

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57589; File No. SR-Amex-2008-09)

April 1, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Options Linkage Fees

I. Introduction

On February 8, 2008, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change relating to fees for trades executed through the intermarket options linkage (the “Options Linkage”). On February 19, 2008, Amex submitted Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the Federal Register on February 28, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to clarify the application of options transaction fees for trades executed through the Options Linkage on the Exchange. Currently, the Amex Options Fee Schedule (the “Options Fee Schedule”) provides that, under the Linkage Fee Pilot Program that is effective through July 31, 2008, the fees applicable to specialists, registered options traders, and market maker apply to members of other options exchanges (“Non-Member Market Makers”) executing Linkage transactions except for Satisfaction Orders. As a result, the fees for

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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> See Securities Exchange Act Release No. 57373 (February 22, 2008), 73 FR 10835 (“Notice”).

Principal Orders (“P Orders”) and Principal Acting As Agent Orders (“P/A Orders”) (collectively, “Linkage Orders”) submitted through the Options Linkage are: (i) \$0.10 per contract side options transaction fee for equity options, exchange traded fund share (“ETF”) options, QQQQ options and trust issued receipt options; (ii) \$0.21 per contract side options transaction fee for index options (including MNX and NDX options); (iii) \$0.05 per contract side options comparison fee; (iv) \$0.05 per contract side options floor brokerage fee; and (v) an options licensing fee for certain ETF and index option products ranging from \$0.15 per contract side to \$0.05 per contract side depending on the particular ETF or index option.<sup>4</sup>

The Options Fee Schedule also provides that broker-dealer orders that are automatically executed on the Exchange are subject to Broker-Dealer Auto-Ex Fees (“BD Auto-Ex Fee”) that include: (i) \$0.50 per contract side options transaction fee for equity options, ETF options, QQQQ options and trust issued receipt options; (ii) \$0.05 per contract side options comparison fee; and (iii) \$0.05 per contract side options floor brokerage fee.<sup>5</sup> Broker-dealer orders that are subject to the BD Auto-Ex Fee include specialist orders, registered options trader orders, Non-Member Market Maker orders, and orders for the account of registered broker-dealers. The Exchange charges this fee to member firms through customary monthly billing. The BD Auto-Ex Fee was implemented prior to the introduction and roll-out of the Options Linkage which commenced on January 31, 2003 in two phases. The entire roll-out of the Options Linkage was completed by July 2003.

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<sup>4</sup> See Options Fee Schedule section of the Amex Price List available at <http://www.amex.com>. See also Securities Exchange Act Release No. 56102 (July 19, 2007), 72 FR 40908 (July 25, 2007) (SR-Amex-2007-64).

<sup>5</sup> See Securities Exchange Act Release No. 47216 (January 17, 2003), 68 FR 5059 (January 31, 2003) (SR-Amex-2002-114).

The Exchange in this proposal seeks to clarify the Options Fee Schedule to make clear that automatically executed Linkage Orders will be charged the BD Auto Ex Fee that includes: (i) \$0.50 per contract side options transaction fee; (ii) \$0.05 per contract side options comparison fee; and (iii) \$0.05 per contract side options floor brokerage fee. Accordingly, the total transaction fee for such orders would be \$0.60 per contract side. In contrast to the initial period of time when the Options Linkage was introduced, most Linkage Orders on the Exchange are automatically executed via the ANTE platform. In the Notice, the Exchange acknowledged that the current Options Fee Schedule does not clearly reflect the fact that for automatically executed Linkage Orders, the BD Auto-Ex Fee would apply.

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the current Options Fee Schedule, only non-Linkage Orders on the behalf of broker-dealers automatically executed orders in ANTE are subject to the BD Auto-Ex Fee;

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<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4)

Linkage Orders that are automatically executed orders in ANTE are not subject to the BD Auto-Ex Fee. The Exchange proposed to clarify that all automatically executed orders in ANTE, whether Linkage Orders or non-Linkage Orders on the behalf of broker-dealers, are subject to the BD Auto-Ex Fee set forth in the Options Fee Schedule. Accordingly, the Commission believes that the Exchange's proposed Options Fee Schedule clearly sets forth the fees imposed on Linkage Orders.

The Commission notes that the Exchange acknowledges that prior versions of its Options Fee Schedule did not represent that the \$.60 per side BD Auto-Ex Fee was applied to electronically executed Linkage Orders. Because the Exchange may have assessed the BD Auto-Ex Fee on Linkage Orders prior to this approval and, therefore, without authority, any parties assessed the BD Auto-Ex Fee for Linkage Orders prior to the approval of this proposed rule change may seek reimbursement. In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2008 and that the Commission is continuing to evaluate whether such fees are appropriate.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2008-09) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).