

requested that the Commission waive the 30-day operative delay.

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 Nasdaq to immediately implement a temporary measure to suspend its continued listing requirements relating to bid price and market value of publicly held shares to respond to recent market volatility and conditions. The Commission notes that this will provide certain companies with immediate relief from receiving a deficiency or delisting notification, or from being delisted, as a result of the current market conditions. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance process or in the hearings process will resume at the same stage of the process if they remain non-compliant with these standards. This will ensure that the temporary suspension addresses the concerns to companies and investors caused by the current market conditions, and that may result in a company's securities becoming non-compliant with the bid price and market value of publicly held shares requirements, or unable to cure such a deficiency, due to these market conditions. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>19</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 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-NASDAQ-2008-082 on the subject line.

<sup>19</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. 15 U.S.C. 78c(f).

##### *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-NASDAQ-2008-082. 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 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-NASDAQ-2008-082 and should be submitted on or before November 13, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58779; File No. SR-NYSE-2008-78]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Amending NYSE Rule 18 To Allow NYSE Alternext US LLC To Participate in the Compensation Fund Established by NYSE To Reimburse Claimants for Losses Associated With NYSE-Operated System Failures

October 14, 2008.

#### I. Introduction

On August 26, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 amending NYSE Rule 18 to allow NYSE Alternext US LLC ("NYSE Alternext")<sup>3</sup> to participate in the compensation fund established by NYSE to reimburse claimants for losses associated with a malfunction of the Exchange's physical equipment, devices, and/or programming which results in an incorrect execution or no execution of an order that was received in Exchange systems (an "Exchange systems malfunction"). The proposed rule change was published for comment in the **Federal Register** on September 9, 2008.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Through a series of mergers (the "Mergers"), the American Stock Exchange LLC ("Amex") has become a subsidiary of NYSE Euronext and was renamed NYSE Alternext US LLC.<sup>5</sup> In connection with the Mergers, NYSE Alternext will relocate all equities trading currently conducted on or through the Amex legacy trading systems and facilities located at 86

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NYSE Alternext US LLC will be a self-regulatory organization distinct from NYSE Euronext's European-market subsidiary, NYSE Alternext. When used throughout this order, "NYSE Alternext" refers to NYSE Alternext US LLC.

<sup>4</sup> See Securities Exchange Act Release No. 58450 (September 2, 2008), 73 FR 52439 (September 9, 2008) (SR-NYSE-2008-78) ("Notice").

<sup>5</sup> See Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (August 7, 2008) (SR-Amex-2008-62) and Securities Exchange Act Release No. 58673 (September 29, 2008) (SR-Amex-2008-62).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

Trinity Place, New York, New York, to the NYSE trading systems and facilities located at 11 Wall Street, New York, New York (the "NYSE Alternext Trading Systems"), which will be operated by the NYSE on behalf of NYSE Alternext (the "Equities Relocation").

NYSE Rule 18 establishes a compensation fund and provides a procedure for compensating NYSE member claimants in the event of an Exchange system failure.<sup>6</sup> The Commission recently approved Amex's proposal to adopt a rule substantially similar to NYSE Rule 18.<sup>7</sup> This rule, NYSE Alternext Equities Rule 18, provides a procedure for compensating NYSE Alternext member claimants in the event of an NYSE Alternext systems failure. Specifically, under NYSE Alternext Equities Rule 18, NYSE Alternext members and member organizations affected by a failure of the NYSE Alternext Trading Systems would have the right to submit claims for compensation to NYSE Alternext. NYSE Alternext's Compensation Review Panel would then decide the validity of NYSE Alternext claims.

Because NYSE Alternext will operate on the Exchange's trading systems after the Equities Relocation, NYSE proposes to amend NYSE Rule 18 to provide a mechanism for NYSE Alternext itself to seek reimbursement from NYSE for the amounts that NYSE Alternext undertakes to pay out to NYSE Alternext members under NYSE Alternext Equities Rule 18 as a result of an Exchange system malfunction.<sup>8</sup> Thus, after the NYSE Alternext Compensation Review Panel has determined the number and amount of claims that NYSE Alternext deems valid, NYSE Alternext would submit to the NYSE a separate claim for each valid claim made by NYSE Alternext members or member organizations, subject to the same requirements under NYSE Rule 18 as any other NYSE claimant. NYSE Alternext will not, however, be required to provide verbal notice of its claims to the Exchange's Division of Floor Operations.

In the event that the total amount of valid claims by NYSE members and

NYSE Alternext exceeds the available funds in the NYSE Rule 18 compensation fund, NYSE Alternext would receive a partial payment of claims pursuant to NYSE Rule 18(c), and NYSE Alternext's obligation to compensate its members for valid claims would be reduced by a like percentage.<sup>9</sup> In the event that a reduction is required, in calculating any such reduction, NYSE officials would consider each claim submitted by NYSE Alternext as a separate claim, so that all claimants from both the Exchange and NYSE Alternext will share equitably from the compensation fund.

NYSE also proposes technical changes to NYSE Rule 18, including corrections to the numbering of certain subparagraphs of the Rule.

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 Commission believes that the proposed amendments to NYSE Rule 18 provide for a fair and reasonable process by which NYSE Alternext may participate in the compensation fund established by the Exchange to reimburse claimants for losses suffered due to a malfunction of systems operated by the Exchange.

<sup>9</sup> In the Notice, NYSE stated that it does not anticipate that the additional claims by NYSE Alternext would create a substantial burden on the fund in the event of a system malfunction in view of: (i) The probable volume of trading on NYSE Alternext; (ii) the fact that to date, the existing compensation fund has been sufficient to pay all valid claims in full; and (iii) the current amount available in the supplemental fund. Notice at 52440.

<sup>10</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>11</sup> 15 U.S.C. 78f(b)(5).

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSE-2008-78) be, and it hereby is, approved.

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

**Florence E. Harmon,**

*Acting Secretary.*

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BILLING CODE 8011-01-P

### SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11479]

#### Kentucky Disaster # KY-00017

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA-1802-DR), dated 10/09/2008.

*Incident:* Severe Wind Storm associated with Tropical Depression Ike  
*Incident Period:* 09/14/2008 through 09/15/2008.

**EFFECTIVE DATE:** 10/09/2008.

*Physical Loan Application Deadline Date:* 12/08/2008.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/09/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 10/09/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Ballard, Boone, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Crittenden, Daviess, Fulton, Gallatin, Graves, Hancock,

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>6</sup> See Securities Exchange Act Release Nos. 56085 (July 17, 2007), 72 FR 40348 (July 24, 2007) (SR-NYSE-2007-09) (adopting NYSE Rule 18); 56718 (October 29, 2007), 72 FR 62506 (November 5, 2007) (SR-NYSE-2007-95) (approving certain amendments to NYSE Rule 18). For a complete discussion of Rule 18, see the Notice, *supra* note 4.

<sup>7</sup> See Securities Exchange Act Release No. 34-58705 (October 1, 2008) 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63).

<sup>8</sup> NYSE Alternext members and member organizations would not be able to submit their claims directly to the NYSE.