

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59480; File No. SR-NYSEALTR-2009-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext US LLC Adopting New Rule 6A—NYSE Alternext Equities and Amending Existing Rule 36—NYSE Alternext Equities Concerning the Use of Personal Portable or Wireless Communication Devices and the Use or Possession of Wireless Trading Devices On and Off the Exchange Trading Floor

March 2, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 2, 2009, NYSE Alternext US LLC (“NYSE Alternext” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 adopt new Rule 6A—NYSE Alternext Equities (“Trading Floor”) and amend existing Rule 36—NYSE Alternext Equities (Communications Between Exchange and Members’ Offices) concerning (i) the use of personal portable or wireless communication devices, and (ii) the use or possession of wireless trading devices on and off the Exchange Trading Floor.

#### 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

The purpose of the proposed rule changes is to adopt new Rule 6A—NYSE Alternext Equities (“Trading Floor”) and amend existing Rule 36—NYSE Alternext Equities (Communications Between Exchange and Members’ Offices) concerning (i) the use of personal portable or wireless communication devices, and (ii) the use or possession of wireless trading devices on and off the Exchange Trading Floor.

##### Background

As described more fully in a related rule filing,<sup>4</sup> 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 Act.<sup>5</sup> 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”).<sup>6</sup> Similarly, effective March 2, 2009, the Exchange will relocate all options trading conducted on the 86 Trinity Trading Systems to trading systems and facilities located at 11 Wall Street (the “Options Relocation”).<sup>7</sup>

Upon the Options Relocation, the Exchange’s Options and Equities Trading Floors will be located in physically separate, adjacent rooms within the 11 Wall Street building. Access to the Trading Floors is restricted at each entrance by turnstiles

<sup>4</sup> 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).

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

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

<sup>7</sup> See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR-NYSEALTR-2008-14) (notice of filing for Options Relocation), as amended.

and only authorized visitors, members or member firm employees are permitted to enter. Both Trading Floors will be managed and overseen by employees of the Exchange’s corporate parent, NYSE Euronext.

##### Proposed Rule Changes

In order to accommodate the Options Relocation and the presence of the Exchange’s Options Trading Floor adjacent to the Exchange’s Equities Trading Floor, the Exchange proposes the following rule changes.

##### 1. New Rule 6A—NYSE Alternext Equities (“Trading Floor”)

Under Rule 6—NYSE Alternext Equities, the term “Floor” is defined as having the meaning provided the term under the Act and the related rules and regulations.<sup>8</sup> In addition, the Exchange has issued interpretive guidance that the “Floor” also includes the areas outside the “Blue Line” (member and member organization booths adjacent to the trading Floor) and “any area reserved primarily for members, including the members’ lounges and the members’ bathrooms.”<sup>9</sup>

The current definition of “Floor” under Rule 6—NYSE Alternext Equities would, upon the Options Relocation, include the Exchange’s Options Trading Floor. This could lead to confusion under Exchange Rules when discussing the “Floor” and the “Trading Floor”. The Exchange therefore proposes to adopt a new Rule 6A—NYSE Alternext Equities to define the term “Trading Floor” to make it clear that, within the area of the “Floor” of the Exchange as technically defined by Rule 6, there are distinct, restricted-access areas where equities trading is conducted by the Exchange on the one hand and options trading on the other. Under the new proposed Rule 6A—NYSE Alternext Equities, the term “Trading Floor” means the restricted-access physical areas designated by the Exchange for the trading of equities securities, commonly known as the “Main Room” and the “Garage.” The Exchange’s Trading Floor does not include the areas where NYSE Alternext-listed options are traded, commonly known as the “Blue Room” and the “Extended Blue Room”. For the

<sup>8</sup> Pursuant to the definitions of “Floor” in Rule 6—NYSE Alternext Equities and NYSE Rule 6, the NYSE and NYSE Alternext Equities Trading Floors overlap and thus references in the proposed rule text as well as in the 19b-4 to “Equities Trading Floor” by default include the NYSE Trading Floor. The NYSE has proposed corresponding rule changes for its members and member organizations. See SR-NYSE-2009-23 (formally submitted March 2, 2009).

<sup>9</sup> See NYSE/NYSE Alternext Information Memo 08-66 (December 22, 2008).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

purposes of the Exchange's Equities Rules, as well as this filing, these areas will be referred to as the "NYSE Alternext Options Trading Floor".

By adopting this new Rule, the Exchange seeks to prevent any confusion that may arise under Exchange Rules and to provide a more accurate description of the physical areas of the Floor where different types of trading are actually conducted. In addition, as described below, this new Rule would also make it easier for the Exchange to define areas where certain conduct is or is not permitted by its members and member firm employees.

## 2. Use of Personal Portable or Wireless Communication Devices

Rule 36—NYSE Alternext Equities currently prohibits, without prior Exchange approval, members and member organizations from establishing or maintaining any telephonic or electronic communication, including the usage of any portable or wireless communication devices (*i.e.* cellular phone, wireless pager, BlackBerry™, etc.), between the Floor and any other location. Under the Rule, Floor brokers may use Exchange authorized and issued portable phones on the Floor, subject to certain restrictions (*see* Rules 36.20—.21—NYSE Alternext Equities).<sup>10</sup> Designated Market Makers (DMMs) may not use any portable or wireless communication devices on the Floor although they may, subject to restriction, maintain at their posts telephone lines and wired or wireless devices that are registered with the Exchange (*see* Rule 36.30—NYSE Alternext Equities). The use of all other portable or wireless communication devices on the Floor is prohibited.

Although it would be prohibited under the current framework of Rule 36—NYSE Alternext Equities, to eliminate any potential confusion arising from the Options Relocation, the Exchange proposes to include a provision in Rule 36.23—NYSE Alternext Equities that expressly prohibits members and member firm employees from using personal portable or wireless communications devices on the NYSE Alternext Options Trading Floor. However, those members and employees of member organizations that

<sup>10</sup> All members and member firm employees who use an authorized portable phone must execute a written acknowledgement as to the usage of the phone and authorizing the Exchange to receive data and records related to incoming and outgoing calls. *See* NYSE Information Memos 08–40 (August 14, 2008) and 08–41 (August 14, 2008) (concerning the use of Exchange authorized and issued portable phones on the Floor, incorporated by reference in joint NYSE/NYSE Alternext Information Memo 08–66).

are also registered to trade options on the Exchange will be permitted to use personal portable or wireless communications devices while on the Exchange's Options Trading Floor in accordance with applicable Exchange Options rules and regulations, including Rule 220.

The Exchange also proposes corresponding amendments to Rules 36.20—[sic] and .21—NYSE Alternext Equities to provide that Floor brokers may not use an Exchange authorized and provided portable phone used to trade equities while on the Exchange Options Trading Floor, and including other technical changes.

## 3. Use or Possession of Wireless Trading Devices

Currently, Exchange members and member firm employees are permitted to use their Exchange approved handheld trading devices throughout the Trading Floor of the Exchange.<sup>11</sup> Subject to certain exceptions, pursuant to Rules 70— and 117—NYSE Alternext Equities Floor brokers are required to either cancel or transfer to another Floor broker their agency interest files if they leave the Crowd (as defined under Rule 70.30—NYSE Alternext Equities), and, unless transferred, any open orders will not be represented while the Floor broker is away from the Crowd.<sup>12</sup>

Upon the Options Relocation, the Exchange's Options Trading Floor will be adjacent to the Exchange's Equities Trading Floor. Thus, in order to address concerns regarding improper information sharing between the Exchange's Equities and Options Trading Floors, the Exchange proposes to adopt Rule 36.70—NYSE Alternext Equities to prohibit Exchange members and member firm employees from (i) using or possessing any wireless trading device that may be used to view or enter orders into the Exchange's Equities trading systems while on the Exchange's Options Trading Floor, and (ii) using or possessing any wireless trading device that may be used to view or enter orders into the Exchange's Options trading systems while on the Exchange's

<sup>11</sup> The Exchange's Wireless Communications Plan governing the use of wireless handheld trading devices on the Equities Trading Floor is the same as the NYSE's, which was previously approved by the Commission. *See* Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR–NYSE–1995–22) and Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR–NYSE–1997–17).

<sup>12</sup> Rule 70.30—NYSE Alternext Equities defines the "Crowd" as "[t]he rooms on the Exchange Floor that contain active posts/panels where Floor brokers are able to conduct business[.]" This is, essentially, the "Trading Floor" as defined in proposed Rule 6A—NYSE Alternext Equities.

Equities Trading Floor. These prohibitions would apply to any and all wireless trading devices, including devices issued by the Exchange or NYSE, as well as devices that are proprietary to a member, member organization or other entity.<sup>13</sup>

These proposed amendments would not change the current regulatory framework within which members and member firm employees may use their wireless trading devices. Members and member firm employees would still be limited to using Exchange approved wireless trading devices and would still be required to cancel or transfer their agency interest files in accordance with Rules 70— and 117—NYSE Alternext Equities if they leave the Crowd/Equities Trading Floor.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934<sup>14</sup> (the "Act"), in that they are designed to prevent fraudulent and manipulative acts and practices, 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 proposed rule changes also support the principles of Section 11A(a)(1)<sup>15</sup> of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes will permit the Exchange's Equities permit holders and Options permit holders to, within the existing regulatory framework at the Exchange, efficiently and effectively conduct business on the respective Equities and Options Trading Floors and engage in personal communications while off the Trading Floors consistent with maintaining necessary regulatory distinctions between the two. Moreover, the proposed rule changes will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floors of the Exchange and its affiliate NYSE.

<sup>13</sup> Proposed Rule 36.70—NYSE Alternext Equities is based on the Exchange's proposed Options Rules 902(g) and (h). *See* Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR–NYSEALTR–2008–14), as amended.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78k–1(a)(1).

### 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder<sup>17</sup> because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>18</sup> The Exchange believes that this filing is non-controversial because it is consistent with its filing implementing the Options Relocation,<sup>19</sup> as well as the Exchange's current regulatory controls governing the use of personal portable or wireless communications devices and wireless trading devices, which were approved by the Commission. Accordingly, the Exchange believes that these rule changes are eligible for immediately effective treatment under the Commission's Streamlining Order.<sup>20</sup>

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing so that the proposed rule changes may become effective upon filing and operative on the date of the Options

Relocation, currently scheduled for March 2, 2009. The Commission hereby grants the Exchange's request.<sup>21</sup> The Commission believes that such action is consistent with the protection of investors and the public interest because the Exchange's proposal would clarify the Exchange's policies governing the use of personal portable or wireless communication devices as well as wireless trading devices. This clarification is necessitated by the Options Relocation.

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-2009-21 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEALTR-2009-21. 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 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 publicly available. All submissions should refer to File Number SR-NYSEALTR-2009-21 and should be submitted on or before March 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-4872 Filed 3-6-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59493; File No. SR-NYSEArca-2009-18]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Listing and Trading of Bear Market Strategic Accelerated Redemption Securities<sup>®</sup> Linked to the S&P Small Cap Regional Banks Index

March 3, 2009.

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 March 2, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE Arca filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of 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. NYSE Alternext has satisfied this requirement.

<sup>19</sup> See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR-NYSEALTR-2008-14), as amended.

<sup>20</sup> See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40143 [sic] (July 11, 2008) (concerning 17 CFR parts 200 and 241).

<sup>21</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</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> 15 U.S.C. 78s(b)(3)(A).