

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59233; File No. SR-NYSEALTR-2008-21)

January 12, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Amending NYSE Alternext Equities Rule 103B to Conform to Amendments Filed by the New York Stock Exchange to: 1) Prohibit DMM Units from Communicating with Issuers After Receipt of Notice From the Exchange of the Issuer's Impending Listing; and 2) Provide DMM Unit Marketing Materials to the Issuer Prior to the Scheduled Interview Rather Than the Day Before

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 31, 2008, NYSE Alternext US 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Alternext Equities Rule 103B ("Security Allocation and Reallocation") to conform to amendments filed by the New York Stock Exchange to: 1) prohibit DMM units from communicating with issuers after receipt of notice from the Exchange of the issuer's impending listing; and 2) provide DMM unit marketing materials to the issuer prior to the scheduled interview rather than the day before.

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<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.

The text of the proposed rule change 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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Alternext Equities Rule 103B ("Security Allocation and Reallocation") to conform with amendments filed by the New York Stock Exchange<sup>4</sup> to: 1) prohibit DMM units from communicating with issuers after receipt of notice from the Exchange of the issuer's impending listing; and 2) provide DMM unit marketing materials to the issuer prior to the scheduled interview rather than the day before.

I. Background

As described more fully in a related rule filing<sup>5</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

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<sup>4</sup> See Securities Exchange Act Release No. 59231 (January 12, 2009) (SR-NYSE-2008-143).

<sup>5</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).

American Stock Exchange LLC (“Amex”), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the “Act”).<sup>6</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, 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>7</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>8</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

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

<sup>7</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>8</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).

Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

## II. Proposed Amendments

The Exchange proposes to amend Section III (A) of NYSE Alternext Equities Rule 103B to prohibit DMM units from having contact with an issuer after the Exchange provides notice to DMM units about the issuer's impending listing on the Exchange.

Currently NYSE Alternext Equities Rule 103B prohibits communication between DMM units and issuers following their interview. The Exchange believes that prohibiting communication between DMM units and issuers just prior to the interview is appropriate in order to promote fairness and objectivity in the interview process. The Exchange therefore proposes to amend NYSE Alternext Equities Rule 103B, Section III to add a section prohibiting DMM units, or any individuals acting on their behalf, from having any contact with any listing company once the Exchange provides written notice to the DMM units that the listing company is listing on the Exchange.

In addition to the above modification related to the interview process, the Exchange further seeks to allow more flexibility in the delivery of DMM marketing materials to an issuer based on the availability of the issuer. Currently, the rule provides that DMM marketing materials are to be provided the day before the interview. The Exchange proposes to amend the language to allow for the marketing materials to be provided prior to the interview. Some issuers that interview at the Exchange may be in transit the day prior to the interview or participating in road shows and business trips and are therefore unavailable to receive the materials the day before the scheduled interview. In those instances the Exchange provides the issuer with the materials the day of the interview. In instances where an issuer is available to receive the

marketing materials in advance of the scheduled interview the Exchange would like to be able to provide the materials to the issuer. Accordingly, the Exchange proposes to amend the rule to simply state that the Exchange will provide the issuer with the DMM units' marketing materials prior to the interview.

The Exchange proposes these amendments to conform the allocation process of NYSE Alternext to the allocation process of its affiliated Exchange, the New York Stock Exchange LLC.

## 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),<sup>9</sup> which requires that an exchange have rules that are designed 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 Exchange believes that the proposed amendments are consistent with these objectives. The amendments sought herein seek to alleviate impediments in the administrative process of assigning securities to DMM units which ultimately facilitates the fair and orderly trading in the subject security.

### 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.

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

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the 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>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has requested that the Commission waive the 30-day operative delay in this case. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will immediately establish the specific point in time when DMM units must cease communication with issuers prior to interviews. In addition, this proposed rule change is substantially similar to an NYSE proposal.<sup>12</sup> For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give 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 Exchange has satisfied this requirement.

<sup>12</sup> See supra note 4.

<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).

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-2008-21 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-2008-21. 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 the 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-2008-21 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).