

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-2008-20 and should be submitted on or before January 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59179; File No. SR-NYSEALTR-2008-16]

### Self-Regulatory Organizations; NYSE Alternext U.S. LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent the NYSE Alternext Bonds System Fee Schedule Which Is Currently Set To Expire on December 31, 2008 as Well as Make Technical Amendments to the Fee Schedule

December 30, 2008.

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> notice is hereby given that on December 24, 2008, NYSE Alternext U.S. LLC ("NYSEALTR" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSEALTR. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii)

of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 make permanent the NYSE Alternext Bonds System fee schedule which is currently set to expire on December 31, 2008 as well as make technical amendments to the fee schedule.

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, NYSEALTR 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. NYSEALTR 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

NYSE Alternext proposes to make permanent the NYSE Alternext Bonds System fee schedule which is currently set to expire on December 31, 2008 as well as make technical amendments to the fee schedule.

The Exchange recently filed a rule change that established, *inter alia*, the NYSE Alternext Bonds System fee schedule ("fee schedule").<sup>5</sup> The fee schedule established execution fees per bond for orders that took liquidity from the NYSE Alternext Bonds Book. The fee schedule was structured to be similar to the NYSE Bonds Price List. The Exchange's reasoning for structuring the fee schedule in this fashion was because member organizations of NYSE Alternext that

trade bonds and NYSE member organizations are member organizations of both exchanges. This dual membership structure allows all member organizations to trade on both exchanges and harmonizes the pricing structures of the two exchanges.

The Exchange is proposing a rule change to make the fee schedule permanent. At the time the fee schedule was first implemented as part of a larger NYSE Alternext filing (SR-NYSEALTR-2008-09), the Exchange inadvertently applied an expiration date of December 31, 2008 to the fee schedule which corresponded with the expiration of the NYSE Bonds pilot program for liquidity takers.<sup>6</sup> The Exchange intended to implement a permanent fee schedule for the NYSE Alternext Bonds System. Accordingly, the Exchange requests that the expiration date of December 31, 2008 be removed from the fee schedule.

Additionally, the Exchange seeks to clarify the language in the fee schedule by replacing the word "order" with "execution." The Exchange is not billing liquidity takers on the orders but rather the executions of those orders. Accordingly, the Exchange has proposed to amend the fee schedule to clarify the current language in the fee schedule.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>8</sup> in general and Section 6(b)(4) of the Act<sup>9</sup> 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 the same fees will be charged to all member organizations.

##### 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 purposes of the Act.

<sup>6</sup> See Securities Exchange Act Release No. 57823 (May 15, 2008), 73 FR 29804 (May 22, 2008) (SR-NYSE-2008-38).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78a *et seq.*

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

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

<sup>5</sup> See Securities Exchange Release No. 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR-NYSEALTR-2008-09).

<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.

*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 foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>11</sup> 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-2008-16 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-2008-16. 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 NYSEALTR. 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-2008-16 and should be submitted on or before January 28, 2009.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59180; File No. SR-NYSEArca-2008-121]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Rule 5.2(j)(6) To Increase the Permissible Aggregate Weight of Underlying Foreign Country Securities

December 30, 2008.

#### I. Introduction

On October 29, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), 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 Arca Equities Rule 5.2(j)(6) relating to the listing of Equity Index-Linked Securities.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on November 28,

<sup>12</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.

<sup>3</sup> Equity Index-Linked Securities are securities, the payment at maturity of which is based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset").

2008.<sup>4</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's listing standards for Equity Index-Linked Securities, among other criteria, currently limit the permissible aggregate weight of underlying foreign country securities and American Depositary Receipts ("ADRs") that can be included in the Equity Reference Asset to 20% of the overall index where the primary trading markets of such foreign country securities or foreign country securities underlying such ADRs are not members of the Intermarket Surveillance Group ("ISG") or parties to comprehensive surveillance sharing agreements ("CSSAs") with the Exchange. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(I)(1)(b)(v) to increase the permissible aggregate weight of such underlying foreign country securities and ADRs up to 50% of the overall index, subject to certain other limitations.

Specifically, the proposal would permit the listing and trading of Equity Index-Linked Securities where the underlying foreign country securities and/or foreign country securities underlying ADRs primarily trading on non-U.S. markets that are not ISG members or otherwise subject to a CSSA agreement with the Exchange account for up to 50% of the aggregate dollar weight of the index, provided that: (1) The securities of any one primary foreign market which is not an ISG member or does not have a CSSA with the Exchange ("Non-Reciprocal Foreign Markets") do not represent more than 20% of the dollar weight of the index; and (2) the securities of any two Non-Reciprocal Foreign Markets do not represent more than 33% of the dollar weight of the index. The Exchange also seeks to make technical and non-substantive modifications to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v).

## III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the

<sup>4</sup> See Securities Exchange Act Release No. 58984 (November 20, 2008), 73 FR 72546.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).