext Equities provides that only members are permitted to “\* \* \* make or accept bids or offers, consummate transactions, or otherwise transact business on the Floor for any security admitted to dealings on the [Exchange] \* \* \*.”<sup>7</sup>

Pursuant to Rule 123B—NYSE Alternext Equities, however, the Exchange permits NYSE Alternext members and member organizations (a “Sponsoring Member Organization”) to sponsor access to Exchange systems by non-member firms or customers (“Sponsored Participants”). Rule 123B—NYSE Alternext Equities is a general sponsored access rule that permits a Sponsoring Member Organization to sponsor a Sponsored Participant’s access to Exchange systems for the Sponsored Participant’s entry and execution of orders on the Exchange. Rule 123B—NYSE Alternext Equities reflects the Exchange’s general policy regarding sponsored access to the Exchange; it does not govern access to NYSE Alternext Bonds.<sup>8</sup> NYSE Arca, Inc. and other market centers similarly permit sponsored access to their trading systems.

##### RMG

Traditionally, the customers of a member or member organization gave orders to the member or member organization and the member or member organization then submitted those orders to the Exchange on behalf of the customer. By means of sponsored access, a member or member organization will allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the Sponsoring Member Organization acting as an intermediary.

To facilitate the ability of Sponsoring Member Organizations to monitor and oversee the sponsored access activity of their Sponsored Participants, NYXATS will offer an order-verification service to Sponsoring Member Organizations. This service will act as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the

(SR-Amex 2008-63) (approving the Equities Relocation).

<sup>7</sup> See also Rule 2—NYSE Alternext Equities.

<sup>8</sup> That is, currently, the provisions of Rule 123B—NYSE Alternext Equities do not apply to Rule 86—NYSE Alternext Equities as that rule independently contains provisions related to how a user gains sponsored access to the NYSE Alternext Bonds system.

<sup>10</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.

Exchange's trading systems for execution. When a Sponsored Participant's order passes through RMG, RMG software determines whether the order complies with order criteria that the Sponsoring Member Organization has established for that Sponsored Participant. The order criteria pertain to such matters as the size of the order (per order or daily quantity limits) or the credit limit (per order or daily value) that the Sponsoring Member Organization has established for the Sponsored Participant. Additional risk filters may also be selected by the Sponsoring Member Organization relating to specific symbols or end users.

If the order is consistent with the parameters set by the Sponsoring Member Organization, then RMG allows the order to continue along its path to the Exchange's trading systems. If the order falls outside of those parameters, then RMG returns the order to the Sponsored Participant. RMG will only return an order to the Sponsored Participant when the order fails to comply with the criteria set by the Sponsoring Member Organization.

RMG software interacts with orders only prior to the orders' entry into the Exchange's trading system for execution. RMG does not have order execution or trade reporting capabilities (though it will allow a Sponsoring Member Organization to monitor the orders of its Sponsored Participants). RMG maintains a record of all messages relating to Sponsored Participants' transactions and supplies a copy of such messages to the applicable Sponsoring Member Organization.

The Sponsoring Member Organization, and not RMG, will have full responsibility for ensuring that Sponsored Participants' sponsored access to the Exchange complies with the Exchange's sponsored access rules. The use of RMG by a Member Organization does not automatically constitute compliance with Exchange rules.

NYXATS will host RMG software on NYXATS' infrastructure. After passing through RMG software, each order will enter the NYSE Common Customer Gateway (CCG)<sup>9</sup> for connectivity to the Exchange's matching engine. In the future NYXATS may integrate RMG into the NYSE CCG for more direct access to the Exchange's matching engine.

The Exchange does not require Sponsoring Member Organizations to use RMG (even when it is integrated

into NYSE CCG in the future). Sponsoring Member Organizations are free to use a competing risk-management service or to use none at all. The Exchange will not provide preferential treatment to Sponsoring Member Organizations using RMG.

The Exchange proposes to make RMG available to its members and member organizations pursuant to contractual arrangements. The Exchange believes that RMG will offer its members and member organizations another option in the efficient risk management of its Sponsored Participant's access to the NYSE Alternext Trading Systems.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)<sup>10</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. The proposed rule change also is designed to support the principles of section 11A(a)(1)<sup>11</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that RMG is consistent with all the aforementioned principles because it fosters competition by providing another option in the efficient risk management of trading on the Exchange without the participation of a dealer.

### 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 the Exchange consents, the Commission will:

(A) By order approve the 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 No. SR-NYSEALTR-2008-12 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NYSEALTR-2008-12. 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 such 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

<sup>9</sup>The NYSE CCG is a part of the NYSE Alternext Trading Systems, operated on behalf of the Exchange by NYSE.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

available publicly. All submissions should refer to File Number SR–NYSEALTR–2008–12 and should be submitted on or before January 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59146; File No. SR–NYSEArca–2008–136]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Amending NYSE Arca Equities Rule 5.2(j)(6), the Exchange's Initial Listing Standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities

December 22, 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 December 10, 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, 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 amend NYSE Arca Equities Rule 5.2(j)(6), the Exchange's initial listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities. The text of the proposed rule change 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.

<sup>12</sup> 17 CFR 200.30–3(a)(12).

<sup>15</sup> 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 NYSE Arca Equities Rule 5.2(j)(6), the Exchange's initial listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities ("Index-Linked Securities"), to provide for greater flexibility in the listing criteria for such securities, as set forth below.

Currently, Rule 5.2(j)(6)(A)(d) provides that the payment at maturity of a cash amount for Index-Linked Securities may or may not provide for a multiple of the direct or inverse performance of an underlying Reference Asset,<sup>4</sup> and in no event will a loss or

<sup>4</sup> As defined in Rule 5.2(j)(6), "Reference Assets" include "Equity Reference Assets," which consist of an underlying index or indexes of equity securities; "Commodity Reference Assets," which consist of a basket or index of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in Rule 8.201); "Currency Reference Assets," which include a basket or index of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in Rule 8.202); "Fixed Income Reference Asset" which consist of one or more indexes or portfolios of notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof; "Futures Reference Asset" which consists of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives; and "Multifactor Reference Asset" which consists of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets.

negative payment at maturity be accelerated by a multiple that exceeds twice the performance of an underlying Reference Asset.

The Exchange proposes to amend Rule 5.2(j)(6)(A)(d) to allow the Exchange to consider for listing and trading Index-Linked Securities that provide that in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset.

The Exchange proposes these changes in order to allow the Exchange to initially consider for listing and trading Index-Linked Securities that employ investment strategies similar or analogous to certain Exchange-Traded Funds which list and trade on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(3).<sup>5</sup> Currently, Exchange-Traded Funds are able to seek daily investment results, before fees and expenses, that correspond to three times the inverse or opposite of the daily performance (–300%) of the underlying indexes.

###### Limitation on Leverage

In connection with Index-Linked Securities that seek to provide investment results, before fees and expenses, in an amount that exceeds –300% of the percentage performance of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to section 19(b)(2) of the Act.<sup>6</sup> In particular, NYSE Arca Equities Rule 5.2(j)(6) would expressly prohibit Index-Linked Securities that seek to provide investment results, before fees and expenses, in an amount that exceeds –300% of the percentage performance of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.<sup>7</sup>

The Exchange believes that a –300% limitation will permit Index-Linked Securities to provide investors with an incremental additional degree of leverage similar to instruments available to professional investors to manage risk. In addition, recommendations to investors of transactions in Index-Linked Securities are subject to the customer suitability requirements of NYSE Arca Equities Rule 9.2, as discussed below.

<sup>5</sup> See Securities Exchange Act Release No. 58825 (October 21, 2008), 73 FR 63756 (October 27, 2008) (SR–NYSEArca–2008–89). Order approving inverse fund shares that cannot exceed –300% of the inverse or opposite of the daily performance of an underlying index.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 240.19b–4(e).