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# J. STREICHER & CO. L.L.C.

MEMBER  
AMERICAN STOCK EXCHANGE, LLC

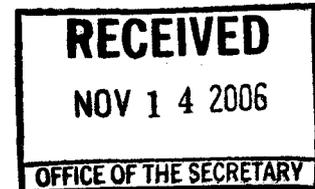
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November 13, 2006

**VIA FEDEX**

Nancy M. Morris  
Secretary  
United States Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549-9303



Re: File No. SR-2006-98  
Release No. 34-54618

Dear Ms. Morris:

I appreciate the opportunity to comment on the above-referenced rule proposal (the "Proposal") by the American Stock Exchange ("Amex" or the "Exchange"). The proposal would amend Amex Rule 154 by adding a new paragraph (b) that, if approved, would restrict equity specialists from charging commissions in certain cases.

As discussed further below, the Proposal is likely to have an adverse impact on market quality on the Exchange. The Proposal is also unnecessary as the Exchange already has rules in place that are better designed to deal with the specific issues that the Proposal is designed to address. Moreover, because the Proposal can be expected to remain in effect for a relatively short period, its significant implementation costs cannot be justified. For all of these reasons and as described more fully below, I respectfully request that the Securities and Exchange Commission (the "Commission") not approve the Proposal.

I am the managing partner of J. Streicher & Co., one of the largest equity specialist operations on the Amex and a founding member of the Exchange since 1910. The Proposal would prohibit equity specialists from charging a commission on certain orders in a manner that is contrary to longstanding practices on the Exchange. If adopted, the Proposal would have a significant and adverse impact on our business and, importantly, on our ability to continue to make markets of the same quality in many of the more thinly traded securities that we now handle.

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As freely admitted by the Amex, the purpose of the Proposal is to strengthen the Exchange's competitive position as compared to the other market places with which it competes. The Exchange also offers, in passing, as a rationale that the Proposal would "provide consistency and clarity to all members" and provide "that orders would not be subject to excessive or arbitrary costs." Putting aside that the fact that the Exchange offers no evidence to support that any real concern has been expressed by its members or investors as to these concerns, it is, in any event, apparent at a glance that the Proposal is not designed with these purposes in mind. The Proposal continues to leave commissions entirely to the discretion of the specialist in many, many situations and, accordingly, provides little in the way of clarity or consistency. Indeed, the Proposal's failure to include exchange traded funds or trust issued receipts within its coverage is likely to actually contribute to a lack of clarity and consistency. As to excessive or arbitrary costs, the Proposal is entirely silent on this point except as to those limited class of orders for which a commission would be entirely prohibited. Moreover, it would also seem that the Exchange already has suitable rules on its books to deal with excessive or arbitrary commissions including the Performance Committee process under Rule 26 and its Rule 16, which requires members to adhere to the principles of good business practices. In any event, to the extent any of the forgoing concerns are real, it is unclear why they do not similarly apply to exchange traded funds or trust issued receipts, which are excluded from the Proposal's coverage.

Of course, the Exchange also notes its belief that the Proposal will benefit investors. In this regard, it appears that the Exchange believes that prohibiting the charging by specialist of certain commissions will reduce the cost of doing business on the Exchange, which, in turn, will cause other markets to compete more aggressively with the Exchange by themselves cutting prices to investors. This rationale fails entirely, however, to account for the fact that markets do not charge investors fees or other charges directly. Rather, markets charge their members. While the Amex may *believe* that its members will pass along these reduced charges to investors, that is, their customers, the Exchange offers no evidence to support this belief and indeed the Amex's belief in this regard seems to be contrary to the reality that is seen in the securities industry daily.

Accordingly, it would appear that the Proposal should be viewed for what the Amex freely admits it is -- an attempt to bolster the competitiveness of the Exchange. While such a purpose might be appropriate and sufficient in some cases, the Commission should reject it where, as here, it will adversely impact investors by reducing the quality of markets offered by the Amex.

The Proposal is similar to that offered by the Chicago Board Options Exchange in CBOE 98-35. There, the CBOE proposed to allow resident market makers to set and impose a fee on options contracts traded by market makers. The purpose of the fee was to subsidize, and thereby reduce, the commissions charged by its order book officials, for the purpose of

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increasing the competitiveness of the CBOE as compared to the other options markets. As noted by the United States Department of Justice, in its comment letter to that filing, however, CBOE's filing had the effect of placing "pressure on market makers to increase their spreads in order to finance the subsidies." As the Department of Justice further noted, increased spreads would result in inferior prices to consumers. Accordingly, the Department of Justice believed that, at a minimum, CBOE should have been required to indicate why its filings would "not adversely affect spreads and/or net consumer costs."

Similarly, the Amex Proposal, to the extent it achieves its stated purpose of reducing commissions, will put pressure on equity specialists to increase spreads to replace the lost commissions. While an increase in spreads may not be practical in highly competitive markets, many of the securities listed on the Amex are thinly traded with most of their trading volume taking place primarily on the Amex. For these securities, there is often little effective competition from other markets. For these securities, it seems likely that the Proposal, if approved, will result in increased spreads and, therefore, will have an adverse impact on investors rather than the positive impact suggested by the Amex. Accordingly, the Commission should reject the Proposal.

Additionally, the Amex already has two rules in place that are better suited to addressing the competitive issue at the heart of the Proposal. Specifically, and as recently noted by the Exchange's Chairman and Chief Executive Officer in the enclosed November 1, 2006 memorandum to the Heads of the Equity Specialists Units, Exchange Rules 26 and 27 allow the Performance Committee and the Allocation Committee, respectively, to assess quality of markets, specialists competitiveness, and willingness to promote the Exchange as a marketplace when exercising their powers to reallocate securities or with respect to allocations of listings. These provisions not only provide the Amex with the authority it needs to respond to the competitive concerns at the heart of the Proposal, but also allow the Amex to address these concerns in a way that is less likely to have a negative impact on investors.

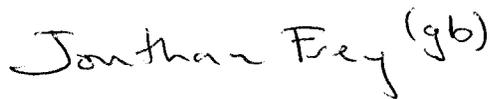
Whatever its merits, the Proposal would result in significant implementation costs that are difficult to justify given the temporary nature of the changes that it would implement. Specifically, if the Proposal is approved, each equity specialist would have to contact all members that send order flow to the specialist for the purpose of renegotiating its commission schedules. Once the commission schedules have been revised, the clearing firms used by the specialists to calculate commissions on an ongoing basis would then have to reprogram their systems so that they could track and calculate commissions in accordance with the new schedules. While the cost and time associated with these steps are significant, these costs are made more onerous by the fact that it appears that this process will have to be repeated when the Exchange implements its new AEMI trading system in the near future. *See Securities Exchange Act Release 34-54552 (September 29, 2006) at note 7 (noting filing of Amendment*

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5 to File No. SR-Amex -2005-104 and the making of additional changes to when specialists may charge commissions).

For the foregoing reasons, the undersigned respectfully requests that the Commission not approve the Proposal. Thank you in advance for your consideration of these concerns.

Very truly yours,

A handwritten signature in cursive script that reads "Jonathan Frey (gb)".

Jonathan Q. Frey  
Managing Partner of J. Streicher & Co.

JQF  
Enclosure



**AMERICAN  
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DATE: November 1, 2006  
TO: Heads of Equity Specialist Units  
FROM: Neal L. Wolkoff *Neal Wolkoff*  
RE: Amex Competitive Position



On September 7, 2006, I held a meeting with representatives of all equity specialist units to discuss market share concerns. Amex staff had received complaints from order flow providers and others about the costs associated with Amex executions brought about by the imposition of specialist commissions for trades for which commissions traditionally had not been charged. At the meeting, I informed the specialist representatives that I believed the imposition of new commission charges and the threatened possibility of new commissions were detrimental to the Exchange and may have caused the recent decrease in market share. I further advised that I intended to present the Board with a proposed rule that would prohibit the charging of commissions for the execution of market and marketable limit orders that remain on the specialist book for less than two minutes. The proposed rule has been submitted to the SEC, has been published for comment, and is currently pending approval.

There is an additional rule currently in effect, which I neglected to bring to your attention during the September 7 meeting, and which is central to the goal of assuring that the Amex remains a competitively priced marketplace. Rule 27 requires that the Allocation Committee consider a specialist's "willingness to promote the Exchange as a marketplace" when making allocation decisions. "[W]illingness to promote the Exchange as a marketplace" is defined in Rule 27 as "responding to competition by offering competitive markets and *competitively priced services...*" [Emphasis supplied]. Pursuant to Rule 27, the Allocation Committee will consider this factor when making determinations for all new allocations and reallocations, including those where the issuer has expressed a preference. I have a meeting scheduled with the Committee to review its powers and procedures.

In addition, Rule 26 requires the Performance Committee to evaluate specialists on the quality of their markets and their competitiveness with other markets. The Performance Committee will assess these factors when exercising their power to require the reallocation of securities and to prohibit specialists from receiving new allocations when they fail to perform properly as a specialist.

Both Committees and their members will receive the full support of the Exchange and its management when they make the decisions mandated by their respective governing rules.

Please see me with questions.