

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53263; File No. SR-Amex-2005-130)

February 9, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Specialist Transaction Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 19, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. On February 1, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the amended proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rebate the increase in the Specialist Transaction Fee that the Amex implemented on October 3, 2005 and which the Exchange has collected since that time.

The text of the proposed rule change is available on the Amex’s Web site at

(<http://www.amex.com>), the Office of the Secretary, the Amex and at the Commission’s Public Reference Room.

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

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

<sup>3</sup> Amendment No. 1, which replaced the original filing in its entirety, made technical and clarifying changes to the proposed rule change.

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 III below. The Amex 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

Effective with transactions beginning October 3, 2005, the Exchange increased the Specialist Transaction Fee from \$.00005 to \$.00007 of the total value of a specialist's transactions in equities.<sup>4</sup> After further consideration, analysis of the impact of the fee increase and discussions with its members, the Exchange has determined to rollback the increase in the Specialist Transaction Fee to \$.00005.<sup>5</sup> The increase in the Specialist Transaction Fee implemented in October 2005 was part of a number of changes to the Equity Fee Schedule, the purpose of which was to generate additional revenue for the Exchange and to create additional incentives for market participants to send order flow to the Amex. According to the Exchange, for market participants other than the specialists, the changes in the aggregate contributed to the increase in revenue for the Exchange. The changes to fees imposed on the specialists, which also generated an increase in revenue, included an increase in the Specialist Transaction Fee and the elimination of a rarely used exemption from the Transaction Fee for trades in paired securities.

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<sup>4</sup> See Securities Exchange Act Release No. 52701 (October 28, 2005), 70 FR 67504 (November 7, 2005) (notice of filing and immediate effectiveness of SR-Amex 2005-101).

<sup>5</sup> See Securities Exchange Act Release No. 53232 (February 6, 2006) (notice of filing and immediate effectiveness of SR-Amex-2006-008).

According to the Exchange, the Specialist Transaction Fee is based on the dollar value of equity shares executed by the specialist. As a result, specialists trading high-priced and/or high volume securities account for a disproportionate amount of the revenue generated by the fee. The recent increase in the fee exacerbated this result. The Exchange submits that rolling back the increase will alleviate, in part, this disproportionate impact on certain specialists.<sup>6</sup> Although the rollback of the increase in the Specialist Transaction Fee will result in a decrease in the additional revenues expected to be generated by the recent changes to the Equity Fee Schedule, the Exchange represents that this decrease will not result in an increase or other revisions to fees charged to other market participants. In a separate filing submitted pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(2), this proposed reduction in the Specialist Transaction Fee became effective upon filing.<sup>7</sup>

The Exchange is now requesting to rebate the increase in the Specialist Transaction Fee collected since October 3, 2005. Beginning October 3, 2005, the Exchange billed and collected the increased Specialist Transaction Fee. Upon approval of this proposal to allow a refund of the increased portion of the fee collected, the Amex will issue a credit to the specialists for the amount collected while the higher fee was in place. Notwithstanding the proposed rebate, the Exchange believes that the recent changes to the Equity Fee Schedule continue to be an equitable allocation of reasonable fees among its members, issuers and other users of its facilities.

## 2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with

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<sup>6</sup> See supra note 5.

<sup>7</sup> See supra note 5. This reduction was effective upon filing on a prospective basis from February 6, 2006.

Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular because it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to reimburse a recent fee increase that the Exchange believes disproportionately impacts some members.<sup>10</sup>

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change, as amended, 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, as amended.

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:

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<sup>8</sup> 15 U.S.C. 78f(b).

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

<sup>10</sup> Amex clarified that although it refers in this sentence to the elimination of a recent fee increase, this proposal requests approval to rebate the increased amount of the Specialist Transaction Fee collected between October 3, 2005 and February 6, 2006. Telephone conversation between Claire McGrath, Senior Vice President and General Counsel, Amex, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on February 9, 2006. In a separate filing, SR-Amex-2006-008, which became effective upon filing, the Amex eliminated the increase in the Specialist Transaction Fee. See supra note 5.

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-Amex-2005-130 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2005-130. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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 No. SR-Amex-2005-130 and

should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> Specifically, the Commission believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,<sup>12</sup> which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission notes that the Exchange believes that the increase in the Specialist Transaction Fee, which became effective on October 3, 2005, resulted in a disproportionate burden on Specialists who trade high-priced and/or high volume securities because the Specialist Transaction Fee is based on the dollar value of equity shares executed by the specialist. Therefore, and as noted above, the Exchange has reduced the amount of the Specialist Transaction Fee from \$.00007 to \$.00005 in a separate filing (effective upon filing on February 6, 2006)<sup>13</sup> and now requests approval to reimburse the increased amount of the Specialist Transaction Fee collected since October 3, 2005. The Commission finds that the Exchange's proposal to rebate the increased amount of the Specialist Transaction Fee collected between October 3, 2005 and February 6, 2006 is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>11</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See supra note 5.

Moreover, the Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate in order to allow Amex to issue credits to its Specialists as quickly as possible.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change, and Amendment No.1 thereto, (SR-Amex-2005-130) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris  
Secretary

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<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).