

receive RSP payments based on the first 43,478 shares executed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is extending a revenue sharing program to maintain incentives for an increase in order flow, up until the ETF Transfer.

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

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder. 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 of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

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-2008-04 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-2008-04. 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-04 and should be submitted on or before December 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59020; File No. SR-NYSEALTR-2008-06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by NYSE Alternext US LLC for Retroactive Application of a Previously Adopted Revenue Sharing Program for ETF Quoting Participants on the Exchange

November 26, 2008.

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 November 17, 2008, NYSE Alternext US LLC (the "Exchange" or "NYSE Alternext") 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 and to grant approval of the proposal on an accelerated basis.

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

The Exchange proposes retroactive application of a previously adopted revenue sharing program for ETF quoting participants on the Exchange. The text of the proposed rule change is available at NYSE Alternext, the Commission's Public Reference Room, and <http://www.nyse.com>.

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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to retroactively apply a previously adopted revenue sharing program (RSP) for ETF quoting participants on the Exchange. The RSP was first put in place by the Exchange for ETF specialists and registered traders effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.³ The RSP was subsequently extended through the end of September 2008.⁴ The RSP was inadvertently allowed to lapse on September 30, 2008, but was subsequently reinstated by filing effective November 14, 2008.⁵ The purpose of the instant filing is to seek approval to retroactively apply the now-reinstated RSP for the time period October 1, 2008 through November 13, 2008 (the "Retroactive Period") in order to effectively assure continuity of the RSP from its inception for all ETF quoting participants on the Exchange, who have continued to quote aggressively in the expectation of receiving RSP payments flowing therefrom. To date, the Exchange believes that the current RSP has been beneficial in creating incentives for ETF quoting participants and does not believe it fair to withhold RSP payments from ETF quoting participants attributable to the Retroactive Period solely because of the Exchange's inadvertent error. Retroactive application of the RSP will preserve all ETF quoting participants' expectations.

For the Retroactive Period, the Exchange will apply the RSP in the same way the RSP was described in SR-NYSEALTR-2008-04 (see note 6 *supra*), to wit, that:

- RSP payments will be made from the Exchange's general revenues and will not be limited to a particular revenue source.
- ETF specialists may receive an aggregate RSP payment (calculated monthly) of as much as \$0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or sells his specialty ETF on the Exchange and is a provider of liquidity in that transaction (e.g., whose quote is traded against or who offsets an order imbalance as part of an opening or closing transaction). The RSP payment is comprised of \$0.0004 per share (or 4 cents per 100 shares) for all shares executed on the Exchange in their specialty ETF (irrespective of whether the specialist is the provider of liquidity), plus another \$0.0020 (or 20 cents per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the RSP payment is limited to \$0.0004 per share executed on the Exchange in their specialty ETF.
- Registered traders in ETFs will receive an RSP payment of \$0.0010 per share (or 10 cents per 100 shares) whenever the registered trader either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.
- DARTS will receive an RSP payment of \$0.0015 per share (or 15 cents per 100 shares) whenever the DART either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.
- No ETF quoting participant will receive an RSP payment when they are contra-parties to the same transaction.
- RSP payments will only be made on transactions in securities trading at less than \$1.00 in amounts proportionate to the amount on which the Exchange collects revenue.

As customer transaction charges are capped at \$100 per transaction, meaning that transaction charges are assessed on only the first 43,478 shares executed, ETF quoting participants will only receive RSP payments based on the first 43,478 shares executed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons

using its facilities. Specifically, the Exchange proposes to retroactively apply the RSP to assure continuity of the program from its inception and to assure fairness for the ETF quoting participants.

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. 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-2008-06 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-2008-06. 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

³ Securities Exchange Act Release No. 55983 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68). The RSP was subsequently extended to Designated Amex Remote Traders, now known as Designated NYSE Alternext Remote Traders (DARTs). Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR-Amex-2008-23).

⁴ Securities Exchange Act Release No. 57541 (March 20, 2008), 73 FR 16400 (March 27, 2008) (SR-Amex-2008-25) (prospectively extending RSP from March 18, 2008 through end of September 2008). See also Securities Exchange Act Release No. 57794 (May 7, 2008), 73 FR 27582 (May 13, 2008) (SR-Amex-2008-34) (retroactively extending RSP from January 1, 2008 through March 17, 2008).

⁵ See SR-NYSEALTR-2008-04 (reinstating RSP effective November 14, 2008 to last through November 30, 2008, by which point the trading of ETFs currently listed on the Exchange is expected to terminate in favor of having willing issuers list and trade such products on NYSE Alternext's sister exchange NYSE Arca, Inc).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

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–2008–06 and should be submitted on or before December 29, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act⁹ in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission notes that the proposal would retroactively apply the RSP to cure a lapse that occurred in the program from October 1, 2008 to November 13, 2008, but would not introduce any changes to the RSP program.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that it previously approved a similar proposal by the Exchange to retroactively cure an earlier lapse in the Exchange's RSP program.¹⁰ The previous retroactive proposal was subject to the full comment period and did not generate any comments. Since this proposal is substantively the same as the previous retroactive proposal and in light of the hardship that the Exchange states members may face on account of the lapse of the RSP, the Commission believes that there is good cause to approve the proposal on an accelerated basis.

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See Securities Exchange Act Release No. 57794 (May 7, 2008), 73 FR 27582 (May 13, 2008) (SR–Amex–2008–34) (retroactively extending RSP from January 1, 2008 through March 17, 2008).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR–NYSEALTR–2008–06) is hereby approved on an accelerated basis.

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

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–28955 Filed 12–5–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59036; File No. SR–OCC–2008–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Stock Loan/Hedge Program

December 1, 2008.

I. Introduction

On February 25, 2008, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) and on October 7, 2008, amended proposed rule change File No. SR–OCC–2008–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the **Federal Register** on November 17, 2008.² No comment letters have been received to date. This order approves the proposed rule change on an accelerated basis.

II. Description

OCC has decided to take certain steps to provide for the continued growth and development of its Stock Loan/Hedge Program (“Program”). These include (1) elimination of the ability of clearing members to carry stock loan and borrow positions without depositing risk margin and (2) adjusting the amount of required risk margin where stock loan collateral provided by the borrower to the lender exceeds the value of the borrowed stock.

Background and General Description of the Proposed Rule Change

The Program is provided for in Article XXI of OCC's By-Laws and Chapter XXII of the Rules. It provides a means for

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 58901 (November 5, 2008), 73 FR 67918.

OCC clearing members to submit certain stock loan/borrow transactions (“stock loan transactions”) to OCC for clearance. The stock and the stock loan collateral move through the facilities of The Depository Trust Company from the lending clearing member (“lender”) to the borrowing clearing member (“borrower”), and vice versa when the stock is returned, in the same way that such transactions are ordinarily effected. Where the stock loan transaction is submitted to OCC for clearance, however, OCC is substituted as the lender to the borrower and the borrower to the lender. Thereafter, OCC guarantees performance of the stock loan transaction with respect to delivery and return of stock and collateral and the making of daily mark-to-market payments between the lender and borrower, which are effected through OCC's cash settlement system.

One advantage of submitting stock loan transactions to OCC is that the stock loan and borrow positions then reside in the clearing member's options accounts at OCC and to the extent that they offset the risk of options positions carried in the same account, may reduce the clearing member's margin requirement in the account. OCC's risk is, in turn, reduced by having the benefit of the hedge. Nevertheless, OCC currently permits qualified clearing members to elect to submit stock loan and borrow transactions to OCC on a “margin ineligible basis,” meaning that the positions are excluded from OCC's margin calculations for the account containing those positions. Margin-ineligible stock loan and borrow positions do not reduce the margin requirement for the account to reflect any offsetting value they might have, and OCC does not collect additional margin to reflect the risk of those positions. The election is made by each clearing member on an account-by-account basis so that all stock loan and borrow positions in a particular account are carried on a margin ineligible basis or none are. In order to carry stock loan and borrow positions on a margin ineligible basis, a clearing member must meet heightened standards of creditworthiness as set forth in Interpretation and Policy .06 under Section 1 of Article V of OCC's By-Laws.

While OCC believes that the current credit-based risk management approach has been adequate to date given historical Program activity levels, OCC also believes that a more conservative approach is warranted to provide for further growth of the Program and greater market volatility. OCC therefore seeks to better manage the market risk resulting from open stock loan and