

for regulating its affiliated broker-dealers.

According to the Plan, BATS will review the Certification, at least annually, or more frequently if required by changes in either the rules of BATS or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add BATS rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete BATS rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be BATS rules that are substantially similar to FINRA rules.<sup>22</sup> FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, BATS will also provide FINRA with a current list of Dual Members and shall update the list no less frequently than once each quarter.<sup>23</sup>

The Commission is hereby declaring effective a plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all BATS rules that are substantially similar to the rules of FINRA for Dual Members of BATS and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to BATS rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add a BATS rule to the Certification that is not substantially similar to a FINRA rule; delete a BATS rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a BATS rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act and noticed for public comment.<sup>24</sup>

The Plan also permits BATS and FINRA to terminate the Plan, subject to notice.<sup>25</sup> The Commission notes,

<sup>22</sup> See paragraph 2 of the proposed 17d-2 Plan.

<sup>23</sup> See paragraph 3 of the proposed 17d-2 Plan.

<sup>24</sup> The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, Dual Members, also would constitute an amendment to the Plan.

<sup>25</sup> See paragraph 12 of the proposed 17d-2 Plan.

however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d-2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.<sup>26</sup>

#### IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-569. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

It is therefore ordered, pursuant to section 17(d) of the Act, that the Plan in File No. 4-569, between FINRA and BATS, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

It is therefore ordered, that BATS is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-569.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-25503 Filed 10-24-08; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58824; File No. SR-NYSEALTR-2008-02]

#### Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC To Amend NYSE Alternext Equities Rule 123D(4) To Expand That Rule's Trading Halt Condition To Cover All Structured Products

October 21, 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 October 17, 2008, NYSE Alternext US LLC ("NYSE Alternext" or "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 the Exchange. The Commission is publishing this

<sup>26</sup> The Commission notes that paragraph 12 of the Plan reflects the fact that FINRA's responsibilities under the Plan will continue in effect until the Commission approves any termination of the Plan.

<sup>27</sup> 17 CFR 200.30-3(a)(34).

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

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

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 NYSE Alternext Equities Rule 123D(4) to expand the application of the trading halt condition provided by that rule to include all NYSE Alternext listed structured products. The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange's Office of the Secretary, 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 these statements may be examined at the places specified in Item IV below. NYSE Alternext 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

On September 30, 2008, NYSE Euronext (the parent company of two other exchanges—New York Stock Exchange LLC ("NYSE") and NYSE Arca, Inc.), completed its acquisition of the Exchange (the "Merger"). In connection with the Merger, NYSE Alternext will relocate all equities trading currently conducted on or through the Amex legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to the NYSE trading facilities and systems 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"). In anticipation of the Equities Relocation, the Exchange has adopted the NYSE's trading rules as the "NYSE Alternext Equities Rules," to be implemented at the time of the Equities Relocation.<sup>3</sup>

<sup>3</sup> Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63).

NYSE Euronext has made a business decision to discontinue the listing and trading of exchange traded funds ("ETFs") and structured products on the Exchange at the time of the Equities Relocation and to encourage the issuers of those securities to transfer their listings to NYSE Arca. As such, the NYSE Alternext Equities Rules do not provide for the trading of ETFs and structured products and the NYSE Alternext Trading Systems will not be equipped for such trading. However, some of the issuers of ETFs and structured products may not have completed the transfer of their listed securities to NYSE Arca prior to the Equities Relocation. It would be prohibitively expensive to keep open the trading floor at 86 Trinity Place to facilitate the trading of a limited number of ETFs and structured products pending their transfer to NYSE Arca. To address this problem as it relates to ETFs, the Exchange included Rule 123D(4) in the NYSE Alternext Equities Rules. Rule 123D(4) provides for a non-regulatory trading halt condition to permit the halting of trading of ETFs on the Exchange to facilitate the closing of the 86 Trinity Place trading floor in connection with the Equities Relocation. Orders in ETFs subject to the trading halt condition are to be routed to NYSE Arca for execution.

Rule 123D(4) as adopted does not apply to structured products that remain listed on the Exchange at the time of the Equities Relocation. As the same problem arises in connection with the continued trading of structured products on the Exchange after the Equities Relocation as arises with ETFs, the Exchange proposes to extend the application of Rule 123D(4) to any structured products that remain listed at that time. In order for Rule 123D(4) to comprehensively apply to all ETFs and structured products, the Exchange proposes to extend its application to securities listed pursuant to Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants), or 107 (Other Securities) of the Exchange's Company Guide or pursuant to Exchange Rules 1000–AEMI and 1001 *et seq.* (Portfolio Depositary Receipts), 1000A–AEMI and 1001A *et seq.* (Index Fund Shares), 1000B *et seq.* (Managed Fund Shares), 1200–AEMI and 1201 *et seq.* (Trading of Trust Issued Receipts), 1200A–AEMI and 1201A *et seq.* (Commodity-Based Trust Shares), 1400 *et seq.* (Trading of Paired Trust Shares), 1500–AEMI and 1501 *et seq.* (Trading of Partnership Units), and 1600 *et seq.* (Trading of Trust Units).

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</sup> 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. In particular, the Exchange believes that the proposed amendment facilitates transactions in securities because it will make it easier for issuers of structured products listed on the Exchange to ensure the continuity of trading of their securities after the closing of the Exchange's trading floor at 86 Trinity Place and pending transfer of the listing of those securities to NYSE Arca.

### *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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>5</sup>

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change is noncontroversial because it will make it easier for issuers of structured products listed on the Exchange to ensure the continuity of trading of their securities after the closing of the 86 Trinity Place trading floor and pending transfer of the listing of those securities to NYSE Arca. The Exchange believes that the proposed amendment to Rule 123D(4)

does not raise any novel regulatory issues as it simply extends the trading halt condition to structured products under the same circumstances in which it applies to ETFs.

The Exchange provided the Commission with written 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 the filing of the proposed rule change as required by Rule 19b–4(f)(6).<sup>6</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–2008–02 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–2008–02. 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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 C.F.R. 240.19b–4(f)(6).

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–NYSEALTR–2008–02 and should be submitted on or before November 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–25528 Filed 10–24–08; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58825; File No. SR–NYSEArca–2008–89]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(3) in Connection With Generic Listing Standards for Multiple Fund Shares and Inverse Fund Shares

October 21, 2008.

#### I. Introduction

On August 25, 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 to amend NYSE Arca Equities Rule 5.2(j)(3) in connection with generic listing standards for Multiple Fund Shares and Inverse Fund Shares. The proposed rule change was published for comment in the **Federal Register** on September 16, 2008. <sup>3</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 proposes to amend Commentaries .01, .02, and .03 and to adopt new Commentary .04, to NYSE Arca Equities Rule 5.2(j)(3), the Exchange's initial listing standards for Investment Company Units (“ICUs”), to permit the listing and trading of ICUs issued by an open-end management investment company that seek to provide investment results, before fees and expenses, that either correspond to a specified multiple of the percentage performance on a given day of a particular benchmark domestic equity index, international equity index, Fixed Income Securities <sup>4</sup> index, or a combination thereof (“Multiple Fund Shares”) or that correspond inversely up to minus or negative 300 percent (–300%) of the percentage performance on a given day of a particular domestic equity index, international equity index, Fixed Income Securities index, or a combination thereof (“Inverse Fund Shares,” and together with Multiple Fund Shares, collectively, “Fund Shares”), in each case, pursuant to Rule 19b–4(e) under the Act. <sup>5</sup>

Specifically, the Exchange proposes to remove the current limitation to listing Multiple Fund Shares and Inverse Fund Shares <sup>6</sup> and to amend Commentaries .01, .02, and .03 to NYSE Arca Equities Rule 5.2(j)(3) to permit the Exchange to approve the listing and trading of

<sup>4</sup> Fixed Income Securities are debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt, and debt of a foreign country or a subdivision thereof. See Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

<sup>5</sup> Rule 19b–4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1) under the Act, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b–4(e)(1). A new derivative securities product means any type of option, warrant, hybrid securities product, or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. See 17 CFR 240.19b–4(e).

<sup>6</sup> See Commentaries .02 and .03 to NYSE Arca Equities Rule 5.2(j)(3) (currently prohibiting the Exchange from approving for listing and trading pursuant to Rule 19b–4(e) a series of ICUs that are issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified index by a specified multiple or that correspond to the inverse of the performance of a specified index by a specified multiple).

Multiple Fund Shares and Inverse Fund Shares pursuant to Rule 19b–4(e) under the Act, *provided* that each of the applicable conditions and requirements set forth in Commentaries .01, .02, or .03 to NYSE Arca Equities Rule 5.2(j)(3), as proposed to be amended, and proposed Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3) are satisfied.

Lastly, the Exchange proposes to make a minor, non-substantive language change to Commentary .02(ii) to NYSE Arca Equities Rule 5.2(j)(3).

#### Limitation on Leverage

In connection with the listing and trading of Multiple Fund Shares, Commentaries .01, .02, and .03 to NYSE Arca Equities Rule 5.2(j)(3), as amended, would not provide a limitation on leverage. Specifically, the proposal would permit the Exchange to approve, pursuant to Rule 19b–4(e) under the Act, the listing and trading of Multiple Fund Shares that seek to provide investment results, before fees and expenses, corresponding to any multiple, without limitation, of the percentage performance on a given day of a particular domestic or international equity index, Fixed Income Securities index, or a combination thereof.

In connection with Inverse Fund Shares, Commentaries .01, .02, and .03 to NYSE Arca Equities Rule 5.2(j)(3), as amended, would expressly prohibit the Exchange from approving pursuant to Rule 19b–4(e) under the Act the listing and trading of Inverse Fund Shares that seek to provide investment results, before fees and expenses, in an amount that exceeds –300% of the percentage performance of the underlying benchmark index. Specifically, with respect to the listing and trading of Inverse Fund Shares that seek to provide investment results, before fees and expenses, in an amount that exceeds –300% of the percentage performance of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to section 19(b)(2) of the Act. <sup>7</sup>

#### Availability of Information About Fund Shares and Underlying Indexes

The Exchange also proposes to adopt new Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3), which would only apply to a series of Multiple Fund Shares and Inverse Fund Shares issued by an open-end management investment company. Proposed Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3) would require the composition of portfolio holdings of a fund be disclosed daily on

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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> See Securities Exchange Act Release No. 58484 (September 8, 2008), 73 FR 53472.