

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59429; File No. SR-NYSEALTR-2009-12]

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a Fee for Its New Risk Management Gateway Service

February 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 12, 2009, NYSE Alternext US LLC ("NYSE Alternext" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 establish a fee for its new Risk Management Gateway ("RMG") service.

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 these 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to offer, through NYSE Euronext Advanced Trading Solutions, Inc., the RMG service to NYSE Alternext members and member organizations. NYSE Transact Tools, Inc, a division of the NYSE Euronext Advanced Trading Solutions Group ("NYXATS"), owns RMG. RMG is a part of the NYSE Alternext Trading

Systems (defined below) operated on behalf of the Exchange by New York Stock Exchange LLC ("NYSE").³ This proposed rule change establishes fees for that service.

Background

As described more fully in a related rule filing,⁴ 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 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").⁵ 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 (the "86 Trinity Trading Systems"), to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's trading systems and facilities at 11 Wall Street (the "NYSE Alternext Trading Systems") are operated by the NYSE on behalf of the Exchange.⁶

In order to implement the Equities Relocation, the Exchange adopted NYSE Rules 1-1004 as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems. Rule 54—NYSE Alternext Equities provides that only members are permitted to " * * * make or accept bids or offers, consummate transactions, or otherwise transact business on the Floor for any security admitted to dealings on the [Exchange] * * *."⁷

On December 12, 2008, the Exchange filed with the Securities and Exchange Commission to establish its RMG service.⁸ RMG is a service designed to facilitate the ability of Sponsoring

Member Organizations to monitor and oversee the sponsored access activity of their Sponsored Participants. NYXATS offers an order-verification service to Sponsoring Member Organizations that acts as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the Exchange's trading systems for execution. When a Sponsored Participant's order passes through RMG, RMG software determines whether the order complies with order criteria that the Sponsoring Member Organization has established for that Sponsored Participant. The order criteria reviewed by RMG may include the size of the order or the credit limit that the Sponsoring Member Organization has established for the Sponsored Participant.

If the order is consistent with the parameters set by the Sponsoring Member Organization, RMG allows the order to continue along its path to the Exchange's trading systems. If the order falls outside of those parameters, then RMG returns the order to the Sponsored Participant. RMG will only return an order to the Sponsored Participant when the order fails to comply with the criteria set by the Sponsoring Member Organization.

The Exchange does not require Sponsoring Member Organizations to use RMG. Sponsoring Member Organizations are free to use a competing risk-management service or to use none at all.

The Exchange believes that RMG will offer its member organizations another option in the efficient risk management of its Sponsored Participant's access to the NYSE.

Fees

NYXATS proposes to charge each Sponsoring Member Organization Three Thousand Dollars (\$3,000) per month for the first Connection plus One Thousand Dollars (\$1,000) per month for each additional Connection.

A "Connection" is defined as up to 1000 messages per second inbound, regardless of the connection's actual capacity (*i.e.*, if the NYXT infrastructure allows any single End User connection to support more than 1000 messages per second inbound, such connection will be deemed to be multiple Connections).

The Exchange believes that the proposed fee would be fair and reasonable and would reflect an equitable allocation of charges among members and others. The fee compares favorably with the fees that NYXATS' competitors charge for similar services. Of course, the marketplace will determine if the fee is too high relative

³ The establishment of fees on the NYSE for the same services was formally submitted to the Securities and Exchange Commission through a separate filing, SR-NYSE-2009-15.

⁴ 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).

⁵ 15 U.S.C. 78f.

⁶ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

⁷ See also Rule 2—NYSE Alternext Equities.

⁸ See Securities Exchange Act Release No. 59353 (February 3, 2009), 74 FR 6935 (February 11, 2009) (SR-NYSEALTR-2008-12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

to the value that the RMG service provides because any market participant that feels that the fee is too high will simply elect to use the risk management services of one of NYXATS' competitors.

Technical Amendment to Price List

The Exchange further proposes through this filing to revise the date on the price list to reflect that it is applicable for the current year "2009".

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "1934 Act") for this proposed rule change are the requirement under Section 6(b)(4)⁹ 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. The Exchange believes that RMG will promote marketplace efficiency by providing security safeguards to the trading of securities by means of sponsored access and believes that the proposed fee is fair and reasonable for the reasons cited above.

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 Exchange 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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange.

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. Please include File Number SR-NYSEALTR-2009-12 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-2009-12. 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 a.m. and 3 p.m. Copies of such filing will also 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 No. SR-NYSEALTR-2009-12 and should be submitted on or before March 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-4181 Filed 2-26-09; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 6535]

Culturally Significant Objects Imported for Exhibition Determinations: "Francis Bacon: A Centenary Retrospective"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Francis Bacon: A Centenary Retrospective", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about May 20, 2009, until on or about August 16, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8048). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: February 19, 2009.

C. Miller Crouch,
Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.
[FR Doc. E9-4249 Filed 2-26-09; 8:45 am]

BILLING CODE 4710-05-P

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).