

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59142; File No. SR-NYSEALTR-2008-14)

December 22, 2008

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing of Proposed Rule Change Amending Rules Governing the Trading of Listed Options on NYSE Amex

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 19, 2008, NYSE Alternext US LLC (“NYSE Alternext”, “NYSE Amex Options”, “NYSE Amex”, 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 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 its rules governing the trading of listed options on NYSE Amex. With this filing, the Exchange proposes to a) adopt new rules for the implementation of a new trading platform for options, NYSE Amex System (“System”) and (b) govern open outcry trading at the Exchange’s new location at 11 Wall Street, New York, NY. The proposed new rule set text is designated Section 900NY, and is shown in the Exhibit 5.

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. The text of Exhibit 5 is also available on the Commission’s Web site (<http://www.sec.gov/rules/sro.shtml>).

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

<sup>2</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 Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to introduce a modern electronic trading platform to support options trading, and in addition, proposes to update and reorganize open outcry trading at the time of the migration to the new platform and the move to a new Options Trading Floor at 11 Wall Street, New York, NY. The new rule set is proposed as Section 900NY.

Rule Section 900NY will replace certain existing NYSE Alternext Rules. These are, under General Rules, Rule 1, Hours of Business; Rule 2, Visitors; Rule 21, Appointment of the Senior Supervisory Officer, Senior Floor Officials, Exchange Officials and Floor Officials; Rule 21, Authority of Floor Officials; Rule 27A, Allocation of Options; Rule 170, Registration and Functions of Specialists. Under Trading of Options Contracts, the superseded Rules are, in Section 1, Rule 900, Applicability, Definitions and References; in Section 2, Rule 918, Trading Rotations, Halts, and Suspensions; in Section 3, Rule 933, Automatic Execution of Options Orders; Rule 934, Limitation on Orders; Rule 936, Cancellation and Adjustment of Equity Options Transactions; in Section 4, Rule 941, Operation of the Linkage; Rule 942, Order Protection; Rule 943, Locked Markets; Rule 944, Limitation on Principal Order Access.

Additionally, Section 900NY will replace, in Section 5 - Floor Rules Applicable to Options, Rule 950, Rules of General Applicability; Rule 951, Premium Bids and Offers; Rule 952, Minimum Price Variations; Rule 953, Acceptance of Bid or Offer; Rule 954, Units of Trading; Rule 955, Floor Reports of Exchange Options Transactions; Rule 956, Open Orders on “Ex Date”; Rule 957, Accounts, Orders and Records of Registered Traders, Designated NYSE Alternext Remote Traders, Specialists and Associated Persons; Rule 958, Options Transactions of Registered Traders; Rule 958A, Application of the Firm Quote Rule, Rule 959, Accommodation Transactions; in Section 9, Rule 992, Exchange Options Market Data System; in Section 11 - Stock Index Options, Rule 918C, Trading Rotations, Halts and Suspensions; and in ANTE Rules, all Rules (Rule 900-ANTE through Rule 997-ANTE).

These Rules will be deleted in a separate filing.

Various provisions contained in the proposed rules define and describe the use of a Routing Broker. A full description of the relationship between the Exchange and the Routing Broker will be submitted in a separate filing.

NYSE Amex proposes to establish rules for NYSE Amex System, a fully automated trading system for standardized equity and index options intended to replace the Exchange’s current options trading platform, ANTE. The System will provide automatic order execution capabilities in the options securities listed and traded on NYSE Amex. Market Makers will be able to stream quotes to the System from on the Trading Floor or remotely. The proposed NYSE Amex System is an electronic market structure which encompasses customer priority while essentially allowing market makers and non customers to compete on a “size pro rata” basis, and will be available for the entry and execution of quotes and orders to ATP Holders. Participation entitlements are reserved for Specialists, e-Specialists, and Directed Order Market Makers. The rules governing Specialists and size pro rata trade allocation are substantially based on rules

which had been approved for the Pacific Exchange and its PCX Plus Platform;<sup>3</sup> additional rules regarding e-Specialists are based on approved rules of the Chicago Board Options Exchange;<sup>4</sup> while rules outlining entitlements of Directed Order Market Makers are based on the rules of the NASDAQ OMX PHLX, Inc.<sup>5</sup>

NYSE Alternext proposes to issue Amex Trading Permits (“ATPs”), as defined in proposed Rule 900.2NY(4), for effecting approved securities transaction on the Exchange’s Trading Facilities. NYSE Alternext Rules 40, 350, 353, 353A, 358, 358A, 359, 359A, and 359B are being amended to reflect the change from 86 Trinity Permits to Amex Trading Permits. Current 86 Trinity Permits will be easily converted to Amex Trading Permits with a simple conversion form submitted to the Exchange. No material change is being made to these Rules, although some outdated provisions, such as the requirement for a medical examination, are being removed. The Exchange is also eliminating the concept of “nominee”.

Access to the NYSE Amex System and business on the Trading Floor is limited to Amex Trading Permit Holders (“ATP Holders”), as defined in proposed Rule 900.2NY(5). ATP Holders are natural persons, sole proprietorships, partnerships, corporations, limited liability companies, or other organizations that have been issued an ATP. References in the Rules of NYSE Alternext to “member,” “member organization,” and “86 Trinity Permit Holder” should be deemed to be references to ATP Holders. In addition, within Rule Section 900NY, (specifically Rules 920NY – 928NY) are rules which describe Market Makers, Specialists, and electronic Specialists, and their respective rights and obligations. These are similar to NYSE Arca rules 6.32 – 6.40.

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<sup>3</sup> See SR-PCX-2003-36, Securities Exchange Act Release No. 47838.

<sup>4</sup> See CBOE Rules 8.87 and 8.92 – 8.94.

<sup>5</sup> See PHLX Rule 1080(l).

In connection with the implementation of the System, NYSE Amex proposes to adopt definitions applicable to activity on the System. The most significant of the proposed definitions are as follows:

Proposed NYSE Amex Rule 900.2NY(44). *NOW Recipients*. As described further below, NYSE Amex proposes to add “NOW Order” as a new order type. Users will be permitted to designate orders entered on the System as “NOW Orders.” NOW Orders are limit orders that are to be executed in whole or in part on the System. Any portion of such orders not executed on the System will be routed to one or more “NOW Recipients” for immediate execution. “NOW Recipients” include any Market Center (1) with which NYSE Amex maintains an electronic linkage, and (2) that provides instantaneous responses to NOW Orders routed from the System. NYSE Amex will designate those Market Centers that qualify as NOW Recipients and periodically publish such information via its website. Any portion of a NOW Order not immediately executed by the NOW Recipient will be cancelled. If a NOW Order is not marketable when it is submitted to the System, it will be cancelled.

Proposed NYSE Amex Rule 900.3NY. In addition to certain existing order types (e.g., Limit Orders, Market Orders), NYSE Amex is proposing to add several new order types available for entry on the System. These include the following:

Proposed NYSE Amex Rule 900.3NY(c). Inside Limit Order. An “Inside Limit Order” is a Limit Order, which, if routed away pursuant to Rule 964NY, will be routed to the market participant with the best displayed price. Any unfilled portion of the order will not be routed to the next best price level until all quotes at the current best bid or offer are exhausted. If the order is no longer marketable it will be ranked in the Consolidated Book pursuant to Rule 964NY.

Proposed NYSE Amex Rule 900.3NY(d). Working Order. Working Orders consist of several existing order types (i.e., All-or-None Orders, Stop Order) as well as several new order types (i.e., Reserve Orders, Stock Contingency Orders, Tracking Orders). Working orders are maintained in the Consolidated Book Working Order Process, are not disseminated on the System and are executed in accordance with NYSE Amex Rule 964NY. A Working Order is any order that has a conditional or undisplayed price and/or size designated as a “Working Order” by NYSE Amex, including, without limitation:

- (1) Reserve Order. A limit order with a portion of the size displayed (“display size”) and with a reserve portion of the size (“reserve size”) that is not displayed on the System.
- (2) All-or-None Order (“AON Order”). A Market or Limit Order that is to be executed in its entirety or not at all.
- (3) Stop Order. A Stop Order is an order that becomes a Market Order when the market for a particular option contract reaches a specified price. A Stop Order to buy becomes a Market Order when the option contract trades at or above the stop price on the System or another Market Center or when the NYSE Amex bid is quoted at or above the stop price. A Stop Order to sell becomes a Market Order when the option contract trades at or below the stop price on the System or another Market Center or when the NYSE Amex offer is quoted at or below the stop price. Stop Orders (including Stop Limit Orders) shall not have standing in any order process in the Consolidated Book and shall not be displayed.

(4) Stop Limit Order. A Stop Limit Order is an order that becomes a Limit Order when the market for a particular option contract reaches a specified price. A Stop Limit Order to buy becomes a Limit Order when the option contract trades at or above the stop price on the System or another Market Center or when the NYSE Amex bid is quoted at or above the stop price. A Stop Limit Order to sell becomes a Limit Order when the option contract trades at or below the stop price on the System or another Market Center or when the NYSE Amex offer is quoted at or below the stop price.

(5) Stock Contingency Order. An option order the execution of which is contingent upon the last sale price as specified by the User of the underlying stock traded at the primary marketplace.

(6) Tracking Order. A Tracking Order is an undisplayed limit order that is eligible for execution in the Working Order Process against orders equal to or less than the size of the Tracking Order.. While Tracking Orders are ranked at their limit price, they are only eligible for execution at a price that matches the NBBO.

For instance, the NBBO market in a series is 2.05 – 2.15, with a 2.10 Tracking Order to buy 10 contracts, but the NYSE Amex displayed bid is 2.00. An order is received to sell 6 contracts at 2.05; this order will be matched against the 2.10 buy Tracking Order at a price of 2.05, matching the NBBO.

Similarly, with the same initial scenario, a second Tracking Order to buy 20 contracts paying 2.05 is placed in the Consolidated Book. An order is received to sell 15 contracts at 2.05. This order is matched against the second Tracking

Order, since it outsizes the first Tracking Order. It will be executed at 2.05, the NBBO price.

If a Tracking Order is executed but not exhausted, the remaining portion of the order shall be cancelled, without routing the order to another market center or market participant. A Tracking Order shall not trade-through the NBBO.

Proposed NYSE Amex Rule 900.3NY(o). NOW Order. A “NOW Order” is a Limit Order that is to be executed in whole or in part on the System, and the portion not so executed will be routed pursuant to Rule 964NY only to one or more NOW Recipients for immediate execution as soon as the order is received by the NOW Recipient. Any portion not immediately executed by the NOW Recipient will be cancelled. If a NOW Order is not marketable when it is submitted to NYSE Arca System, it will be cancelled.

Proposed NYSE Amex Rule 900.3NY(p). PNP Order. A “PNP Order” (Post No Preference) is a Limit Order to buy or sell that is to be executed in whole or in part on NYSE Amex, and the portion not so executed is to be ranked in the Consolidated Book, without routing any portion of the order to another market center; provided, however, NYSE Amex shall cancel a PNP Order that would lock or cross the NBBO.

Proposed NYSE Amex Rule 902NY. NYSE Amex is proposing NYSE Amex Rule 902NY to govern Access and Conduct on the Trading Floor at its new location at 11 Wall Street. Although the Options Trading Floor will be physically separated from the New York Stock Exchange and NYSE Alternext equity trading floor, the floors will be managed and overseen by combined NYSE Euronext employees, and the standards of dress and conduct for the Options Floor will be the same as the standards for the equity floor. Rule 902NY also describes additional standards of dress and conduct that will apply to the Options Floor, consistent with



standards for the NYSE Arca Options Trading Floor.<sup>6</sup> ATP Holders on the Trading Floor will be either Market Makers (including Specialists) or Floor Brokers.

The Exchange currently has four general classifications of Market Maker: Specialist, Registered Options Trader (“ROT”), Supplemental Registered Options Traders (“SROT”), and Remote Registered Options Trader (“RROT”). Under the proposed new Rules, these will remain essentially the same, although ROTs and SROTs will be combined into one classification as Floor Market Maker. RROTs will become Remote Market Makers.

There will be no limit to the number of Remote Market Makers, and no limit to the number of Floor Market Makers. The only significant change to the operations of Floor Market Makers is that the “join quote” mechanism described in Rule 958-*ANTE* (Options Transactions of Registered Options Traders and Supplemental Registered Options Traders and Remote Registered Options Traders) will not be available on the new System, and each Floor Market Maker will be required to submit quotes through their own proprietary quoting device.

Proposed NYSE Amex Rule 902.1NY. Proposed NYSE Amex Rule 902.1NY will govern access to the System and the expected conduct of ATP Holders and persons employed by or associated with an ATP Holder. The Exchange also proposes in Rule 902.1NY to allow access to the System by Sponsored Participants. ATP Holders, and persons employed by or associated with any ATP Holder, while using the facilities of NYSE Amex, may not engage in conduct: (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of NYSE Amex; or (iii) inconsistent with the ordinary and efficient conduct of business. Activities that may violate these provisions include, but are not limited to: (a) failure of a Market Maker to provide quotations in accordance with Rule 925NY;

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<sup>6</sup> See NYSE Arca Rule 6.2.

(b) failure of a Market Maker to bid or offer within the ranges specified by Rule 925NY; (c) failure of an ATP Holder to adequately supervise a person employed by or associated with such ATP Holder to ensure that person's compliance with NYSE Amex Rules; (d) failure to abide by a determination of NYSE Amex; and (e) refusal to provide information requested by NYSE Amex.

Proposed NYSE Amex Rule 920NY. Proposed NYSE Amex Rule 920NY defines "Market Maker" on the NYSE Amex System. A Market Maker on the System will be an ATP Holder registered with NYSE Amex for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the System from on the trading floor or remotely from off the trading floor. A Market Maker submitting quotes remotely is not eligible to participate in trades effected in open outcry except to the extent that such Market Maker's quotation represents the best bid or offer on the Exchange ("BBO"). Market Makers will be designated as specialists on NYSE Amex for all purposes under the Act and the Rules and Regulations thereunder. A Market Maker on NYSE Amex will be either a Specialist, a Floor Market Maker or a Remote Market Maker.

A Specialist must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue.

Specialists are assigned a location on the Floor where their issues will trade; e-Specialists are Market Makers located off the Floor who also have a 90% quoting obligation.

Remote Market Makers ("RMMs") are Market Makers who must provide continuous two sided quotations throughout the trading day in their appointed issues for 60% of the time the Exchange is open for trading in each issue. RMMs are located off the Floor of the Exchange,

and generally have no rights with respect to open outcry transactions that take place on their quoted prices.

Floor Market Makers (“FMMs”) are Market Makers who also must provide continuous two sided quotations throughout the trading day in their appointed issues for 60% of the time the Exchange is open for trading in each issue, and, in addition, are appointed to a Trading Zone on the Floor.

Unless specified, or unless the context requires otherwise, the term Market Maker in the NYSE Amex Rules refers to Specialists, Floor Market Makers, and Remote Market Makers.<sup>7</sup>

Proposed NYSE Amex Rule 921.1NY. The Exchange is proposing NYSE Amex Rule 921.1NY to limit Remote Market Maker access to the System to those ATP Holders or officers, partners, employees or associated persons of ATP Holders that are registered with NYSE Amex as Market Maker Authorized Traders (“MMATs”). MMATs will be required to pass an NYSE Amex conducted examination to demonstrate their knowledge of NYSE Amex rules prior to being approved by NYSE Amex as an MMAT. NYSE Amex also may require a Remote Market Maker to provide additional information NYSE Amex considers necessary to establish whether a person should be approved as an MMAT. A person may be approved conditionally as an MMAT subject to any conditions NYSE Amex’s Chief Regulatory Officer considers appropriate in the interests of maintaining a fair and orderly market.

Rule 921.1NY will permit NYSE Amex to suspend or withdraw the registration of an MMAT if NYSE Amex determines that: (i) the person has caused the Market Maker to fail to

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<sup>7</sup> See e-mail dated December 22, 2008, from Andrew B. Stevens, Chief Counsel – U.S. Equities & Derivatives, NYSE Euronext, Inc., to Natasha Cowen, Special Counsel, Division of Trading and Markets, Commission (restoring certain unintentionally omitted text).

comply with the Rules of NYSE Amex; (ii) the person is not properly performing the responsibilities of an MMAT; (iii) the person has failed to meet the conditions described above (e.g., failed the Exchange administered examination); or (iv) NYSE Amex believes it is in the best interest of fair and orderly markets. If NYSE Amex suspends the registration of a person as an MMAT, the Remote Market Maker must not allow the person to submit quotes and orders on NYSE Amex System. The registration of an MMAT also will be withdrawn upon the written request of the ATP Holder for which the MMAT is registered. Such written request must be submitted on the form prescribed by NYSE Amex.

Proposed NYSE Amex Rule 922NY. Proposed NYSE Amex Rule 922NY is based on NYSE Arca Rule 6.34, prohibits ATP Holders who are physically on the Floor from trading for their own personal account or for an account in which they have an interest, unless part of their market making obligations. Floor Brokers are thus prohibited from trading for an account for which they have an interest except to resolve a bona fide error resulting from their floor brokerage business.

Proposed NYSE Amex Rule 923NY. NYSE Amex is proposing changes to the manner in which Market Maker appointments are made. Similar to current NYSE Arca Rule 6.35, Market Makers will be required to apply for an appointment in one or more options classes. NYSE Amex may appoint one Specialist per option class, additional e-Specialists, and an unlimited number of Market Makers in each class unless NYSE Amex determines that the number of Market Makers appointed to a particular option class should be limited whenever, in NYSE Amex's judgment, system capacity limits the number of Market Makers who may participate in a particular option class.

NYSE Amex is proposing to delineate the number of classes per ATP that a Market Maker may select for its appointment as follows: (i) Market Makers with one ATP will have up to 100 option issues included in their appointment; (ii) Market Makers with two ATPs will have up to 250 option issues included in their appointment; (iii) Market Makers with three ATPs will have up to 750 option issues included in their appointment; and (iv) Market Makers with four ATPs will have all option issues traded on NYSE Amex included in their appointment. Market Makers may select from among any option issues traded on NYSE Amex for inclusion in their appointment, subject to the approval of NYSE Amex.

In addition, Floor Market Makers must select appointment to a Trading Zone on the Floor. The issues assigned to a Trading Zone by the Exchange will not be counted towards the number of issues per ATP selected by the Floor Market Maker. All transactions by a Market Maker in open outcry effected in issues in their appointed Trading Zone will be considered as transactions within their primary appointment. Specialists will be appointed to the Trading Zone designated for their issues.

NYSE Amex will continue to consider the following factors when determining whether to approve the appointment of a Market Maker in each security: (i) the Market Maker's preference; (ii) the financial resources available to the Market Maker; (iii) the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities; (iv) the Market Maker's operational capability; and (v) the maintenance and enhancement of competition among Market Makers in each security in which they are appointed.

Market Makers will be permitted to change the option issues that are included in their appointment, subject to the approval of NYSE Amex and provided that such request is made in a

form and manner prescribed by NYSE Amex. In considering whether to approve Market Makers' request to change their appointment, NYSE Amex will consider the five factors set forth directly above. Market Makers will be permitted to withdraw from trading an option issue that is within their appointment by providing NYSE Amex with three business days' written notice of such withdrawal. Market Makers who fail to give advance written notice of withdrawal to NYSE Amex may be subject to formal disciplinary action pursuant to NYSE Alternext Rule Section 9A.

NYSE Amex will be permitted to suspend or terminate any appointment of a Market Maker in one or more option issues under Rule 923NY whenever, in NYSE Amex's judgment, the interests of a fair and orderly market are best served by such action. A Market Maker will be able to seek review of any action taken by NYSE Amex pursuant to the proposed Rule, including the denial of the appointment for, or the termination or suspension of, a Market Maker's appointment in an option issue or issues in accordance with Rule Section 9A.

Market Makers will continue to be required to trade at least 75% of their contract volume per quarter in classes within their appointment.

NYSE Amex will periodically conduct an evaluation of Market Makers to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, observance of ethical standards and administrative factors. In so doing, NYSE Amex may consider any relevant information including, but not limited to, the results of a Market Maker evaluation, trading data, a Market Maker's regulatory history and such other factors and data as may be pertinent in the circumstances. If NYSE Amex finds any failure by a Market Maker to meet minimum performance standards, NYSE Amex will be permitted to take the following actions after written notice and after opportunity for hearing

pursuant to Section 9A: (i) restrict appointments to additional option issues in the Market Maker's primary appointment; (ii) suspend, terminate or restrict an appointment in one or more option issues; or (iii) suspension, termination, or restriction of the Market Maker's registration in general. If a Market Maker's appointment in an option issue or issues has been terminated because it failed to meet minimum performance standards, the Market Maker will not be re-appointed as a Market Maker in that option issue or issues for a period not to exceed six months.

Proposed NYSE Amex Rule 925NY. NYSE Amex is proposing new Rule 925NY to outline Market Maker obligations (i) generally, (ii) within a Market Maker's appointed classes, and (iii) outside of a Market Maker's appointed classes on the System. Unlike NYSE Arca Rule 6.37, upon which it is based, NYSE Amex will not have an in-person requirement. In-person requirements date back to a time when the only way for Market Makers to meet their obligations was to be present on the Floor to respond to a call for a market. In a modern marketplace, most of the liquidity on the Exchange is available electronically, and only electronically submitted bids and offers are able to be represented in the disseminated quote. The intent of the in-person requirement is actually better served by the 60% quoting obligation for Market Makers, and the requirement to conduct 75% of one's business within one's primary appointment.

Proposed NYSE Amex Rule 925.1NY. NYSE Amex is proposing new Rule 925.1NY to outline Market Maker quoting obligations on the System. Market Makers will be required to undertake a meaningful obligation to provide continuous two-sided markets in classes traded on the System. Proposed Rule 925.1NY generally is consistent with NYSE Arca Rule 6.37B. Under the proposed Rule, Market Makers only will be permitted to enter quotations in the classes included in their appointment.

Proposed NYSE Amex Rule 925.2NY. NYSE Amex is proposing new Rule 925.2NY that will allow Market Makers to enter on the System all permitted order types. However, orders do not satisfy or contribute to meeting a Market Makers quoting obligation; that obligation is only satisfied by submission of legal width quotes.

Proposed NYSE Amex Rules 927NY – 927.3NY. The Exchange describes in proposed Rules 927NY – 927.3NY Specialists and their rights, duties, and obligations, including the requirements for Information Barriers for ATP Holders affiliated with a Specialist.

Proposed NYSE Amex Rules 927.4NY – 927.6NY. The Exchange is also describing in proposed Rules 927.4NY – 927.6NY e-Specialists, who are Remote Market Makers appointed to fulfill certain obligations required of Specialists. In addition to the Specialist, it is possible to have multiple e-Specialists.

Proposed NYSE Amex Rule 928NY. NYSE Amex is proposing new Rule 928NY to provide a mechanism for limiting Market Maker risk during periods of increased and significant trading activity on the System in a Market Maker's appointment. NYSE Amex proposes setting the "n" period for calculation of the number of trades by a Market Maker at one second. Furthermore, NYSE Amex will no longer generate two-sided quotes on behalf of a Specialist in the event that there are no Market Makers quoting in an issue. Rather, in the event that there are no Market Makers quoting in the issue, the best bids and offers of those orders residing in the Consolidated Book in the issue will be disseminated as the BBO. If there are no Market Makers quoting in the issue and there are no orders in the Consolidated Book in the issue, NYSE Amex System will disseminate a bid of zero and an offer of zero in that issue.

Proposed NYSE Amex Rule 930NY. Proposed NYSE Amex Rule 930NY defines a Floor Broker as an ATP Holder who is registered with the Exchange for the purpose, while on



the Floor, to accept and execute options orders received from ATP Holders and, in certain circumstances, orders from others.

Proposed NYSE Amex Rules 931NY – 932NY. Proposed NYSE Amex Rules 931NY – 932NY describe the registration and authorization of Floor Brokers, and are substantially the same as NYSE Arca Rules 6.44, 6.45, and 6.46.

Proposed NYSE Amex Rule 933NY. Proposed NYSE Amex Rule 933NY describes the responsibilities of Floor Brokers, and is substantially the same as NYSE Arca Rule 6.46, with the addition of insuring compliance with Section 11(a)(1) of the Act. An ATP Holder must ensure that each of its transactions complies with Section 11(a) of the Act, which generally prohibits an ATP Holder from effecting a transaction trading for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion (each, a “covered account”) unless a valid exemption in the statute or the rules thereunder applies.

In cases where a Floor Broker's transaction would occur at the same price as one or more orders on the electronic book, the Floor Broker, if it can rely on no exception other than the "G" exception (Section 11(a)(1)(G); Rule 11a1-1(T)), must, in addition to complying with the other requirements of the “G” exemption, yield to all orders in the Consolidated Book at the same price if the Floor Broker has no ability to determine that an order in the Consolidated Book is not the order of a non-ATP Holder. In addition, in the case where an ATP Holder submits an order to the book (or an order is submitted on its behalf) and such ATP Holder is relying on the “G” exemption, the order must be entered as IOC.

In addition, when relying on the exemption set forth in Rule 11a2-2(T) under the Act, a Floor Broker may not enter into the NYSE Alternext System any order for a covered account,

including orders sent to it by an affiliated ATP Holder from off the floor, if the order is for such affiliated ATP Holder's own account, the account of an associated person, or an account over which it or an associated person exercises investment discretion.

Proposed NYSE Amex Rule 934NY. NYSE Amex is proposing Rules 934NY, 934.1NY, 934.2NY, and 934.3NY to govern crosses effected on the trading floor. Proposed Rule 934NY describes (i) Customer-to-Customer crosses and (ii) Non-facilitation (Regular Way) crosses. Proposed Rule 934.1NY describes Facilitation Cross Transactions. Proposed Rule 934.2NY describes At-Risk Cross Transactions, while Proposed Rule 934.3NY describes Solicitation. In all cases, Floor Brokers must request bids and offers for the option series involved and make the Trading Crowd and the Trading Official aware of the request for market. Trading crowd participants will be given a reasonable time to respond with the prices and sizes at which they would be willing to participate in the cross. With respect to facilitations, Floor Brokers still will be permitted to participate in up to 40% of the balance of an order to be facilitated once Customer bids or offers in the Consolidated Book at or better than the proposed execution price, have been satisfied.

There is no electronic crossing mechanism proposed for NYSE Amex System at this time.

Proposed NYSE Amex Rule 935NY. Proposed NYSE Amex Rule 935NY requires Floor Brokers to expose agency orders for a period of time before attempting to execute them as Principal, and is based on NYSE Arca Rule 6.47A.

Proposed NYSE Amex Rule 935NY. The Exchange describes in proposed Rule 935NY Discretionary Transactions, and limits a Floor Broker's use of discretion on orders.

Proposed NYSE Amex Rule 937NY. Proposed NYSE Amex Rule 937NY limits a Floor Broker from acting as both Principal and Agent in the Same Transaction unless it is part of an error resulting from the Floor Broker's error or omission.

Proposed NYSE Amex Rule 940NY. Proposed NYSE Amex Rule 940NY describes the obligations of Trading Officials for fair, orderly, and competitive market.

Proposed NYSE Amex Rule 952NY. NYSE Amex is proposing new NYSE Amex Rule 952NY to govern the opening process, which traditionally has been referred to as a "rotation," and which will be referred to as an "auction" on the NYSE Amex System. A "Trading Auction" is a process by which trading is initiated in a specified options class. Trading Auctions may be employed at the opening of NYSE Amex each business day or to re-open trading after a trading halt. Trading Auctions will be conducted automatically by the System.

The System will accept Market and Limit Orders and quotes for inclusion in the opening auction process ("Auction Process") until the Auction Process is initiated in that option series. Prior to the Auction Process, ("pre-opening"), non-Market Makers will be able to submit orders to the System and Market Makers will be able to submit two-sided quotes and orders to the System. Contingency orders (except for "opening only" orders) will not participate in the Auction Process. Any eligible open orders residing in the Consolidated Book from the previous trading session will be included in the Auction Process. After the primary market for the underlying security disseminates the opening trade or the opening quote (or the first disseminated value for index options), the related option series will be opened automatically based on the following principles and procedures:

- a. The System will determine a single price at which a particular option series will be opened.

b. Orders and quotes in the System will be matched up with one another based on price-time priority. Orders at or better than the opening price will have priority over Market Maker quotes.

c. Orders in the Consolidated Book that were not executed during the Auction Process shall become eligible for the Core Trading Session immediately after the conclusion of the Auction Process.

To determine the opening price in a series, upon receipt of the first consolidated quote or trade of the underlying security, the System will compare the OPRA NBBO market with an instantaneous BBO market. NYSE Amex System will generate an opening trade if possible or open a series on the quoted market. The System then will send the NYSE Amex BBO quote to OPRA.

The opening price of a series will be the price, as determined by the System, at which the greatest number of contracts will trade at or nearest to the midpoint of the initial NBBO disseminated by OPRA, if any, or the midpoint of the best quote bids and quote offers in the Consolidated Book. Midpoint pricing will not occur if that price would result in an order or part of an order being traded through. Instead the Trading Auction will occur at that limit price, or, if the limit price is superior to the quoted market, within the range of 75% of the best quote bid and 125% of the best quote offer. The same process will be followed to reopen an option class after a trading halt.

Unmatched orders and Market Maker quotes that are marketable against the initial NBBO will “sweep” through the Consolidated Book and be executed in price/time priority. If the best price is at an away Market Center(s), orders will be routed away to the relevant Market Center(s).

Proposed NYSE Amex Rule 953NY. Proposed NYSE Amex Rule 953NY outlines procedures for halting or suspending trading in a class of options.

Proposed NYSE Amex Rule 954NY. Proposed NYSE Amex Rule 954NY, Order Identification, is based on NYSE Arca Rule 6.66; however, the Exchange is proposing to exclude the requirements to identify the particular ATP Holder when requesting a quote and size from the crowd, in order to avoid the possibility of disparate treatment. Additionally, the Exchange is proposing to not include the Commentaries found in NYSE Arca Rule 6.66, as the Exchange finds these inconsistent with the efforts to make the market transparent.

Proposed NYSE Amex Rules 955NY and 956NY. Proposed NYSE Amex Rules 955NY and 956NY describe the requirements for order format and system entry requirements, and the elements required for keeping a record of orders, and are based on NYSE Arca Rules 6.67 and 6.68. The Exchange will not maintain and preserve all electronic orders on behalf of ATP Holders, but is still bound by its own requirements to preserve records of orders.

Proposed NYSE Amex Rule 957NY. Proposed NYSE Amex Rule 957NY describes the reporting duties of ATP Holders. Although based on NYSE Arca Rule 6.69, the Exchange is proposing to require open outcry transactions between a Floor Broker and a Market Maker to be reported by the Floor Broker, regardless of who is the seller. The Floor Broker will already have the order details systematized by virtue of it being input into an Electronic Order Capture device.

Proposed NYSE Amex Rule 958NY. Proposed NYSE Amex Rule 958NY determines that the execution price is binding despite errors in reporting the price and is based on NYSE Arca Rule 6.70.

Proposed NYSE Amex Rule 959NY. Proposed NYSE Amex Rule 959NY describes the meaning of premium bids and offers, and is based on NYSE Arca Rule 6.71.

Proposed NYSE Amex Rule 960NY. Proposed NYSE Amex Rule 960NY describes the minimum quoting increments and the minimum trading increments for options, and is based on NYSE Arca Rule 6.72.

Proposed NYSE Amex Rule 961NY. Proposed NYSE Amex Rule 961NY outlines the manner of bidding or offering, either electronically through the NYSE Amex System, or in open outcry, and is substantially the same as NYSE Arca Rule 6.73.

Proposed NYSE Amex Rule 963NY. Proposed NYSE Amex Rule 963NY describes Priority and Order Allocation Procedures for Open Outcry trading. These provisions are substantially the same as used on other floor based options exchanges. Generally, bids and offers are afforded priority on a price time basis on response to a call for a market. The Floor Broker or Market Maker who calls for the market is responsible for determining the sequence in which bids or offers are vocalized. If bids or offers are made simultaneously, they will be on parity. If an ATP Holder has previously requested a market to fill an order, and the crowd has provided a collective response, then the order will be allocated on a size pro rata basis.

Proposed NYSE Amex Rule 963NY. Proposed Rule 963NY also provides for a Specialist's entitlement to 40% of the balance of any order after Customer bids and offers in the Consolidated book have been satisfied; provided, however, that the Specialist has vocally responded to the Floor Broker's call for a market, and has responded with a price that is at least equal to the best bid or offer. In addition, the Rule describes Priority on Split Price Transactions, which are substantially the same as approved in NYSE Arca Rule 6.75(h).

Proposed NYSE Amex Rule 963.1NY. Proposed Rule 963.1NY describes the proper trading procedures for complex orders, which are based on NYSE Arca Rule 6.75 Commentary .01. and NYSE Arca Rule 6.91 Commentaries .01 and .02.

Proposed NYSE Amex Rule 964NY. NYSE Amex will display all non-marketable Limit Orders in the Display Order Process of the Consolidated Book. Except as otherwise permitted by Rule 964NY, all bids and offers at all price levels in the Consolidated Book will be displayed on an anonymous basis. The System also will disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between NYSE Amex and other Market Centers, consistent with the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.

Bids and offers will be ranked and maintained in the Display Order Process and/or Working Order Process of the Consolidated Book according to account type and price-time priority.

a. Within the Display Order Process

Limit Orders, with no other conditions, and quotes will be ranked based on account type and the specified price and the time of original order or quote entry. The display portion of Reserve Orders (not the reserve size) will be ranked in the Display Order Process by account type and at the specified limit price and the time of order entry. When the display portion of the Reserve Order is decremented completely, the display portion of the Reserve Order will be refreshed for

- (1) the display amount; or
- (2) the entire reserve amount, if the remaining reserve amount is smaller than the display amount, from the reserve portion and shall be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed.

b. Within the Working Order Process

- (1) The reserve portion of Reserve Orders will be ranked based on account type and the specified limit price and the time of original order entry. After the displayed portion of a Reserve Order is refreshed from the reserve portion, the reserve portion remains ranked based on the original time of order entry, while the displayed portion is sent to the Display Order Process with a new time-stamp.
- (2) All-or-None Orders will be ranked based on account type and the specified limit price and the time of order entry.
- (3) Stop and Stop Limit Orders will be ranked based on account type and the specified stop price and the time of order entry.
- (4) Stock Contingency Orders will be ranked based on account type and the specified limit price and the time of order entry.
- (5) Tracking Orders will be ranked based on account type and the specified limit price and the time of order entry.

Consistent with Rule 602 under Regulation NMS, the best-ranked displayed bids and the best ranked displayed offers in the Consolidated Book and the aggregate displayed size of such bids and offers associated with such prices shall be collected and made available to vendors for dissemination.

Proposed Rule 964NY also outlines the applicable requirements for order execution and priority on the System. Incoming orders will be matched against bids and offers in the System based on price, account type, and time. For an execution to occur in any order process, the price



must be equal to or better than the NBBO, unless the System has routed orders to away Market Centers at the NBBO.

The NYSE Amex System first will attempt to match incoming marketable bids and offers against bids or offers in the Display Order Process at the display price of the resident bids or offers for the total amount of option contracts available at that price or for the size of the incoming order, whichever is smaller. For the purposes of proposed Rule 964NY, the size of an incoming Reserve Order will include the displayed and reserve size, and the size of the portion of the Reserve Order resident in the Display Order Process is equal to its displayed size.

NYSE Amex proposes to allocate incoming marketable bids and offers as follows:

- (1) The incoming marketable bid or offer will be matched against Customer orders in the Display Order Process at the NBBO.
- (2) If there are any remaining contracts to be executed after matching against Customer orders, and the incoming marketable bid or offer has been directed to a Directed Order Market Maker, the Directed Order Market Maker will receive 40% of the balance of the order, provided the Directed Order Market Maker is quoting at the NBBO for at least that size.
- (3) If the incoming marketable bid or offer has not been directed to a Directed Order Market Maker, or if the Directed Order Market Maker is not quoting at the NBBO, the bid or offer will be matched against the Specialist Pool for 40% of the remaining balance of the bid or offer, provided the Specialist Pool is quoting at the NBBO for at least that size..

(4) If the bid or offer has not been executed in its entirety, the remaining part of the order shall be matched against non-customer bids and offers on a size pro-rata basis.

If the original bid or offer is for 5 contracts or less, and has either not been directed to a Directed Order Market Maker, or the Directed Order Market Maker is not quoting at the NBBO, the entire bid or offer will be matched against the bid or offer of the Specialist Pool after being matched against any customer bids or offers in the Display Order Process, provided the Specialist Pool is quoting at the NBBO. The participants in the Specialist Pool will be allocated orders of five contracts or less on a rotating basis, provided the participant's quoted size is equal to or greater than the size of the allocation. The Exchange will monitor the sizes of all orders received, and, on a quarterly basis, will evaluate the percentage of volume constituted by orders of five contracts or less. If 40% or more of the order flow is comprised of orders of five contracts or less, the Exchange will reduce the eligible size for orders included in this provision.

If the bid or offer has not been executed in its entirety, the remaining part of the order shall be matched against any Working Orders at or better than the NBBO.

An incoming marketable bid or offer will be matched against orders within the Working Order Process in the order of their ranking, at the price of the displayed portion (for Reserve Orders) or at the limit price (for most other Working Order types), for the total amount of option contracts available at that price or for the size of the incoming bid or offer, whichever is smaller. Incoming marketable bids and offers will be matched against Tracking Orders in the order of their ranking, but only at a price equal to the NBBO, and only if the incoming marketable bid or offer is eligible for routing and is less than the size of the Tracking Orders.

If an incoming marketable order has not been executed in its entirety on the System and it has been designated as an order type that is eligible to be routed away, the order will be routed for execution to another Market Center(s).

The order will be routed, either in its entirety or as component order, to another Market Center(s) as a Limit Order equal to the price and up to the size of the quote published by the Market Center(s). The remaining portion of the order, if any, will be ranked and displayed in the Consolidated Book in accordance with the terms of such order and such order shall be eligible for execution pursuant to Rule 964NY. A marketable Reserve Order may be routed serially as component orders, such that each component corresponds to the display size of the Reserve Order.

An order that has been routed away will remain outside of the System for a prescribed period of time and may be executed in whole or in part subject to the applicable trading rules of the relevant Market Center. While an order remains outside of the System, it will have no time standing, relative to other orders received from Users at the same price that may be executed against the Consolidated Book.

Requests from Users to cancel their orders while the orders are routed away to another Market Center and remain outside the System will be processed subject to the applicable trading rules of the relevant Market Center.

Where an order or portion of an order is routed away and is not executed either in whole or in part at the other Market Center (i.e., all attempts at the fill are declined or timed-out), the order shall be ranked and displayed in the Consolidated Book in accordance with the terms of such order, and such order shall be eligible for execution under proposed Rule 964NY, but will

not have time standing relative to other orders received from Users at the same price while it was outside the System.

Proposed NYSE Amex Rule 964.1NY describes Directed Orders, and is substantially the same as NASDAQ OMX PHLX Rule 1080(1). It would be considered a violation of just and equitable principals of trade and a misuse of non public information for a Directed Order Market Maker to become aware of an impending Directed Order so as to improve the quote to momentarily match the NBBO, and then worsen the price of the quote following execution of the Directed Order.

Proposed NYSE Amex Rule 964.2NY. Proposed NYSE Amex Rule 964.2NY describes the participation entitlement of Specialists and e-Specialists, which collectively comprise the Specialist Pool, as defined in proposed Rule 900.3NY(y). Generally, the Specialist Pool is entitled to 40% of the remaining balance of an order after any orders on behalf of Customers in the Consolidated Book are satisfied. The Specialist's participation within the Pool is granted extra weighting, with no more than 66 2/3% if there is only one e-Specialist, and no more than 50% if there are two or more e-Specialists.

Proposed NYSE Amex Rule 965NY. Proposed NYSE Amex Rule 965NY, Contract Made on Acceptance of Bid or Offer, is based on NYSE Arca Rule 6.77 and on NYSE Alternext Rule 953 – ANTE.

Proposed NYSE Amex Rule 970NY. Proposed NYSE Amex Rule 970NY is substantially the same as NYSE Arca Rule 6.86. Rule 970NY will state the minimum quotation size will be one contract. NYSE Arca Rule 6.86 Commentary .03 is proposed to be designated as NYSE Amex Rule 970.1NY.

Proposed NYSE Amex Rule 975NY. The Exchange is also proposing new NYSE Amex Rule 975NY- Obvious Errors and Catastrophic Errors. Proposed Rule 975NY is substantially based on NYSE Arca Rule 6.87.

Proposed NYSE Amex Rules 990NY- 993NY. Proposed NYSE Amex Rules 990NY- 993NY describe the Operation of the Linkage, Order Protection, Locked and Crossed Markets, and Limitations on Principal Order Access. These Rules are essentially the same as the uniform rules governing Linkage on all options exchanges, including existing NYSE Alternext Rules 940 – 944, and Rule 941 ANTE.

Proposed NYSE Amex Rule 995NY. NYSE Amex proposes new Rule 995NY which describes Prohibited Conduct. The first section of the proposed rule prohibits conduct that threatens, harasses, intimidates, constitutes a "refusal to deal" or retaliates against another ATP Holder or associated person of an ATP Holder. The second section prohibits de facto market making through the use of Customer orders, since Customer orders have priority at any price over the bids and offers of non-customers. The third section prohibits ATP Holders who have knowledge of the material terms and conditions of an order, the execution of which is imminent, from buying or selling related options, underlying securities, or related securities, until the terms of the order are disclosed to the trading crowd, or the execution of the order is no longer considered to be imminent.

In addition, the Exchange is proposing to add Part 1C to the Supplementary Material of NYSE Alternext Rule 476A. Part 1C lists options rule violations and their applicable fines that will be in effect upon implementation of the NYSE Amex System and the relocation of the Trading Floor to 11 Wall Street, New York, NY.

Current NYSE Alternext Rule 476 includes Sanctioning Guidelines in its Supplementary Material. While the principles to be considered in determining sanctions will continue, the guidelines after Supplementary Material .01 (C)(19) that describe specific types of violations all pertain to the existing NYSE Alternext Rules, and will not apply to violations of Rules in Section 900NY.

The Exchange believes the proposed new rules will reduce regulatory confusion, encourage efficient transactions on both the electronic market and in open outcry trading, and delineate an unambiguous standard for conducting a fair and orderly market.

## 2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</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.

### 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

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 self-regulatory organization 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 Number SR-NYSEALTR-2008-14 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NYSEALTR-2008-14. 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 10:00 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-2008-14 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>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).