

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53540; File No. SR-Amex-2006-14)

March 22, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Specialists' Transactions with Public Customers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 7, 2006, 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 Amex. On March 16, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 17, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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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> In Amendment No. 1, the Exchange revised proposed Amex Rule 190, Commentary .07 (iv), to require that a specialist represent to the Amex that neither the specialist nor his affiliates are making a market in any of the underlying component securities, currencies, or commodities of any ETF issued by the sponsor with which the specialist has entered into a business transaction.

<sup>4</sup> In Amendment No. 2, the Exchange made further changes to proposed Amex Rule 190, Commentary .07 (iv), to apply the requirement therein to transactions entered into by either specialist or his member organization or any member, officer, employee or approved person therein.

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

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

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

The Exchange proposes to amend Amex Rule 190 and Section 910 of the Amex Company Guide to permit business transactions between a specialist or his member organization, or any member, officer, employee or approved person therein and the sponsor of any exchange traded fund ("ETF") in which the specialist is registered. The text of the proposed rule change, as amended, is attached hereto as Exhibit A and is also available on the Amex Web site <http://www.amex.com>, at the principal office of Amex, 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, as amended, and discussed any comments it received on the proposal. 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, of the most significant aspects of such statements.

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

1. Purpose

Amex Rule 190 (Specialist's Transactions with Public Customers) and Section 910 (Relationship with Specialists) of the Amex Company Guide generally restrict business transactions between a specialist or his member organization, or any member, officer, employee or approved person therein (collectively, "affiliates") and any company or any officer, director, or 10% stockholder of a company in whose stock the specialist is registered. The restriction is intended to ensure that a specialist or his affiliates do not enter into a material business

relationship with a company in whose security the specialist is registered, such that the specialist's or his affiliates' status creates conflicts of interest with respect to the specialist's affirmative and negative obligations to maintain a fair and orderly market in the security.

Currently, Amex Rule 193 provides exemptions from Amex Rule 190(a) and (b) to an approved person or member organization that is affiliated with a specialist member organization with respect to business transactions with issuers. This is due to the fact that the functional separation required by Amex Rule 193 eliminates conflict of interest concerns. The Exchange proposes to add an exemption to Amex Rule 190 and Section 910 of the Amex Company Guide that would apply to business transactions between a specialist or his affiliates and the sponsor of any ETF in which the specialist is registered. The Commission previously approved a similar rule filing by the New York Stock Exchange, Inc. ("NYSE").<sup>7</sup>

For the purposes of the proposed rule change, ETFs are Portfolio Depositary Receipts (as defined in Rule 1000), Index Fund Shares (as defined in Rule 1000A), Trust Issued Receipts (as defined in Rule 1200) and derivative instruments based on one or more securities, currencies or commodities. The Exchange believes that potential conflicts of interest will be reduced due to the nature of how ETFs are traded. Since the trading price of an ETF is generally based on the price(s) of one or more security, commodity, currency or related futures contract (collectively, "underlying assets"), the Exchange believes that the potential for conflicts of interest that might have an undue influence or impact on the trading price of an ETF will be minimal. The Exchange also believes that conflict of interest or undue influence concerns will be further minimized by the fact that the underlying assets of an ETF are typically traded on a different exchange or market than Amex or in a different location within Amex.

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<sup>7</sup> See Securities Exchange Act Release No. 52838 (November 28, 2005); 70 FR 72320 (December 2, 2005) (SR-NYSE-2005-66).

The Exchange also believes that the potential for conflicts of interest that might arise between a specialist or his affiliates and a sponsor of an ETF will be negligible because the responsibilities of a sponsor of an ETF are limited to establishing the trust that issues ETF shares, registering the ETF shares with the SEC, and filing required periodic reports. Thus, while the ETF sponsor generally oversees the performance of the trustee of the ETF and the trust's principal service providers, the trustee is responsible for the day-to-day administration of the trust.

The proposed rule change would provide that in order to take advantage of the exemption the following conditions must be met: (i) the business transaction may only be entered into with the sponsor of the ETF and the sponsor may not be involved in the day-to-day administration of the ETF; (ii) any fee or other compensation paid in connection with the business transaction to a specialist or his affiliates must not have any relationship to the trading price or daily trading volume of the ETF; (iii) the specialist or his affiliate must notify and provide a full description to the Exchange of any business transaction or relationship it may have with any sponsor of an ETF in which the specialist or any of its affiliates is registered; and (iv) the specialist or his affiliate must make a representation to the Exchange indicating that the neither the specialist nor his affiliates are making a market in any of the underlying component securities, currencies or commodities of any ETF issued by the sponsor with which such specialist or affiliate has entered into a business transaction.

The Exchange believes that the above-listed conditions will serve as an additional layer of protection against conflicts of interest by diminishing any potential ability for a specialist or his affiliates to unduly influence trading for their own benefit and any incentive for such specialist to compromise his specialist obligations in maintaining fair and orderly markets. The

Exchange also believes that such conditions will help to ensure that the ETF sponsor does not unduly influence its specialist or his affiliates.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

The Exchange 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

The Exchange did not solicit or receive any written comments with respect to the proposed rule change, as amended.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> in that the proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for “non-controversial” proposals and make the proposed rule change, as amended, effective and operative upon filing. The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.<sup>12</sup> The Commission notes that the proposed rule change imposes conditions for specialist transactions with sponsors of ETFs that are substantially identical to those contained in NYSE Rule 460, Commentary .25 and NYSE Rule 103B.VIII.

Therefore, the foregoing rule change, as amended, has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>15</sup>

#### IV. 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-Amex-2006-14 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-2006-14. 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

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<sup>15</sup> The effective date of the original proposed rule change is February 7, 2006, the date of the original filing, and the effective dates of Amendment Nos.1 and 2 are, respectively, March 16, 2006 and March 17, 2006, the filing dates of the amendments. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 17, 2006, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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 Number SR-Amex-2006-14 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

AMERICAN STOCK EXCHANGE LLC

Proposed Rule Change

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Underlined text indicates material to be added. [Bracketed] text indicates material to be deleted.

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**Specialist's Transactions with Public Customers**

**Rule 190.** (a) through (e) No change.

••• *Commentary*

.01 through .06 No change.

.07 The restrictions in paragraph (a) above relating to business transactions between a specialist or his member organization or any member, officer, employee or approved person therein and a company in which stock the specialist is registered shall not apply to Portfolio Depository Receipts (as defined in Rule 1000), Index Fund Shares (as defined in Rule 1000A), Trust Issued Receipts (as defined in Rule 1200) and derivative instruments based on one or more securities, currencies or commodities (all of the foregoing collectively referred to in this Commentary .07 as "ETFs"), if the following conditions are met:

(i) the specialist or his member organization or any member, officer, employee or approved person therein only enters into the business transaction with the sponsor of the ETF and the sponsor is not involved in the day-to-day administration of the ETF; and

(ii) any fee or other compensation in connection with the business transaction paid to the specialist or his member organization or any member, officer, employee or approved person therein must not be dependent on the trading price or daily trading volume of the ETF;

(iii) the specialist or his member organization or any member, officer, employee or approved person therein must notify and provide a full description to the Exchange of any business transaction or relationship it may have with any sponsor of an ETF that he or it is registered as specialist in; and

(iv) the specialist or his member organization or any member, officer, employee or approved person therein represents to the Exchange that the specialist, member organization or any member, officer, employee or approved person therein are not making a market in any of the underlying component securities, currencies or commodities of any ETF issued by the sponsor with which such specialist, member organization or any member, officer, employee or approved person therein has entered into a business transaction.

## **AMEX COMPANY GUIDE**

### **RELATIONSHIP WITH SPECIALIST**

#### **PROCEDURES, RULES AND REGULATIONS**

**Sec. 910.** Introduction and (a) through (c) No change.

(d) *Exchange Rules Governing Specialist's Activities*—In addition to certain provisions of the Securities Exchange Act of 1934, a number of Exchange regulations place clearly defined limits on a specialist's activities. An awareness of both the intent and spirit of Exchange rules, and the responsibilities the Exchange places on the specialist, will help ensure that contacts between company officials and the specialist are conducted within the framework provided for above.

With respect to any security in which a specialist is registered, Exchange rules prohibit specialists (and, with respect to paragraphs iii through ix, the member firm or member corporation of which the specialist is a member) from:

(i) through (v) No change.

(vi) effecting, directly or indirectly, any business transaction with the issuer of any such security or any officer, director or 10% stockholder of any such issuer, except as provided in Commentary .07 to Rule 190 with respect to business transactions, under certain conditions, between a specialist or his member organization or any member, officer, employee or approved person therein and the sponsor of an ETF (as defined therein) that he or it is registered as specialist in;

(vii) through (ix) No change.

With respect to any security in which a specialist is registered, Exchange rules require the specialist to report to the Exchange:

(i) through (iii) No change.

(iv) any unusual transaction in which the specialist participates as a broker or dealer;  
[and]

(v) each purchase and sale for the specialists' own account[.]; and

(vi) a full description of any business transaction or relationship that a specialist or his member organization or any member, officer, employee or approved person therein may have, under certain conditions as provided in Commentary .07 to Rule 190, with any sponsor of an ETF (as defined therein) that he or it is registered as specialist in.

(e) No change.