

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59517; File No. SR-NYSEALTR-2009-23)

March 5, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of  
Proposed Rule Change by NYSE Alternext US LLC to Permit Two Trading Officials to  
Modify the Required Bid/Ask Differentials

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 March 3, 2009, NYSE Alternext US LLC (“NYSE Amex” or the “Exchange”) 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 Exchange. The Exchange 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 Exchange Rule 925NY – Obligations of Market Makers. 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 [www.nyse.com](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

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<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).

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 change is to adopt a provision which will allow the Exchange to establish different quote differentials other than what is provided for in Rule 925NY(b)(5). The proposed rule language is substantially similar to what has been approved for, and is presently in place at, the Chicago Board Options Exchange (“CBOE”).<sup>5</sup>

Pursuant to Rule 925NY(b), Market Makers on NYSE Amex are required to submit electronic quotations within certain bid/ask differentials. Subsection (5) of this rule states that following an Auction, options traded on NYSE Amex may be quoted with a difference not to exceed \$5 between the bid and offer. NYSE Amex now proposes to add a provision that will allow the Exchange to establish different bid/ask differentials for certain series.

Situations may arise where the \$5 differential provided for in Rule 925NY(b)(5) is overly restrictive; this has shown to be the case when extreme price fluctuations

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<sup>5</sup> See CBOE Rule 8.7(b)(iv)(C)(ii).

coupled with increased volatility in an underlying security makes it extremely difficult to accurately calculate the price of a given options series. To address these concerns, the CBOE has established modified bid/ask differentials in certain options series, pursuant to CBOE Rule 8.7(b)(iv).<sup>6</sup> This proposed rule change seeks only to allow the Exchange to offer NYSE Amex Market Makers the same quote relief that is offered to Market Makers on the CBOE.

The Exchange envisions establishing quote differentials wider than \$5 in very limited situations. In addition, if the Exchange were to establish modified bid/ask differentials it would do so with the contingency that the disseminated markets in affected series would remain competitive and remain narrower than the relief granted, whenever possible.

The CBOE rule states that “the Exchange” may establish bid/ask differences other than what is provided for in their rules. NYSE Amex proposes that the decision to establish different quote differentials will be made by two Trading Officials.<sup>7</sup> In the case of NYSE Amex, two Trading Officials will collectively make the determination on behalf of the Exchange. This is the only difference between the CBOE rule text and the proposed rule text for NYSE Amex.

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<sup>6</sup> See CBOE Bid/Ask Circular 09-02 (January 7, 2009) establishing modified bid/ask differentials pursuant to CBOE Rule 8.7(b)(iv).

<sup>7</sup> A Trading Official is an Exchange Employee that has been designated as such by the Chief Executive Officer, or the Chief Regulatory Officer, pursuant to Rule 900.2NY(82).

The Exchange notes that Rule 925NY(b) was adopted when the Commission approved SR-NYSEALTR-2008-14, on February 27, 2009.<sup>8</sup> This rule change was filed in conjunction with the NYSE Amex move to a new trading facility and the implementation of a new electronic trading system. Prior to the rule change, NYSE Amex Rule 958-ANTE governed the bid-ask differentials for electronic quoting on NYSE Amex. Rule 958-ANTE(c)(i) contained a similar provision to what is proposed in this filing, which authorized the Exchange to establish differences other than what was prescribed in the rule. So, while this proposal does amend the rules presently in effect for NYSE Amex, the concept of allowing the Exchange to establish quote differentials, other than what is prescribed in the rules, is not without precedent.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, because 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 mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is appropriate in that it creates a mechanism whereas Market Makers will be able to provide two side

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<sup>8</sup> See Securities and Exchange Act Release No. 34-59472, February 27, 2009. This Approval Order had not yet been published in the Federal Register at the time this proposal was filed.

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

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

quotations even in situations where it is difficult to accurately calculate the price of given options series.

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 does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written 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 Commission is waiving the five-day pre-filing requirement in this case.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission hereby grants the Exchange's request.<sup>13</sup> The proposed rule change is substantially similar to a rule of the CBOE and does not raise any novel or significant issues. Therefore, the Commission believes that waiving the 30-day period to allow the proposed rule change to become operative upon filing is consistent with the protection of investors and the public interest and designates the proposal as operative upon filing.

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.

#### 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-2009-23 on the subject line.

##### Paper Comments:

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<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).

- 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-2009-23. 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 10:00 a.m. and 3:00 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-2009-23 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).