

*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**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>27</sup> and Rule 19b-4(f)(6) thereunder.<sup>28</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>29</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>30</sup> and has proposed to make the rule change operative as of February 6, 2009.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will enable the Exchange to immediately implement a more efficient closing process, thereby providing for timelier reporting of the closing transaction. Additionally, the Commission notes that the Exchange will continue to publish the Mandatory Indication when there is a significant imbalance before the close, as required under Rule 123C(5). Accordingly, the Commission designates the proposed rule change as operative as of February 6, 2009.<sup>31</sup>

<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

<sup>29</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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 has satisfied this requirement.

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>31</sup> For purposes only of waiving the operative delay for this proposal, the Commission has

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>32</sup>

**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-NYSE-2009-10 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2009-10. 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 Exchange. All comments received will be posted

considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>32</sup> 15 U.S.C. 78s(b)(3)(C).

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-2009-10 and should be submitted on or before March 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-2650 Filed 2-6-09; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59344; File No. SR-NYSEALTR-2009-03]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC Making Changes to Certain NYSE Alternext Equities Rules to Conform With Amendments to Corresponding Rules Recently Filed for Immediate Effectiveness by the New York Stock Exchange LLC and To Make Other Technical Changes**

February 2, 2009.

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 January 23, 2009, 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. NYSE Alternext filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</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 (i) make changes to certain NYSE Alternext Equities Rules to conform with

<sup>33</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.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

amendments to corresponding rules recently filed for immediate effectiveness by the New York Stock Exchange LLC (“NYSE”);<sup>6</sup> and (ii) make technical changes to Rule 431—NYSE Alternext Equities.

The text of the proposed rule change is available at <http://www.nyse.com>, the Exchange, and 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 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 purpose of the proposed rule changes is to (i) make changes to certain NYSE Alternext Equities Rules to conform with amendments to corresponding NYSE Rules recently filed for immediate effectiveness by the NYSE; and (ii) make technical changes to Rule 431—NYSE Alternext Equities.

#### Background

As described more fully in a related rule filing,<sup>7</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 U.S. LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.<sup>8</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange

<sup>6</sup> See Securities Exchange Act Release No. 59077 (December 10, 2008), 73 FR 76691 (December 17, 2008) (SR–NYSE–2008–127) (clean-up amendments related to the New Market Model).

<sup>7</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>8</sup> 15 U.S.C. 78f.

relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, 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”) are operated by the NYSE on behalf of the Exchange.<sup>9</sup>

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems.<sup>10</sup> The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

#### Proposed Conforming Amendments to Certain NYSE Alternext Equities Rules:

As noted above, the Exchange proposes to make changes to certain NYSE Alternext Equities Rules to conform with amendments to corresponding NYSE Rules recently filed for immediate effectiveness by the NYSE. Unless specifically noted, and subject to such technical changes as are necessary to apply the Rules to the Exchange, NYSE Alternext is proposing to adopt the NYSE’s rule changes in the form that they were filed with the Commission. The NYSE’s rule changes and the Exchange’s proposed conforming rule changes are described below.

<sup>9</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>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); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (adopting amendments to NYSE Alternext Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11) (adopting amendments to Rule 62—NYSE Alternext Equities to track changes to corresponding NYSE Rule 62).

NYSE Rule Filing SR–NYSE–2008–127<sup>11</sup>

In this filing, the NYSE proposed to (i) amend the operative duration of Rule 104T (Dealings by DMMs), (ii) delete text from Rules 104T and 123 (Record of Orders) relating to orders received by NYSE systems and DMM yielding, (iii) change internal cross-references in Rules 98 (Operation of a DMM Unit) and 123E (DMM Combination Review Policy), (iv) add the terms “market maker” and “market making” to certain provisions of Rule 431 (Margin Requirements), and (v) make technical “clean-up” changes to other NYSE Rules by substituting “DMM” for “specialist”.

Most of the changes noted above were adopted by the Exchange for the NYSE Alternext Equities Rules in a prior filing tracking changes to NYSE Rules.<sup>12</sup> However, the Exchange proposes the following conforming changes that still need to be made to the NYSE Alternext Equities Rules: (i) In Rule 70.25(a)(viii) clarifying “DMM unit” rather than “DMM”; (ii) in Rule 98(c)(2)(D), removing the cross-reference to paragraph (b) of Rule 103.20; (iii) in Rule 431(f)(2)(M)(iv)(10)(F) adding in the terms “market maker” and “market making”; and (iv) in the chart contained in Rule 900(b), clarifying that, for Rule 98A, the second sentence of the first paragraph of that Rule does not apply to after-hours trading on the Exchange.

#### Proposed Technical Amendments to Rule 431—NYSE Alternext Equities

The Exchange also proposes to make additional technical changes to Rule 431—NYSE Alternext Equities to correct references to “specialist” that were incorrectly changed to “DMM” in a prior rule filing.<sup>13</sup> The term “specialist” as used in that Rule is used in conformity with federal rules and, unlike the term “DMM”, is not Exchange-specific.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of

<sup>11</sup> See Securities Exchange Act Release No. 59077 (December 10, 2008), 73 FR 76691 (December 17, 2008).

<sup>12</sup> See Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10).

<sup>13</sup> See Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10).

<sup>14</sup> 15 U.S.C. 78f(b).

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

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>16</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 changes are necessary and appropriate to update the NYSE Alternext Equities Rules in conformity with changes made to the corresponding NYSE Rules on which they are based and to make other technical amendments to correct the Rules. To the extent the Exchange has proposed changes that differ from the NYSE version of the Rules, such changes are technical in nature and do not change the substance of the proposed Rules.

#### *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**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to

Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>19</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>20</sup> which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will conform the rule text to language that was previously approved by the Commission in prior proposed rule changes, and make technical clarifications to those rules.<sup>21</sup> Waiving the operative delay will ensure that the rule text of the Exchange is accurate and will avoid potential confusion by eliminating technical errors. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>22</sup>

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>23</sup>

### **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:

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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 has satisfied this requirement.

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

<sup>21</sup> See *supra* notes 11 and 12.

<sup>22</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(C).

#### *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-2009-03 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEALTR-2009-03. 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, 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 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-2009-03 and should be submitted on or before March 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-2580 Filed 2-6-09; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>16</sup> 15 U.S.C. 78k-1(a)(1).