

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. Please include File Number SR-NYSE-2009-29 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-NYSE-2009-29. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-NYSE-2009-29 and should be submitted on or before April 14, 2009.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59593; File No. NYSEALTR-2009-28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC Amending NYSE Alternext Rules To Delete References to Specific Exchange Systems and To Remove the Requirement that Opening Transactions Receive Specific Designations Pursuant to NYSE Alternext Rules 79A and 115A. These Amendments are Proposed To Conform to Amendments Filed by the New York Stock Exchange LLC¹

March 17, 2009.

Pursuant to Section 19(b)(1)² of the Securities Exchange Act of 1934 (the "Act")³ and Rule 19b-4 thereunder,⁴ notice is hereby given that, on March 13, 2009, NYSE Alternext U.S. LLC (the "Exchange" or "NYSE Alternext") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, which Items have been prepared by the self-regulatory organization. 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 NYSE Alternext rules to delete references to specific Exchange systems and to remove the requirement that opening transactions receive specific designations pursuant to NYSE Alternext Rules 79A and 115A.

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.

¹ See SR-NYSE-2009-29, to be filed March 13, 2009.

² 15 U.S.C. 78s(b)(1).

³ 15 U.S.C. 78a.

⁴ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend its rule book to delete references to specific Exchange systems. The Exchange seeks to replace references to "DOT", "SuperDot", "Limit Order System" and "Opening Automated Report Service" ("OARS") with "Exchange systems". In addition, the Exchange seeks to remove the requirement that certain opening transactions be designated "OPD", "OPN" pursuant to NYSE Alternext Rule 79A (Miscellaneous Requirements on Stock Market Procedures) and Rule 115A (Orders at Opening or in Unusual Situations).

I. Background

As described more fully in a related rule filing,⁵ 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 U.S. LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act").⁶ 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 (the "Equities Relocation"). The Exchange's equity trading systems and facilities at 11 Wall Street (the "NYSE Alternext Trading Systems") are operated by the NYSE on behalf of the Exchange.⁷

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the

⁵ 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).

⁶ 15 U.S.C. 78f.

⁷ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

¹³ 17 CFR 200.30-3(a)(12).

NYSE Alternext Trading Systems.⁸ The NYSE Alternext 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 Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

On March 1, 1976, the NYSE commenced the operation of its Designated Order Turnaround (“DOT”) system. It was re-designated “SuperDot” (or sometimes cited as “SuperDOT”) in 1984. Today, SuperDot® is an electronic order-routing system used by NYSE and NYSE Alternext member organizations to send market and limit orders directly to the trading post where the security is traded. The system provides members and member organizations the ability to enter and manage their order flow on the NYSE and the Exchange electronically. After the orders have been executed, SuperDot uses the same electronic circuit to send post-trade reports back to member firms.

At one time, the NYSE’s Limit Order System electronically files orders to be executed when and if the specific limit price of an order is reached and electronically updates the Display Book. Good ‘til Cancelled orders not executed on the day of submission are automatically stored in this system until executed or cancelled.

When first introduced on the NYSE in 1980,⁹ OARS was designed to facilitate more efficient and accurate processing of orders received by the NYSE prior to the opening, a critical point in the trading day. It provided automation of certain clerical functions carried out at the trading post, issued reports on executions and substantially reduced the number of potential unmatched

trades since processing was done electronically.

OARS accepts member organizations’ pre-opening market orders for execution at the opening. OARS automatically pairs buy and sell orders and presents the imbalance to the DMM up to the time of the opening to assist the DMM in determining the opening price. Once that price is determined and transmitted by the DMM, the OARS system assigns the price to the orders it holds and issues reports back to the entering firms and brokers immediately.

Opening Report “OPD” Opened Designation

NYSE Alternext Rule 79A.20 requires a Designated Market Maker to obtain prior Floor Official approval if a security is going to open at one or more dollars away from the closing price at the Exchange when the closing price was under \$20 a share, or two dollars or more away from the closing price at the Exchange when the closing price was \$20 per share or more. Under (c) of Rule 79A.20, when such a transaction is an opening trade, the symbol “OPD”, which means opened, will appear next to the transaction when published to the Consolidated Tape.

The “OPD” designation traces back to when executions were manually entered to be reported to the Consolidated Tape. The “OPD” designation served two functions. First, because getting Floor Official approval required time, securities that were opening at one or more dollars away from the closing price usually had delayed openings. The “OPD” designation provided notice that the stock had in fact commenced trading. In addition, “OPD” provided a validation to the individual charged with manually entering the opening transaction information that the price associated with the opening transaction being reported was valid as the transaction would be a dollar or more away from the closing price.

NYSE Alternext Rule 115A.30 provides that orders stored in OARS will receive “OPN” or “such other universal contra as the Exchange may designate” to identify that the trade took place in Exchange systems at the opening. “OPN” is used as an omnibus account designation to identify market orders executed through OARS to the member or member organization receiving the report of the execution of the trade.

Proposed Amendments

Exchange Systems

The NYSE, and therefore NYSE Alternext, is enhancing its systems to

create a strong platform for technological growth that offers its customers the most comprehensive set of trading technology solutions to meet their needs and expectations. In order to attain this goal, the NYSE is continually upgrading its systems that accept, manage and report orders. In this process, legacy systems that once performed the functions governed by certain NYSE and NYSE Alternext Rules may be upgraded or replaced in their entirety. In order to keep pace with the enhancements to its technology, the Exchange seeks to replace references to specific systems that perform a function and replace it with the phrase “Exchange systems”.

The Exchange therefore proposes to amend NYSE Alternext Rules 123C (Market on The Close Policy And Expiration Procedures), 123D (Openings and Halts in Trading), 130 (Overnight Comparison of Exchange Transactions) and 132B (Order Tracking Requirements) to replace any references to “Designated Order Turnaround”, “Limit Order System”, “DOT”, “SuperDot” or “SuperDOT” with “Exchange systems”.

The OARS system functioning will be carried out through similar functioning in the Display Book®,¹⁰ and as a result, there will no longer be a separate system for processing openings. As a result, the Exchange seeks to remove the references to “Opening Automated Report Service” from .30 in the Supplementary Material to NYSE Alternext Rule 91 (Taking or Supplying Securities Named in Order), from various references in .30 of NYSE Alternext Rule 115A (Orders at Opening or in Unusual Situations) and in .10 under Supplementary Material to Rule 134 (Differences and Omissions—Cleared Transactions). The Exchange seeks to insert the phrase “Exchange systems” in NYSE Alternext Rules 91.10, 115A.30 and 134 to replace the references to the “Opening Automated Report Service” or “the Service”. In addition, the Exchange proposes to substitute the phrase “securities on the Exchange” and similar wording to replace the phrase “designated stock”, “designated stocks” or “stocks”. In practice, the instant rules apply to all instruments traded on the Exchange, which include structured products such as capital trusts and warrants. As such,

¹⁰ Display Book® is an order management and execution facility that receives and displays orders to the DMM and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. In addition, the Display Book is connected to a variety of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

⁸ 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 Alternext 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 Alternext Equities to track changes to corresponding NYSE Rule 62).

⁹ See Securities Exchange Act Release No. 16649 (March 13, 1980) 45 FR 18541 approving SR-NYSE–80–09 and Securities Exchange Act Release No. 17132 (September 8, 1980) 45 FR 60526 (September 12, 1980), approving SR-NYSE–80–25.

the broader term “securities” more accurately reflects the types of instruments traded on the Exchange than the narrower term “stock”. Finally, the Exchange proposes to remove the specific references to “OPN and OARS” as contras in NYSE Alternext Rule 115A and proposes to add language to the Rule to indicate that the designation by the Exchange of universal contras for orders stored in Exchange systems will not be deemed inconsistent with NYSE Alternext Rules 121.10 and 138. Both these rules allow that a substitute name may be used with respect to trade reports and the use of universal contras designated by the Exchange is deemed consistent with those requirements.

“OPD” and “OPN” Designations

These enhancements to NYSE systems have also negated the need for the “OPD” and “OPN” designations. Currently NYSE systems process orders, allocate the executed shares to the various participants, and publish reports of executions automatically. Given this change from how interest was processed in the manual environment, “OPD” no longer serves the purpose of validating the transaction price and is therefore no longer necessary, as the opening price is systemically validated. As such, the Exchange seeks through this filing to eliminate the requirement pursuant to NYSE Alternext Rule 79A.20(c) that opening transactions at one or more dollars away from the closing price “be accompanied when published on tape by the symbol “OPD”. In addition, as explained above, the Exchange also seeks to remove the reference to “OPN” in NYSE Alternext Rule 115A since, with the transference of the functions of OARS to the NYSE Display Book, the universal contra of “OPN” will no longer be used.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) ¹¹ of the Act 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 national market system, and, in general, to protect investors and the public interest. The Exchange believes that the rescission of the references to outdated systems and processes promotes just and equitable principles of trade and protects investors and the public interest because it allows the Exchange to upgrade its systems in a

timely manner thus providing customers the most comprehensive and all-encompassing set of trading technology solutions and mechanisms for efficient executions.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act ¹² and Rule 19b-4(f)(6) thereunder. ¹³

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. ¹⁴ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange 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. By waiving the operative delay, the proposed rule change may take effect on or about March 16, 2009, when the Exchange expects to install these technological changes. A waiver of the

30-day operative delay will also allow timely removal of outdated language in Exchange rules and avoid any potential confusion, and it will ensure that Exchange rule text is more accurate. For these reasons, the Commission designates the proposed rule change as operative upon filing. ¹⁵

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. ¹⁶

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. Please include File Number NYSEALTR-2009-28 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 NYSEALTR-2009-28. 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii). 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.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's effect on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(3)(C).

¹¹ 15 U.S.C. 78f(b)(5).

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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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 NYSEALTR-2009-28 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-6405 Filed 3-23-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59582; File No. SR-NASDAQ-2008-102]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 2 Thereto To Establish a Pilot Program for NASDAQ Basic Data Feeds

March 16, 2009.

I. Introduction

On December 23, 2008, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a five-month pilot to offer a real-time data feed combining both NASDAQ's Best Bid and Offer ("QBBO") and the "NASDAQ Last Sale" (collectively, "NASDAQ Basic"). On January 8, 2009, NASDAQ filed Amendment No. 1 to the proposed rule change. On January 12, 2009, NASDAQ replaced the original filing and Amendment No. 1 by filing Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal**

Register on January 22, 2009.³ The Commission received one comment letter on the proposal.⁴ NASDAQ responded to the comment letter on March 3, 2009.⁵ This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal

NASDAQ proposes to establish NASDAQ Basic, a five-month pilot to offer real-time quotation data in combination with last sale data solely from the NASDAQ Market Center. There will be no fees for NASDAQ Basic for the first month of the pilot.

NASDAQ Basic is a "Level 1" product containing two data elements: (1) Quotation information from the NASDAQ Market Center and (2) last sale data from the NASDAQ Market Center. NASDAQ Basic will be available in three forms, NASDAQ Basic for NASDAQ, NASDAQ Basic for NYSE, and NASDAQ Basic for Alternext. NASDAQ stated that it designed NASDAQ Basic to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the consolidated Level 1 products.

NASDAQ proposes to charge each professional user of the NASDAQ Basic product, a per subscriber monthly charge of \$10 for NASDAQ-listed stocks, \$5 for NYSE-listed stocks, and \$5 for Alternext-listed stocks, and charge each non-professional subscriber a per subscriber monthly charge of \$0.50 for NASDAQ-listed stocks, \$0.25 for NYSE-listed stocks, and \$0.25 for Alternext-listed stocks. For users that do not require a monthly subscription, there will be a per query option available for NASDAQ Basic, with a fee of \$0.0025 for NASDAQ-listed stocks, \$0.0015 for NYSE-listed stocks, and \$0.0015 for Alternext-listed stocks. Vendors that report per query usage to NASDAQ are permitted to convert to monthly subscriptions when the cost of individual users' queries exceeds the cost of the monthly subscription.

As with the distribution of other NASDAQ proprietary products, all distributors of NASDAQ Basic will be assessed a monthly Distributor Fee in addition to any applicable usage fees.

³ See Securities Exchange Act Release No. 59244 (January 13, 2009), 74 FR 4065 (January 22, 2009) ("Notice").

⁴ See Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, to Elizabeth Murphy, Secretary, Commission, dated February 12, 2009 ("SIFMA Letter").

⁵ See Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ, to Elizabeth Murphy, Secretary, Commission, dated March 3, 2009 ("NASDAQ Response").

Each Distributor of NASDAQ Basic for NASDAQ-listed stocks shall pay a monthly fee of \$1,500 for either internal or external distribution or both. Each Distributor of NASDAQ Basic for NYSE-listed stocks will pay a fee of \$250 per month for internal distribution or \$625 per month external distribution. Each Distributor of NASDAQ Basic for Alternext-listed stocks will pay a fee of \$250 per month for internal distribution or \$625 per month external distribution. Distributors that pay the fee for external distribution of NASDAQ Basic for NYSE and Alternext may distribute the same data internally for no additional fee. In addition, each Distributor that receives Direct Access to the NASDAQ Basic will also pay a monthly fee of \$2,000 for NASDAQ-listed stocks, \$1,000 for NYSE-listed stocks, and \$1,000 for Alternext-listed stocks.

III. Summary of Comments Received and NASDAQ's Responses

The Commission received one comment letter from the Market Data Subcommittee of the Securities Industry and Financial Markets Association ("SIFMA") opposing NASDAQ's proposed rule change.⁶ As an initial matter, SIFMA objects to NASDAQ's application of the "fair and reasonable" test announced in the NYSE Arca Order⁷ to NASDAQ Basic's fees.⁸ NASDAQ notes that the NYSE Arca Order is a valid agency action; therefore, NASDAQ believes it is proper to apply the "fair and reasonable" test to the NASDAQ Basic proposal.⁹ SIFMA notes that SIFMA members that sign up for NASDAQ's new market data feeds will still be required to purchase the consolidated data for trading purposes,¹⁰ and, if the other exchanges also repackage their own best bids and offers and last sale prices, adding together all of these fees could result in firms paying more, not less, for overall market data, and could potentially cause considerable technological and administrative burdens.¹¹ NASDAQ agrees that NASDAQ Basic is not a substitute for consolidated data when trading and order routing decisions can be implemented,¹² but rather a less expensive alternative to consolidated data when consolidated data is not required to be displayed, including portfolio measurement, back-office

⁶ *Id.*

⁷ See *infra* note 27.

⁸ See SIFMA Letter at 2.

⁹ See NASDAQ Response at 1.

¹⁰ 17 CFR 242.603(c).

¹¹ See SIFMA Letter at 2.

¹² 17 CFR 242.603(c).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.