

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55865; File No. SR-Amex-2007-51)

June 6, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Backup Trading Arrangements

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 May 21, 2007, 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 substantially prepared by the Exchange. The Exchange filed the proposed rule change as a “noncontroversial” rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 seeks to adopt new rules authorizing the Amex to enter into arrangements with one or more other exchanges which would provide for backup trading facilities for Amex listed options on another exchange if the Amex’s facility becomes disabled and is unavailable for trading. The proposed rules further provide for the availability of Amex trading facilities to another exchange to trade its listed options if that exchange’s facility becomes disabled.

The text of the proposed rule change is available on the Amex’s Web site ([www.amex.com](http://www.amex.com)), at Amex’s principal office, 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> 17 CFR 240.19b-4(f)(6).

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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to adopt new Amex Rule 62 governing Backup Trading Arrangements. Proposed new Rule 62 sets forth procedures whereby Amex members and associated persons may use a Backup Exchange's facilities to conduct the trading of some or all of its Exclusively and Singly Listed Options for the duration of a disabling event. The Amex will provide for another exchange (a "Disabled Exchange") to trade its Exclusively and Singly Listed Options in the event they are unable to do so because of an emergency or extraordinary set of circumstances that severely and adversely affects its ability to trade (a "Disabling Event").

The Amex is the Disabled Exchange

Proposed Rule 62(a)(i) governs the trading of Exclusively Listed Options ("Exclusively Listed Options" or "ELOs") if the Amex is the Disabled Exchange. The term "exclusively listed option" is defined as an option that is listed exclusively by an exchange (because such exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option). Proposed Rule 62(a)(i)(B) provides that the Amex may enter into arrangements with one or more other exchanges (each a "Backup Exchange") to permit the Amex and its members and associated persons and other personnel to use a portion of the Backup Exchange's facilities to

conduct the trading of some or all of the Amex's Exclusively Listed Options if there were a Disabling Event. Such options shall trade as listings of Amex and the facility of the Backup Exchange used by the Amex for this purpose will be deemed to be a facility of the Amex.

The Exchange's proposal further provides that the trading of Amex Exclusively Listed Options shall be conducted in accordance with the rules of the Backup Exchange. In addition, the Amex and the Backup Exchange may agree that other rules of the Amex will apply to such trading. The Backup Exchange rules that govern trading on Amex's facility at the Backup Exchange shall be deemed to be Amex rules for purposes of such trading.

According to the Exchange's proposal, the Backup Exchange shall perform the related regulatory functions with respect to trading of Amex Exclusively Listed Options on the Amex's facility at the Backup Exchange, except as the Amex and the Backup Exchange may specifically agree otherwise. The Backup Exchange and the Amex shall coordinate with each other regarding surveillance and enforcement respecting trading of the Exclusively Listed Options on the Amex's facility at the Backup Exchange.

If the Backup Exchange is unable to accommodate all Amex members that desire to trade on Amex's facility at the Backup Exchange, the Amex may determine which members shall be eligible to trade at that facility. Factors the Amex shall consider in making such determinations may include, but are not limited to, any one or more of the following: whether the member is a specialist in the applicable product, the number of contracts traded by the member or member organization in the applicable product, market performance, and other factors relating to a member's contribution to the market in the applicable product or products during a specific period.

The Exchange's proposal further provides that the members of the Backup Exchange shall not be authorized to trade in any Amex Exclusively Listed Options, except that the Amex may deputize willing floor brokers of the Backup Exchange as temporary Amex members to permit them to execute orders as brokers in the Amex Exclusively Listed Options traded on the Amex's facility at the Backup Exchange. Furthermore, the Backup Exchange has agreed that it will, at the instruction of Amex, select members of the Backup Exchange that are willing to be deputized by the Amex as temporary Amex members authorized to trade Amex Exclusively Listed Options on the Amex's facility at the Backup Exchange for a period of time following a Disabling Event as the Amex determines to be appropriate, and the Amex may deputize such members of the Backup Exchange as temporary Amex members for that purpose.

The Exchange's proposal further provides that options listed by the Backup Exchange that do not satisfy the standard listing and maintenance criteria of the Backup Exchange will be subject, upon listing by the Backup Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Backup Exchange).

Proposed Rule 62(a)(ii) governs the trading of singly listed options (a "Singly Listed Option" or "SLO"). A Singly Listed Option is defined as an option that is not an Exclusively Listed Option, but that is listed by an exchange and not by any other national securities exchange. Proposed Rule 62(a)(ii) provides that the Amex may enter into arrangements with a Backup Exchange under which the Backup Exchange will agree, in the event of a Disabling Event, to list for trading Singly Listed Options that are then singly listed only by the Amex and not by the Backup Exchange. The proposed Rule further provides that any such options listed by the Backup Exchange shall trade on the Backup Exchange and in accordance with the rules of

the Backup Exchange. Such options shall be traded by members of the Backup Exchange and by Amex members selected by the Amex to the extent the Backup Exchange can accommodate Amex members in the capacity of temporary members of the Backup Exchange. If the Backup Exchange is unable to accommodate all Amex members that desire to trade at the Backup Exchange, the Amex may determine which of its members shall be eligible to trade at the Backup Exchange.

Any Amex member who is granted temporary access to the Backup Exchange pursuant to this paragraph shall only be permitted to act in those Backup Exchange capacities that are authorized by the Backup Exchange and that are comparable to capacities in which the temporary member has been authorized to act on the Amex, and to trade in those options in which the temporary member is authorized to trade on the Amex. Finally, Singly Listed Options listed by the Backup Exchange that do not satisfy the standard listing and maintenance criteria of the Backup Exchange will be subject, upon listing by the Backup Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Backup Exchange).

#### The Amex is the Backup Exchange

Proposed Rule 62(b)(i) provides that the Amex may enter into arrangements with one or more other Disabled Exchanges to allow the Disabled Exchange and its members to use a portion of the Amex's facilities to conduct the trading of some or all of the Disabled Exchange's Exclusively Listed Options in the event of a Disabling Event.

Proposed paragraph (B) provides that the trading of the Disabled Exchange's Exclusively Listed Options on the Disabled Exchange's facility at the Amex shall be conducted in accordance with Amex rules. The members of the Disabled Exchange that are trading on the

Disabled Exchange's facility at the Amex (not including Amex members who become temporary members of the Disabled Exchange) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange. In addition, the Disabled Exchange and the Amex may agree that other Disabled Exchange rules will apply to such trading. The Disabled Exchange and the Amex have agreed to communicate to their respective members which rules apply in advance of trading.

Proposed paragraph (C) provides that the Amex will perform the related regulatory functions with respect to trading of the Disabled Exchange's Exclusively Listed Options on the Disabled Exchange's facility at the Amex, in each case except as the Disabled Exchange and the Amex may specifically agree otherwise. The Amex and the Disabled Exchange have agreed to coordinate with each other regarding surveillance and enforcement respecting trading of the Disabled Exchange's Exclusively Listed Options on the Disabled Exchange's facility at the Amex. The Disabled Exchange has agreed that it shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to the Disabled Exchange's facility at the Amex.

Proposed paragraph (D) provides the Amex members shall not be authorized to trade in any Exclusively Listed Options of the Disabled Exchange, except that: (1) the Disabled Exchange may deputize willing Amex floor brokers as temporary members of the Disabled Exchange to permit them to execute orders as brokers in Exclusively Listed Options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Amex; and (2) at the instruction of the Disabled Exchange, the Amex shall select Amex members that are willing to be deputized by the Disabled Exchange as temporary members of the Disabled Exchange authorized to trade the Disabled Exchange's Exclusively Listed Options on the facility of the

Disabled Exchange at the Amex for such period of time following a Disabling Event as the Disabled Exchange determines to be appropriate, and the Disabled Exchange may deputize such Amex members as temporary members of the Disabled Exchange for that purpose.

Proposed paragraph (b)(ii) provides that the Amex may enter into arrangements with a Disabled Exchange under which the Amex will agree, in the event of a Disabling Event, to list for trading options that are then singly listed only by the Disabled Exchange and not by the Amex. Singly Listed Options listed by the Amex shall trade on the Amex and in accordance with Amex rules. Such options shall be traded by Amex members and by members of the Disabled Exchange selected by the Disabled Exchange to the extent the Amex can accommodate members of the Disabled Exchange in the capacity of temporary members of Amex. Any member of a Disabled Exchange granted temporary access to conduct business on the Amex under this paragraph shall only be permitted to act in those Amex capacities that are authorized by the Amex, and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange and to trade in those options in which the temporary member is authorized to trade on the Disabled Exchange.

Classes of options listed by the Amex that does not satisfy Amex listing and maintenance criteria will be subject, upon listing by the Amex, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in Amex rules.)

#### Temporary Members of the Disabled Exchange and the Backup Exchange

Paragraph (c) of proposed Rule 62 governs the member obligations of both the temporary members of the Disabled Exchange and the temporary members of the Backup Exchange. Proposed paragraph (A) provides that an Amex member acting as a temporary

member of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Amex to the extent applicable during the period of such trading. Such Amex member shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Amex as described in the Exchange's proposal herein. Additionally, the member organization associated with such Amex member, if any, shall be responsible for all obligations arising out of that Amex member's activities on or relating to the Disabled Exchange. Finally, the proposed rule provides that the clearing member of such Amex member shall guarantee and clear the transactions of such Amex member on the Disabled Exchange.

Similarly, the Exchange's proposal provides that a member of the Backup Exchange acting in the capacity of a temporary member of the Amex pursuant to proposed paragraph (a)(i)(F) shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Amex at the Backup Exchange, including Amex rules to the extent applicable during the period of such trading. The proposed rule further provides that temporary members shall have none of the rights of an Amex member except the right to conduct business on the facility of Amex at the Backup Exchange as described herein. In addition, the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to the Amex and the clearing member of such temporary member shall guarantee and clear the transactions on the Amex of such temporary member.

Proposed paragraph (c)(ii)(A) provides that an Amex member acting in the capacity of a temporary member of the Backup Exchange pursuant to paragraph (a)(ii)(B) shall be subject to, and obligated to comply with, the rules of the Backup Exchange that are applicable to the

Backup Exchange's own members. Such Amex member shall have none of the rights of a member of the Backup Exchange except the right to conduct business on the Backup Exchange to the extent described in the proposed Rule. The member organization associated with such Amex member, if any, shall be responsible for all obligations arising out of that Amex member's activities on or relating to the Backup Exchange. Furthermore, the clearing member of such Amex member shall guarantee and clear the transactions of such Amex member on the Backup Exchange. Finally, such Amex member shall only be permitted to act in those capacities on the Backup Exchange that are authorized by the Backup Exchange and that are comparable to capacities in which the Amex member has been authorized to act on the Amex, and to trade in those options in which the Amex member is authorized to trade on the Amex.

A member of Disabled Exchange acting in the capacity of a temporary member of the Amex pursuant to paragraph (b)(ii)(A) shall be subject to, and obligated to comply with, Amex rules that are applicable to Amex's own members. Such temporary member shall have none of the rights of an Amex member except the right to conduct business on the Amex to the extent described in the proposed Rule. The member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to the Amex. The clearing member of such temporary member shall guarantee and clear the transactions of such temporary member on the Amex and such temporary member shall only be permitted to act in those Amex capacities that are authorized by the Amex and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange, and to trade in those option classes in which the temporary member is authorized to trade on the Disabled Exchange.

Member Proceedings

Proposed paragraph (d) governs member proceedings that may take place regarding trading during a backup period. Proposed paragraph (d)(i) provides that if the Amex initiates an enforcement proceeding with respect to the trading during a backup period of the Singly Listed Options of the Disabled Exchange by a temporary member of the Amex or the Exclusively Listed Options of the Disabled Exchange by a member of the Disabled Exchange (other than an Amex member who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the backup period, the Amex may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the backup period. Moreover, arbitration of any disputes with respect to any trading during a backup period of Singly Listed Options of the Disabled Exchange or of Exclusively Listed Options of the Disabled Exchange on the Disabled Exchange's facility at the Amex will be conducted in accordance with Amex rules, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

Proposed Rule 62(d)(ii) provides that if the Backup Exchange initiates an enforcement proceeding with respect to the trading during a backup period of Amex Singly Listed Options by a temporary member of the Backup Exchange or Amex Exclusively Listed Options by an Amex member (other than a member of the Backup Exchange who is a temporary member of the Amex), and such proceeding is in process upon the conclusion of the backup period, the Backup Exchange may transfer responsibility for such proceeding to the Amex following the conclusion of the backup period. Furthermore, arbitration of any disputes with respect to any trading during a backup period of Amex Singly Listed Options on the Backup Exchange or of Amex Exclusively Listed Options on the facility of the Amex at the Backup Exchange will be

conducted in accordance with the rules of the Backup Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with Amex rules.

Finally, the proposed rule provides that Amex members are required to take appropriate actions as instructed by the Exchange to accommodate the Amex's backup trading arrangements.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

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

The proposed rule change does not 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.

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

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

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

Because 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 filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup> As required under Rule 19b-4(f)(6)(iii),<sup>8</sup> 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.

Amex has 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.<sup>9</sup> The Commission notes that the proposed rule change is modeled on a recently approved Philadelphia Stock Exchange proposal.<sup>10</sup> Amex's proposal does not appear to raise any novel regulatory issues and will allow Amex without undue delay to implement backup trading arrangements for options – particularly exclusively listed options – in the event of a Disabling Event.

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

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> See Exchange Act Release No. 51926 (June 27, 2005), 70 FR 38232 (July 1, 2005) (SR-PHLX-2004-65).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in the 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-Amex-2007-51 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-2007-51. 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. Copies of such filing also will be available for inspection and copying at the principal offices 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-Amex-2007-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30–3(a)(12).