

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 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 without interruption the provisions of Rule 48 regarding the Exchange's ability to declare an extreme market volatility condition at the close and suspend certain rules relating to closing of securities on the Exchange. These provisions are currently scheduled to expire on December 31, 2008. The Commission notes the Exchange's representation that it soon intends to file a proposal to establish permanent rules regarding closing of securities subject to an extreme order imbalance at the close. In light of the foregoing, the Commission designates the proposal operative upon filing.<sup>13</sup>

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-2008-18 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-2008-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEALTR-2008-18 and should be submitted on or before January 27, 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. E8-31349 Filed 1-5-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59170; File No. SR-NYSEALTR-2008-19]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC To Amend Certain Regulatory Fees Applicable to Its Member Organizations

December 29, 2008.

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 December 24, 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, 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

NYSE Alternext proposes to (i) continue to waive registered representative fees for New York Stock Exchange ("NYSE") member organizations that automatically became NYSE Alternext member organizations by operation of NYSE Alternext Equities Rule 2, and (ii) revise the examination fees payable by member organizations for which the Exchange is the Designated Examining Authority ("DEA"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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

<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>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.

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. NYSE Alternext 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

In connection with the acquisition of the American Stock Exchange (renamed NYSE Alternext US at the time of the acquisition) by NYSE Euronext, all equities trading conducted on or through the American Stock Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, was moved on December 1, 2008, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the "NYSE Alternext Trading Systems"), which are operated by the NYSE on behalf of NYSE Alternext (the "Equities Relocation"). At the time of the Equities Relocation, by operation of NYSE Alternext Equities Rule 2, all NYSE member organizations automatically became NYSE Alternext member organizations. By acquiring NYSE Alternext membership, the NYSE member organizations that were not previously NYSE Alternext members would become subject to the NYSE Alternext registration fees for all of their employees who serve as registered representatives. As these NYSE member organizations that had no NYSE Alternext business prior to the Equities Relocation became NYSE Alternext members without any action on their own part, NYSE Alternext waived the application of its registered representative fees to those firms for the month of December. At that time, NYSE Alternext stated that it expected to submit a filing to adopt a revised registered representative fee commencing January 1, 2009.<sup>3</sup> NYSE Alternext has not yet determined how best to revise its registration fees in light of the accession to NYSE Alternext membership of these NYSE member organizations. As such, NYSE Alternext believes that it is appropriate to continue for the present its waiver of registered representative fees payable by member organizations which acquired their membership automatically in connection with the Equities Relocation.

<sup>3</sup> See Exchange Act Release 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR-NYSEALTR-2008-09).

NYSE Alternext will submit a filing to the Commission at such time as it wishes to end this waiver. In any event, the current waiver will end by its terms on June 30, 2009, so NYSE Alternext must submit a filing on or prior to that date to either adopt a new fee approach or to further extend the term of the waiver.

NYSE Alternext also proposes to revise its fees payable by member organizations for which the Exchange is the DEA. Currently, this fee is set at \$0.00040 per dollar of gross revenue subject reported on FOCUS Report Form X-17A-5, subject to a minimum quarterly payment of (i) \$250 for member organizations not in engaged in public business and (ii) \$750 for member organizations that are engaged in public business. Going forward, for purposes of establishing minimum DEA fees, the Exchange will no longer distinguish among member organizations on the basis of whether they are engaged in public business and will instead categorize them based on whether or not they are clearing firms. The minimum fee for non-clearing firms will be a monthly fee of \$275 (\$825 per quarter) and the minimum fee for clearing firms will be a monthly fee of \$1,000 (\$3,000 per quarter). The Exchange is also eliminating the provision that member organizations operating additional entities subject to the minimum fees are subject to 50% of these minimum fees for each additional entity. As a consequence, these additional entities will be subject to the full minimum fee going forward. The Exchange is not making any change to the \$0.00040 per dollar of gross revenue charge. The revisions proposed in this filing make the Exchange's DEA fees identical to those charged by the Chicago Board Options Exchange ("CBOE") and more reflective of the costs the Exchange incurs in connection with its role as DEA.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>4</sup> of the Act 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 (i) the same DEA fees will be charged to all member organizations and (ii) the waiver of registered representative fees applies only to firms that became

<sup>4</sup> 15 U.S.C. 78f.

Alternext member organizations automatically without any action on their part and in spite of the fact that they did not conduct any Alternext business.

*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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>5</sup> of the Act and Rule 19b-4(f)(2)<sup>6</sup> thereunder.

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-2008-19 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-2008-19. This file number should be included on the subject line if e-mail is used. To help the

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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 a.m. and 3 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-2008-19 and should be submitted on or before January 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

[FR Doc. E8-31350 Filed 1-5-09; 8:45 am]  
BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59161; File No. SR-NYSEArca-2008-118]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

December 24, 2008.

#### I. Introduction

On November 3, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to amend its Schedule of Fees and Charges for Exchange Services

("Schedule of Fees"). The proposed rule change was published for comment in the **Federal Register** on November 24, 2008.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange has proposed to amend its Schedule of Fees to charge the same amount for Principal Orders ("P Orders") and Principal Acting As Agent Orders ("P/A Orders") (collectively, "Linkage Orders") in foreign currency options ("FCO") as they currently charge for Linkage orders in issues included in the Penny Pilot. The Exchange recently amended its rules to enable the Exchange to list and trade FCOs.<sup>4</sup> These rules permit FCOs to be quoted and traded in one cent increments. Presently, the Exchange charges \$0.45 for all electronically executed Linkage Orders in Penny Pilot issues.<sup>5</sup> The Exchange is proposing to similarly charge \$0.45 for all electronically executed Linkage Orders in FCOs.

#### III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to amend its Schedule of Fees and Charges for Exchange Services is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the current Schedule of Fees, NYSE Arca charges electronically executed FCO orders the fee rate of \$.50 for Linkage Orders submitted through the Options Linkage. The Exchange proposed to lower the charge to \$.45 for all electronically executed Linkage Orders in FCOs.

<sup>3</sup> See Securities Exchange Act Release No. 58945 (November 13, 2008), 73 FR 71072.

<sup>4</sup> See Securities Exchange Act Release No. 58800 (October 16, 2008), 73 FR 63539 (October 24, 2008) (SR-NYSEArca-2008-109).

<sup>5</sup> The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. See Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

The Commission notes that the \$.45 fee rate for electronically executed FCOs orders that take liquidity has been in place in the non-Linkage context since October 2008.<sup>8</sup> In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2009 and that the Commission is continuing to evaluate whether such fees are appropriate.

For the foregoing reasons, the Commission believes that the proposal to amend the fees the Exchange charges for Linkage Orders in FCOs is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEArca-2008-118) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. E8-31346 Filed 1-5-09; 8:45 am]  
BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59167; File No. SR-NYSEArca-2008-141]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. Implementing Fee Change

December 29, 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 22, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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.

<sup>8</sup> See Securities Exchange Act Release No. 58875 (October 29, 2008), 73 FR 65916 (November 5, 2008) (SR-NYSEArca-2008-117).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

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

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

<sup>7</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.