

conformity with other obvious error provisions previously approved by the Commission.<sup>8</sup> The amendments relating to non-CBOE market-makers and ROS and HOSS rotations also conform CBOE's rule to rules already approved by the Commission.<sup>9</sup> The Commission believes that expanding the applicability of the extended customer obvious error notification provision for transactions involving certain non-broker-dealer customer orders that are entered before the opening rotation and that are executed as part of HAL on the opening process or that are executed immediately following the opening rotation through the Complex Order Book would give those customers a reasonable amount of time to discover an obvious error transaction and to request an obvious error review. The Commission believes that limiting the price adjustment for binary options is reasonable and objective in light of the payout structure of those options.

#### *Catastrophic Error*

The Commission believes that the proposed catastrophic error provision balances the need for certainty of trades and mitigating large losses due to errors in extreme circumstances through clear and objective procedures.<sup>10</sup> Moreover, the Commission believes that the proposed Catastrophic Error Panel, the streamlined review process, and the proposed fee for unsuccessful claims are appropriate to accomplish this balance.

#### *Erroneous Prints and Quotes in the Underlying*

The Commission deems that the provision allowing CBOE to designate the applicable underlying securities (or related instruments) and relevant markets for any option is beneficial to members in determining whether an erroneous print or quote has occurred. The provision takes into account the fact that members often base their options prices on various products in various markets and that erroneous options transactions may be a result of erroneous prints or quotes in markets other than the primary market for an underlying security. The changes to the calculation of average quote width and allowing adjustments in addition to nullifications are appropriate and

consistent with other rules previously approved by the Commission.<sup>11</sup>

#### *Trading Officials and Obvious Error Panel*

The Commission believes that the change to the definition of "Trading Officials" is appropriate and does not negatively impact the objectiveness or fairness of CBOE's obvious error provisions. Lastly, the Commission notes that deleting "non-DPM" from the definition of floor brokers is a non-substantive technical change and is appropriate.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CBOE-2009-024) is hereby approved.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-12717 Filed 6-1-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59975; File No. SR-NYSEALTR-2009-26]

### Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Changing Certain NYSE Amex Equities Rules To Conform Them With Changes to Corresponding Rules Filed by the New York Stock Exchange LLC

May 26, 2009.

#### I. Introduction

On March 9, 2009, the NYSE Alternext LLC (n/k/a NYSE Amex LLC) ("NYSE Amex" 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 to make changes to certain NYSE Amex Equities rules, to be effective retroactively to December 15, 2008, to conform them with changes to corresponding rules filed by the New York Stock Exchange LLC ("NYSE") on

March 9, 2009,<sup>3</sup> and approved by the Commission on May 21, 2009.<sup>4</sup> NYSE had proposed the rule changes described in the NYSE Notice to harmonize NYSE rules with corresponding rules that were filed by the Financial Industry Regulatory Authority, Inc. ("FINRA"), and approved by the Commission or were effective upon filing with the Commission.<sup>5</sup> On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The proposed rule change was published in the **Federal Register** on April 6, 2009.<sup>7</sup> The Commission received no comments on the proposal. On May 11, 2009, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>8</sup> This order provides notice of the proposed rule change, as modified by Amendment No. 2, and approves the proposed rule change, as amended, on an accelerated basis.

#### II. Description of the Proposal

NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 ("Merger").<sup>9</sup> 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 Amex US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.<sup>10</sup>

<sup>3</sup> See Securities Exchange Act Release No. 59655 (March 30, 2009), 74 FR 15563 ("NYSE Notice").

<sup>4</sup> See Securities Exchange Act Release No. 59965 (May 21, 2009) ("NYSE Order").

<sup>5</sup> See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR-FINRA-2008-033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR-FINRA-2008-027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR-FINRA-2008-030); and Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR-FINRA-2008-057).

<sup>6</sup> Amendment No. 1 to SR-NYSEALTR-2009-26 superseded and replaced the original filing in its entirety.

<sup>7</sup> See Securities Exchange Act Release No. 59655 (March 30, 2009), 74 FR 15540 ("Notice").

<sup>8</sup> Amendment No. 2 to SR-NYSEALTR-2009-26 clarified certain points set forth in the purpose section of Amendment No. 1 to SR-NYSEALTR-2009-026 relating to certain NYSE Amex Equities rules.

<sup>9</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>10</sup> 15 U.S.C. 78f.

<sup>8</sup> See, e.g., Securities Exchange Act Release No. 57712 (April 24, 2008), 73 FR 24100 (May 1, 2008) (approving revisions to the Philadelphia Stock Exchange's Obvious Error Rule).

<sup>9</sup> See, e.g., CBOE Rule 24.16.

<sup>10</sup> See Securities Exchange Act Release No. 57398 (February 28, 2008), 73 FR 12240 (March 6, 2008).

<sup>11</sup> See *supra*, note 8, and Rule 6.25(a)(5) (relating to an erroneous quote in the underlying).

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

<sup>13</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.

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 ("Equities Relocation"). The Exchange's equity trading systems and facilities at 11 Wall Street ("NYSE Amex Trading Systems") are operated by the NYSE on behalf of the Exchange.<sup>11</sup>

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply those rules to the Exchange as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.<sup>12</sup> The NYSE Amex 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 Amex Equities Rules as necessary to conform them with rule changes to corresponding NYSE Rules filed by the NYSE.

As noted above, the Exchange proposes to change certain NYSE Amex Equities Rules to conform them with changes to corresponding NYSE Rules that were described in the NYSE Notice.<sup>13</sup> On July 30, 2007, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc., the regulatory subsidiary of the NYSE, consolidated their member firm regulation operations into FINRA. In connection with that consolidation, FINRA is in the process of establishing a consolidated FINRA rulebook ("Consolidated FINRA Rulebook")<sup>14</sup>

<sup>11</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>12</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); 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 Amex 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 Amex Equities to track changes to corresponding NYSE Rule 62).

<sup>13</sup> See NYSE Notice, *supra* note 3.

<sup>14</sup> The current FINRA rulebook consists of three sets of rules: (1) NASD Rules, (2) rules and rule

that will harmonize NASD rules and certain NYSE rules related to member firm regulation.<sup>15</sup> All of these rules will be identified as "FINRA Rules" when the rule consolidation process is completed.

To reduce regulatory duplication, the Exchange proposes to conform several NYSE Amex Equities rules with changes to corresponding rules that were filed by the NYSE<sup>16</sup> and recently approved by the Commission.<sup>17</sup> The Notice provides a more detailed description of the Exchange's proposed rule changes.<sup>18</sup>

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2009-026 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-2009-26. This file number should be included on the

interpretations incorporated from the NYSE ("FINRA Incorporated NYSE Rules") (together, referred to as the "Transitional Rulebook"), and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members.

<sup>15</sup> Pursuant to Rule 17d-2 under the Act, NYSE, NYSE and NASD entered into an agreement (the "Rule 17d-2 Agreement") to reduce regulatory duplication for Dual Members by allocating to FINRA regulatory responsibility for specified NYSE rules (the "Common Rules"). See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include the FINRA Incorporated NYSE Rules. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Incorporate Certain NYSE Rules Relating to Member Firm Conduct) (SR-NASD-2007-054). Paragraph 2(b) of the Rule 17d-2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

<sup>16</sup> See NYSE Notice, *supra* note 3.

<sup>17</sup> See NYSE Order, *supra* note 4.

<sup>18</sup> See Notice, *supra* note 7.

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 available publicly. All submissions should refer to File Number SR-NYSEALTR-2009-26 and should be submitted on or before June 23, 2009.

### IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, as amended, and finds that it is consistent with the requirements of Section 6 of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires, among other things, that the Exchange's rules be 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.

NYSE Amex is deleting certain rules pertaining to: (1) Compensation or gratuities to employees of others; (2) business conduct, trading against firm

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

<sup>20</sup> In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

recommendations, and private sales; (3) excessive trading by members, excessive trading in discretionary accounts, successive transactions by members, manipulative operations, reopening contracts, and loans for accounts of non-members; (4) disciplinary proceedings concerning conduct that is inconsistent with just and equitable principles of trade; (5) reporting of certain information concerning short sales and proprietary transactions; (6) reporting and certification of member or member organization's supervision and compliance efforts; (7) formation and approval or merger organizations; (8) reporting of short positions; (9) notification requirements for listed securities; and (10) disclosure and monitoring of non-managed fee based accounts. In place of the deleted rules and interpretations, NYSE Amex proposes to adopt rules that conform the NYSE Amex Equities Rules with changes made to the corresponding NYSE Rules on which they are based.<sup>22</sup>

The Commission believes that the proposed rule change, as amended, is appropriate and would provide greater harmonization among NYSE Rules, NYSE Amex Equities Rules and FINRA Rules, thereby resulting in less burdensome and more efficient regulatory compliance for their common members and member organizations. With respect to the Exchange's proposal to delete NYSE Amex Equities Rule 350 and to adopt NYSE Amex Equities Rule 3220, (relating to influencing or rewarding employees of others), the Commission notes that NYSE Amex has stated that, immediately upon Commission approval of new NYSE Amex Equities Rule 3220, it will issue an Information Memorandum to its members and member organizations including NYSE Amex-only members and those members registered with FINRA, clarifying that FINRA's interpretive guidance related to FINRA Rule 3220 is considered part of NYSE Amex Equities Rule 3220, and that such members and member organizations are required to regulate their conduct according to Rule 3220 and the interpretive guidance related to FINRA Rule 3220.<sup>23</sup> Accordingly, the Commission believes that the proposed rule change, as amended, is consistent with the requirements of the Act.

The Commission also finds good cause for approving the proposed rule change as modified by Amendment No.

2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 2 simply clarifies certain points relating to proposed changes to NYSE Amex Equities Rules. Because Amendment No. 2 does not significantly alter the proposed rule change, which was subject to a full notice and comment period, the Commission finds that it is in the public interest to approve the proposed rule change, as modified by Amendment No. 2, without delay to expedite implementation. Accordingly, the Commission finds that there is good cause, consistent with and in furtherance of the objectives of Sections 6<sup>24</sup> and 19(b)(2)<sup>25</sup> of the Exchange Act, to approve Amendment No. 2 on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NYSEALTR-2009-26) be, and it hereby is, approved on an accelerated basis.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-12714 Filed 6-1-09; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59978; File No. SR-NYSEArca-2009-41]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules Related to Doing a Public Business in Options

May 27, 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 May 7, 2009, NYSE Arca, Inc. ("NYSE Arca" 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 substantially prepared by the

Exchange.<sup>4</sup> 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 Exchange Rule 9.18—Doing a Public Business in Options. The text of the proposed rule change 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 Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below.

##### 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 change is to amend Exchange Rule 9.18(f) to provide that the market on which an options transaction is executed need not be disclosed on a written confirmation furnished to a customer of an Options Trading Permit Holder ("OTP Holder") or Options Trading Permit Firm ("OTP Firm").<sup>5</sup>

<sup>4</sup> The Exchange and Commission staff agreed to several clarifying changes in text of Items I, II, and III during a telephone conversation between Andrew Stevens, Chief Counsel U.S. Equities and Derivatives, Exchange, and Darren Vieira, Attorney Advisor, Division of Trading and Markets, Commission on May 21, 2008.

<sup>5</sup> The proposed filing is being done pursuant to an industry-wide initiative under the auspices of the Options Self-Regulatory Council ("OSRC"), which is a committee comprised of representatives from each of the options exchanges functioning pursuant to the OSRC Plan (the "Plan"). See Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983). The Plan is not a National Market System ("NMS") plan under Section 11A of the Act, but rather is a plan to allocate regulatory responsibilities under Rule 17d-2 under the Act. 17 CFR 240.17d-2. As a result of the introduction of multiply listed options and the introduction of the Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage ("Options Linkage Plan"), the contracts in a customer options order could be executed on more than one options

Continued

<sup>22</sup> See NYSE Order, *supra* note 4.

<sup>23</sup> Telephone conversation between Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., and Nancy J. Burke-Sanow, Assistant Director, Division of Trading and Markets, Commission, May 21, 2009.

<sup>24</sup> 15 U.S.C. 78f.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

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