

which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.<sup>15</sup>

The Commission approved the fee for NYSE Realtime Reference Prices for a pilot period which runs until December 31, 2008.<sup>16</sup> The Commission notes that the Exchange proposes to extend the pilot program for three months. The Exchange proposes no other changes to the existing pilot program.

On December 2, 2008, the Commission issued an approval order ("Order") that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for "non-core" market data products, such as NYSE Realtime Reference Prices.<sup>17</sup> The Commission believes that NYSE's proposal to temporarily extend the pilot program is consistent with the Act for the reasons noted in the Order.<sup>18</sup> The Commission believes that approving NYSE's proposal to temporarily extend the pilot program that imposes a fee for NYSE Realtime Reference Prices for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information. In addition, extending the pilot program for an additional three months will allow NYSE, consistent with its representation,<sup>19</sup> to file, the public to comment on, and the Commission to analyze consistent with the Order and in light of Section 19(b) of the Act, a proposal to permanently approve the fee for NYSE Realtime Reference Prices.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of

<sup>15</sup> NYSE is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

<sup>16</sup> See *supra* notes 3 and 7. NYSE reduced the flat monthly fee for NYSE Realtime Reference Prices from \$100,000 per month to \$70,000 per month. See Securities Exchange Act Release No. 58443 (August 29, 2008), 73 FR 52436 (September 9, 2008) (SR-NYSE-2008-79).

<sup>17</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

<sup>18</sup> See *supra* notes 3 and 7.

<sup>19</sup> The Exchange represents that it intends to file a proposal seeking permanent approval of NYSE Realtime Reference Prices. Telephone conversation between Ronald Jordan, Executive Vice President, Market Data Services, NYSE Euronext, and John Roeser, Assistant Director, Division of Trading and Markets, Commission, on December 30, 2008.

publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in NYSE Realtime Reference Prices. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>20</sup> to approve the proposed rule change on an accelerated basis to extend the operation of the pilot until March 31, 2009.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2008-141) is hereby approved on an accelerated basis until March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E9-9 Filed 1-6-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59176; File No. SR-NYSEALTR-2008-20]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC Extending the Implementation of the NYSE Alternext Book Clerk Program From January 1, 2009 Through March 31, 2009

December 30, 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 29, 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 NYSE Alternext. 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 extend the implementation of the NYSE Alternext

Book Clerk program from January 1, 2009 through March 31, 2009.

The text of the proposed rule change is available at <http://www.nyse.com>, NYSE Alternext, 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 Commission previously approved a proposed rule change by the American Stock Exchange ("Amex"), the predecessor of the Exchange before Amex's acquisition by NYSE Euronext, Inc. on October 1, 2008 (the "Acquisition"), to (1) Eliminate the obligation and ability of an Amex options specialist to act as an agent in connection with orders in his or her assigned options classes, (2) establish an Amex Book Clerk (now NYSE Alternext Book Clerk) program ("ABC program") to designate unaffiliated persons responsible for operating and maintaining the customer limit order book and effecting proper executions, and (3) amending certain Amex rules relating to the operation of the ABC program.<sup>4</sup>

Exchange Rule 995-ANTE originally provided that the roll-out of the ABC program would occur over a six-month period ending on May 1, 2008. On May 1, 2008, Amex filed a proposal to extend the roll-out of the ABC program from May 2, 2008 through December 31, 2008, and that proposal was designated by the Commission as operative upon filing.<sup>5</sup> Due to integration activities subsequent to the Acquisition, the Exchange seeks an additional extension of the roll-out period from January 1,

<sup>4</sup> See Securities Exchange Act Release No. 56804 (November 16, 2007), 72 FR 66002 (November 26, 2007) (SR-Amex-2006-107) ("ABC Proposal").

<sup>5</sup> See Securities Exchange Act Release No. 57770 (May 2, 2008), 73 FR 26452 (May 9, 2008) (SR-Amex-2008-37).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

2009 through March 31, 2009. The Exchange submits that complexities associated with the aforementioned integration activities, including plans to replace the Exchange's current technology with NYSE Arca electronic trading technology and to move the Exchange's trading floor operations to a new options trading floor located at 11 Wall Street in February 2009, have caused a delay in the revised ABC program roll-out schedule. The Exchange believes that an extension of the roll-out period of the ABC program through March 31, 2009 will allow the Exchange sufficient time to resolve the integration activity that has delayed completion of the roll-out.

As set forth in the ABC Proposal and Amex Regulatory Circular 2008-03 (January 23, 2008), during the roll-out period, options specialists who continue to operate the customer limit order book will continue to be subject to the same agency obligations as are currently provided under Exchange Rules 950-ANTE(l) and 958-ANTE(e).

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the "Act"), 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, 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. Additionally, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

More specifically, the Exchange believes that extending the completion date for the roll-out of the ABC program will allow the Exchange to keep its primary focus on transitioning options trading to the NYSE Arca electronic trading technology. This technology update will provide the Exchange's options traders with a faster, more transparent marketplace with greater capacity, thereby contributing to perfecting the mechanism of a free and open market and a national market system, and which is also consistent

with the protection of investors and the public interest.<sup>8</sup>

### 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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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>11</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. NYSE Alternext requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> which would make the rule change effective and operative upon filing. The Exchange noted that this proposal merely extends the implementation date of the ABC program due to circumstances (*i.e.*, the Acquisition) that it did not foresee at the

time the previous extension was granted.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to extend the roll-out of the ABC program without interruption.<sup>13</sup> In particular, prompt effectiveness of this extension will allow the Exchange to focus its resources on the integration activities resulting from the Acquisition and the upgrading of its options trading platforms. Therefore, the Commission designates the proposal operative upon filing.

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 or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</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-NYSEALTR-2008-20 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-2008-20. 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

<sup>8</sup> The Exchange notes that the new options trading platform will have functionality that is similar to the ABC program.

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</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. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</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).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(C).

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

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

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-2008-20 and should be submitted on or before January 28, 2009.

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

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

[FR Doc. E9-2 Filed 1-6-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59179; File No. SR-NYSEALTR-2008-16]

### Self-Regulatory Organizations; NYSE Alternext U.S. LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent the NYSE Alternext Bonds System Fee Schedule Which Is Currently Set To Expire on December 31, 2008 as Well as Make Technical Amendments to the Fee Schedule

December 30, 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 24, 2008, NYSE Alternext U.S. LLC ("NYSEALTR" or the "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 NYSEALTR. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii)

of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal 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 make permanent the NYSE Alternext Bonds System fee schedule which is currently set to expire on December 31, 2008 as well as make technical amendments to the fee schedule.

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, NYSEALTR 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. NYSEALTR 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 make permanent the NYSE Alternext Bonds System fee schedule which is currently set to expire on December 31, 2008 as well as make technical amendments to the fee schedule.

The Exchange recently filed a rule change that established, *inter alia*, the NYSE Alternext Bonds System fee schedule ("fee schedule").<sup>5</sup> The fee schedule established execution fees per bond for orders that took liquidity from the NYSE Alternext Bonds Book. The fee schedule was structured to be similar to the NYSE Bonds Price List. The Exchange's reasoning for structuring the fee schedule in this fashion was because member organizations of NYSE Alternext that

trade bonds and NYSE member organizations are member organizations of both exchanges. This dual membership structure allows all member organizations to trade on both exchanges and harmonizes the pricing structures of the two exchanges.

The Exchange is proposing a rule change to make the fee schedule permanent. At the time the fee schedule was first implemented as part of a larger NYSE Alternext filing (SR-NYSEALTR-2008-09), the Exchange inadvertently applied an expiration date of December 31, 2008 to the fee schedule which corresponded with the expiration of the NYSE Bonds pilot program for liquidity takers.<sup>6</sup> The Exchange intended to implement a permanent fee schedule for the NYSE Alternext Bonds System. Accordingly, the Exchange requests that the expiration date of December 31, 2008 be removed from the fee schedule.

Additionally, the Exchange seeks to clarify the language in the fee schedule by replacing the word "order" with "execution." The Exchange is not billing liquidity takers on the orders but rather the executions of those orders. Accordingly, the Exchange has proposed to amend the fee schedule to clarify the current language in the fee schedule.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>8</sup> in general and Section 6(b)(4) of the Act<sup>9</sup> 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 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 purposes of the Act.

<sup>6</sup> See Securities Exchange Act Release No. 57823 (May 15, 2008), 73 FR 29804 (May 22, 2008) (SR-NYSE-2008-38).

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

<sup>8</sup> 15 U.S.C. 78a *et seq.*

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

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

<sup>5</sup> See Securities Exchange Release No. 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR-NYSEALTR-2008-09).

<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.