

been subject to the substitution listing fee.

Finally, the Exchange is amending the language of Section 142 to state that the fees in the section apply to non-U.S. companies. According to the Exchange, they have always applied the fees in Section 142 to non-U.S. companies, and therefore, this amendment clarifies the Exchange's policy.

III. Discussion and Commission's Findings

After careful review, 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. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires, among other things, that the rules of an exchange provide for equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

As discussed in the Notice, many of the Exchange's proposed fees, such as the initial listing fees for common stock or common stock equivalents, the maximum fee per issuer for listing additional shares in a calendar year, the fee charged in connection with a company changing its name or ticker symbol, and the Technical Original Listing fees are competitive with or substantially similar to the fees already in place at Nasdaq.⁸ The Commission recognizes that competition for listings is becoming increasingly vigorous, and that such competition may help to ensure the reasonableness of fees among the markets vying for new listings.⁹

Moreover, as described in the Notice, the Exchange represented that it had increased services to listed companies and incurred increased costs for services and regulatory programs, which required changes to its listing fees.¹⁰ The Exchange also cited different levels of services based on the number of outstanding shares to support the higher fees generally paid to the Exchange by larger companies and to provide justification for the proposed increases. Accordingly, the Commission believes that the Exchange's proposed fee increases are reasonable, given the current competitive landscape, the listing fees charged by Nasdaq, the services the Exchange offers issuers that

choose to list with NYSE Alternext and the increased regulatory oversight costs noted by the Exchange. The Commission also believes it is reasonable for the Exchange to charge non-U.S. companies the same initial listing fees as domestic companies since, according to the Exchange, they receive the same level of service from the Exchange. For these reasons, the Commission believes the proposed fee changes meet the statutory standard of an equitable allocation of reasonable dues, fees and other charges among issuers.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.¹¹

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSEALTR-2009-02) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-5718 Filed 3-16-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59561; File No. SR-NYSEALTR-2009-25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Eliminating the Ability To Enter Orders on the Exchange With the Settlement Instructions of "Cash", "Next Day" and "Seller's Option" To Conform to Amendments Filed by the New York Stock Exchange

March 11, 2009.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 5, 2009, 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

¹¹ 15 U.S.C. 78f(b)(4). In approving the 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).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 eliminate the ability to enter orders on the Exchange with the settlement instructions of "cash", "next day" and "seller's option" to conform to amendments filed by the New York Stock Exchange ("NYSE").

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing the Exchange seeks to amend several NYSE Alternext Equities rules to conform these rules with amendments filed by the New York Stock Exchange ⁴ to remove references to certain settlement instructions that are no longer compatible with the Exchange's more electronic market. These include instructions to settle on "cash", "next day" or "seller's option" basis.

I. Background

As described more fully in a related rule filing,⁵ 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

⁴ See Securities Exchange Act Release No. 34-59446 (February 25, 2009), 74 FR 9323 (March 3, 2009) (SR-NYSE-2009-17).

⁵ 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).

⁷ 15 U.S.C. 78f(b)(4).

⁸ See Notice, *supra* note 3.

⁹ See Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007).

¹⁰ See Notice, *supra* note 3. Additionally, some costs were offset by the elimination of the \$5,000 application fee.

NYSE Alternext U.S. 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”) [sic].⁶ 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.⁷

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.⁸ 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 Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

II. Proposed Amendments

Currently, in addition to regular way settlement (*i.e.*, settlement on the third business day following trade date), a customer may submit an order with settlement instructions for cash, next day or seller’s option. An order with cash settlement instructions requires delivery of the securities the same day as the transaction in contrast to a regular way transaction, where the seller is required to deliver the securities on the

third business day. Next day settlement instructions require delivery of the securities on the first business day following the transaction. Orders that have settlement instructions of seller’s option afford the seller the right to deliver the security or bond at any time within a specified period, ranging from not less than two business days to not more than 180 days for stocks and not less than two business days and no more than sixty days for U.S. government securities.

Orders that include cash, next and seller’s option settlement instructions may be submitted electronically to the Exchange; however, the orders containing any of those settlement instructions cannot be immediately and automatically executed. Rather, the orders must bypass the Exchange matching/execution engine, Display Book, and are literally printed on paper at the trading post for manual processing on the Floor.

Proposed Elimination of Cash, Next Day, Seller’s Option Settlement Instructions

In the Exchange’s current more electronic market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed. Order types and settlement instructions that require manual intervention pose significant impediments to the efficient functioning of the NYSE Alternext Trading Systems operated by the NYSE on behalf of the Exchange. To this end the NYSE filed with the Commission to remove legacy orders that require manual processing. Specifically, on January 31, 2008, the NYSE filed with the Commission to amend NYSE Rule 13 to invalidate the use of the manual order types “Alternative Order—Either/Or Order”, “Orders Good Until a Specified Time”, “Scale Order” and “Switch Order—Contingent Order” and Rule 124’s order types “Limited Order, With or Without Sale” and “Basis Price Order” as being incompatible with the more electronic NYSE market environment.⁹ These changes were already reflected in NYSE Alternext’s rules following the merger with the NYSE.

The Exchange’s commitment to provide its market participants with the ability to have their orders executed in the most efficient manner necessitates the elimination of cash, next day and seller’s option as valid settlement instructions for orders submitted to the

Exchange. These instructions result in these orders printing to paper at the trading Post¹⁰ when they are submitted electronically in Exchange systems. The DMM and the trading assistant must realize that the document printed was in fact an order thus causing delay in the execution of the order. The DMM is then responsible for the manual execution of the order. The manual intervention required of the DMM and trading assistant at the Post in the processing of these orders puts the orders at the very real risk of “missing the market” as a result of the current speed of order execution in the Exchange market. In addition, since orders with these settlement instructions will no longer be supported by New York Stock Exchange systems, NYSE Alternext will also no longer be able to accept them for the securities traded in the NYSE Alternext market.

The Exchange now seeks to eliminate cash, next day and seller’s option as valid settlement instructions for orders submitted to the Exchange. The Exchange therefore proposes to delete the references to those settlement instructions from NYSE Alternext Rules 12 (“Business Day”), 64 (Bonds, Rights and 100-Share-Unit Stocks), 66 (U.S. Government Securities)¹¹, 123 (Records of Orders), 124 (Odd-Lot Orders), 130 (Overnight Comparison of Exchange Transactions), 137 (Written Contracts), 137A (Samples of Written Contracts), 189 (Unit of Delivery), 235 (Ex-Dividends, Ex-Rights), 236 (Ex-Warrants), 241 (Interest—Added to Contract Price), 257 (Deliveries After “Ex” Date), 282 (Buy-In Procedures) and 440G (Transactions in Stocks and Warrants for the Accounts of Members, Principal Executives and Member Organizations). In addition, the Exchange seeks to eliminate entirely NYSE Alternext Rules 73 (“Seller’s Option”), 177 (Delivery Time—“Cash” Contracts) and 179 (“Seller’s Option”). In addition, the Exchange proposes to remove language in NYSE Alternext Rules 64 and 66 that provide for the possibility of using multiple settlement periods for bids and offers entered on the Exchange since, for all practical purposes, the Exchange will now only accept orders for regular way settlement.

The Exchange also proposes to amend NYSE Alternext Rule 66 to add the provision that exists in NYSE Alternext Rule 64 to allow the Exchange, in its

¹⁰ Trading Posts are the horseshoe shaped counters manned by DMMs and trading assistants on the Trading Floor of the NYSE where individual stocks are bought and sold.

¹¹ The Exchange does not have the capability to accept these order types for U.S. Government securities.

⁶ 15 U.S.C. 78f.

⁷ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (approving the Equities Relocation).

⁸ 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).

⁹ See Securities and [sic] Exchange Act Release No. 57295 (February 8, 2008), 73 FR 8731 (February 14, 2008) (SR-NYSE-2008-11).

discretion, to provide for additional settlement periods. The Exchange is proposing this addition to bring the provisions of the two rules into harmony as they address similar procedures with respect to different types of securities admitted to dealings on the Exchange. The Exchange, however, recognizes that any additional settlement periods it proposes to add will be subject to the rule filing process under Section 19(b) of the Securities Exchange Act of 1934 (the "Act") [sic].¹²

The Exchange will commence implementation of the proposed elimination of the settlement instructions discussed herein on March 13, 2009. The Exchange intends to progressively implement this elimination on a security by security basis as it gains experience with the implementation until it is operative in all securities traded on the Floor. During the implementation, the Exchange will identify on its website which securities will no longer be eligible for these settlement instructions.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") [sic] for this proposed rule change is the requirement under Section 6(b)(5)¹³ that an exchange have rules that are designed to promote just and equitable principles of trade, 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 instant filing accomplishes these goals by rescinding legacy settlement instructions that place customers at risk of missing the market and possibly receiving inferior priced executions.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) 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, it has become effective pursuant to Section 19(b)(3)(A)¹⁴ of the Act and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.¹⁶ However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative on March 13, 2009. Specifically, the Exchange states that the proposal will rescind legacy settlement instructions that are not compatible with the Exchange's electronic market. The Commission believes that allowing the proposed rule change to become operative on March 13, 2009 is consistent with the protection of investors and the public interest, because it will enable the Exchange to implement pending technological enhancements that require the rescission of these legacy settlement instructions. The Exchange expects these enhancements to make its order processing operations more efficient and thereby strengthen and advance the quality of the Exchange's market. Accordingly, the Commission designates the proposed rule change to be operative on March 13, 2009.¹⁸

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-2009-25 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-2009-25. 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 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-2009-25 and

¹² 15 U.S.C. 78s(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹⁸ For purposes only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-5719 Filed 3-16-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59556; File No. SR-NYSEArca-2009-17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 6.87—Obvious Errors

March 11, 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 27, 2009, NYSE Arca, Inc. (“NYSE Arca” 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 self-regulatory organization. NYSE Arca filed the proposed rule change as a “non-controversial” proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Rule 6.87—Obvious Errors. A copy of this filing 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.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca proposes to amend Rule 6.87 pertaining to the nullification and adjustment of options transactions. Specifically, the Exchange proposes to adopt a new provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Executive Officer of NYSE Arca Inc. (“CEO”) or his/her designee (collectively “Exchange officer”),⁵ may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous.⁶ A transaction reviewed pursuant to this new provision may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous as provided in Rule 6.87(a)(1)–(5) or Commentary .04 thereof. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange officer may be assisted by a Trading Official in reviewing a transaction.

The Exchange officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the Exchange officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. An OTP Holder affected by a determination to nullify or adjust a transaction pursuant to this new provision may appeal such

determination in accordance with Rule 6.87(a)(6); however, a determination by an Exchange officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. NYSE Arca believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted.

This new provision is not intended to replace a party’s obligation to request a review, within the required time periods under Rule 6.87(a)(3), of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Rules 6.87(a)(1)–(5) or Commentary .04 thereof, no additional relief may be granted under this new provision. Moreover, NYSE Arca does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of a transaction pursuant to Rule 6.87(a)(3). NYSE Arca believes this provision will help to protect the integrity of its marketplace by vesting an Exchange officer with the authority to review a transaction that may be erroneous, in those situations where a party failed to make a timely request for a review.

The Exchange also proposes at this time to revise Rule 6.87(a)(3)(A) in order to clarify that the time period in which a Market Maker or other OTP Holder must notify the Exchange, when requesting relief from a possible erroneous transaction, applies to all transactions that are subject to adjustment or nullification, pursuant to Rule 6.87(a)(1)–(5).

2. Statutory Basis

This proposed rule change is designed to allow an Exchange officer to review a transaction in order to provide the opportunity for potential relief to a party affected by an obvious error. The Exchange believes that for these reasons the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, because 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 mechanism of a free and open market and a national market system. NYSE Arca notes that the

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange represents that a CEO designee will be an officer of the Exchange, who has also been designated as a Trading Official, such as the Executive Vice President of Trading Operations or the Vice President of Trading Services. Exchange officers are employees of the Exchange, and are not affiliated with OTP Holders or OTP Firms.

⁶ In the event a party to a transaction requests that the CEO or his/her designee review a transaction, the Exchange officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).