

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55583; File No. SR-Amex-2006-107)

April 5, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amex Book Clerks

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 November 14, 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, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposal on March 29, 2007. The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to eliminate the agency obligations of Exchange options specialists and establish Amex book clerks (“ABCs”). The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and [www.amex.com](http://www.amex.com).

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

In its filing with the Commission, Amex 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

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

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

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the obligation and ability of an Exchange options specialist to act as an agent in connection with orders in his or her assigned options classes. This proposal would also permit the Exchange to designate Exchange employees or independent contractors to serve as ABCs, responsible for maintaining and operating the ANTE Central Book (i.e., the specialist's customer limit order book) and the ANTE Display Book.<sup>3</sup> The Exchange also seeks to amend certain Exchange rules relating to the operation of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") to accommodate the implementation of pertinent ABC rules and other proposed rule changes described herein.<sup>4</sup> Finally, this proposed rule change also would implement several other amendments to conform other Exchange rules to the proposal. The

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<sup>3</sup> The Exchange submits that all incoming customer orders are represented in the ANTE Central Book, and if marketable, will be automatically executed subject to a number of limited exceptions. Orders that are otherwise eligible for automatic execution may not receive an automatic execution: (i) whenever the Amex Best Bid or Offer (ABBO) crosses the National Best Bid or Offer (NBBO) and causes an inversion in the quote; or (ii) whenever a better bid or offer is being disseminated by another options exchange and the order is not eligible for automatic price matching. In addition, if quotes are deemed unreliable or the Exchange is experiencing communications or systems problems, non-firm markets or delays in the dissemination of quotes by the Options Price Reporting Authority, orders will not be automatically executed. In these limited cases, incoming customer orders will be routed to the ANTE Display Book for manual handling.

<sup>4</sup> Exchange rules governing the operation of the Linkage Plan are set forth under Amex Rules 940 through 945 and Amex Rule 941-ANTE.

Exchange notes that the proposal substantially mirrors changes recently adopted by the Chicago Board Options Exchange to eliminate DPM agency responsibilities and establish PAR Officials.<sup>5</sup> The following summarizes the effects this proposed rule change would have on existing Exchange rules.

a. Agency Responsibilities

Generally, Amex Rule 170 (applicable to options transactions by Amex Rule 950–ANTE(1)) governs options specialists on the Exchange and describes the obligations imposed on an options specialist. These obligations include the general obligation, with respect to each of a specialist’s assigned options classes, to fulfill market-making obligations and provide functions of a floor broker (to the extent that the options specialist acts as a floor broker). Rule 170(b), in particular, describes the floor broker and agency functions that an options specialist is required to perform. As a condition of being registered as a specialist by the Exchange, options specialists are required to execute options orders on an agency basis for those classes of options assigned to them.<sup>6</sup> Accordingly, all options specialists on the Amex presently act as both agent and principal for orders in their respective assigned options classes. The Exchange has now determined that it is in the best interest of the Exchange, its members, and investors to eliminate the agency obligation of options specialists.

This rule change proposes to eliminate those provisions providing for the options specialist’s broker and agency functions and would provide that an options specialist “shall not

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<sup>5</sup> See Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005).

<sup>6</sup> See Amex Rule 950–ANTE(1), incorporating Amex Rule 170 to options transactions.

execute orders as an agent or floor broker.”<sup>7</sup> Instead, the Exchange proposes to create a new category of market participant, the ABC, who will be responsible for maintaining and operating the customer limit order book. This responsibility would include handling and executing orders that are routed to the customer limit order book. The proposal would clarify that the specialists’ accounts shall continue to be used by the ABC to execute P/A and Satisfaction Orders routed to the Exchange and that the specialists shall continue to be liable for any charges incurred in relation to executing such orders. This change would afford options specialists the ability to concentrate their efforts exclusively on their market-making functions and would eliminate the potential conflicts associated with options specialists acting as both principal and agent with respect to orders they handle and trades they make as options specialists.

The ABC would be an Exchange employee or independent contractor designated by the Exchange to be responsible for: (i) maintaining and operating the customer limit order book for the assigned options classes; and (ii) effecting proper executions of orders placed in the customer order limit book. The ABC would be prohibited from having an affiliation with any member that is approved to act as a specialist, registered options trader (“ROT”), remote registered options trader (“RROT”) and supplemental registered options trader (“SROT”) on the Exchange. The Exchange believes that the responsibility for executing agency orders at trading posts should belong to the ABC, who has no interest that might conflict with the duties owed to the customer. Additionally, given that the increased reliance on electronic order execution has resulted in the virtual elimination of manual order handling, a vast majority of orders are currently never

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<sup>7</sup> Proposed Amex Rule 950–ANTE(1), Commentary .01.

handled or seen by specialists. This trend effectively eliminates the need for specialists to act in an agency capacity and perform functions related thereto.

b. Other Affected Rules

The Exchange is proposing amendments to other Exchange rules to allow the Exchange to reassign agency responsibilities and obligations from the options specialist to the ABC, as detailed below.

Display Obligation. Currently, under Amex Rule 958A–ANTE, an options specialist is required to immediately display the full price and size of any eligible customer limit orders when such orders represent buying or selling interest that is at a better price or size than the best disseminated Amex quote.<sup>8</sup> Because the options specialist no longer would be operating the customer limit order book or executing orders as agent and since the vast majority of orders are currently either executed, displayed or booked immediately and without any input from a specialist, the Exchange proposes to shift the display obligation in its entirety from the options specialist to the ABC.<sup>9</sup> Accordingly, the ABC would be required to maintain and keep active the Exchange’s automated customer limit order display facility in ANTE.

Due Diligence Responsibility. Under the proposed rule, the ABC would be required to use due diligence to execute customer orders at the best prices available to him or her under the rules of the Exchange.

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<sup>8</sup> See Amex Rule 958A–ANTE(e). See also Securities Exchange Act Release No. 51062 (January 21, 2005), 70 FR 4163 (January 28, 2005) (File No. SR-Amex-00-27).

<sup>9</sup> The display obligation set forth in Amex Rule 958A–ANTE(e), along with the exceptions set forth therein, would be moved to proposed Amex Rule 995–ANTE.

Public Order Book Responsibilities. In addition to his or her responsibility for maintaining orders in the electronic customer order limit order book in ANTE, the ABC also would be prohibited from removing a booked public customer order unless the order is cancelled, expires, is transmitted in accordance with Intermarket Option Linkage (“Linkage”) obligations, or is executed.

Linkage Obligations. As the options specialist would no longer be executing agency orders, this responsibility, and any associated Linkage obligations that previously were handled by the options specialist, would now fall upon the Exchange. As an employee (or independent contractor) of the Exchange, the ABC would be responsible for handling Linkage orders in the option classes appointed to him or her. Specifically, an ABC would have the means to: (1) utilize an options specialist’s account to route Principal Acting as Agent (“P/A”) Orders<sup>10</sup> and Satisfaction Orders to away markets based on prior instructions that must be provided by the options specialist to the ABC, and (2) handle all Linkage orders or portions of Linkage orders received by the Exchange that are not automatically executed. The ABC also would have the means to utilize the options specialist’s account to fill Satisfaction Orders that result from a Trade Through<sup>11</sup> that the Exchange effects. Because the Linkage Plan requires that P/A Orders

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<sup>10</sup> A “Principal Acting as Agent (“P/A”) Order” is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange under the Linkage Plan that is authorized to represent public customer orders), reflecting the terms of a related unexecuted public customer order for which the specialist is acting as agent. See Linkage Plan Section 2(16)(a).

<sup>11</sup> See Amex Rule 940(b)(19).

be submitted for the account of an eligible market maker,<sup>12</sup> the ABC must be able to utilize the options specialist's account to fulfill the Linkage obligations imposed by Amex rules.

Amex Linkage Rules would be amended to require an options specialist to make available its account to the ABC for the purpose of enabling the ABC to satisfy certain Linkage-related obligations. Amex Linkage Rules also would be amended to obligate the options specialist to provide the ABC with prior written instructions for routing P/A Orders, and Satisfaction Orders to other markets.<sup>13</sup> Since orders routed pursuant to the Linkage can be configured in numerous ways, these written instructions would, with some degree of specificity (i.e., state whether order should be routed automatically, the means through which the order should be routed, etc.), direct how the ABC should handle responses to Linkage Orders, as provided under proposed Amex Rule 995-ANTE, as well as detail the procedures the ABCs would be required to follow when utilizing the options specialists' accounts.

Finally, when handling outbound P/A Orders and Satisfaction Orders, the ABC shall use due diligence to execute the orders entrusted to him/her, act in accordance with the prior written instructions provided by the options specialist for P/A Orders and Satisfaction Orders that the ABC represents, and act in accordance with Amex rules regarding P/A and Satisfaction Orders received through the Linkage.

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<sup>12</sup> See Linkage Plan Section 2(16)(a); see also Amex Rule 940(10)(i).

<sup>13</sup> The Exchange intends to file with the Commission a request for an exemption from the requirements set forth in Rule 608(c) of Regulation NMS under the Act requiring the Exchange to comply with and enforce compliance by its members with certain provisions of the Linkage Plan that require eligible market makers (such as specialists and ROTs) through whom the P/A Order is routed to be functioning as the agent with respect to that order. This exemption would facilitate the establishment of ABCs and their handling of Linkage Orders.

Compensation of ABCs. As an Exchange employee or independent contractor, the ABC's compensation would be determined and paid solely by the Amex. No options specialist, ROT, RROT or SROT would be permitted to directly or indirectly compensate or provide any other form of consideration to an ABC.

Liability of the Exchange for Actions of ABCs. The Exchange's liability for the actions of ABCs would be limited in the same manner as currently provided under existing Exchange rules, including (but not limited to) Article IV, Section 1(e) of the Amex Constitution (Exchange Liability) and Amex Rule 61 (Exchange's Costs of Defending Legal Proceedings).

Firm Disseminated Market Quotes. Amex Rule 958A-ANTE currently provides that, in the case of an order received by the options specialist, the options specialist's firm quote obligation attaches at the time the order is received by such specialist, regardless of whether the options specialist is actually aware of the order at that time. This provision is a direct consequence of the fact that the options specialists currently represent orders on the customer limit order book in an agency capacity from the moment such orders are received on the book. However, because the options specialist no longer would be operating the customer limit order book if the proposed rule change were approved, Amex Rule 958A-ANTE would be modified such that the firm quote obligation would attach, when an options specialist is the responsible broker or dealer, at the same time those obligations attach with respect to each other responsible broker or dealer—that is, when the order is announced to the trading crowd either via electronic display or by the ABC.

Rules Relating to ANTE's Automatic Execution Feature. Under established procedures set forth in Amex Rule 933-ANTE (ANTE Automatic Matching and Execution of Options Orders), an order eligible for automatic matching and execution will not be automatically

executed if the Amex disseminated quote is inferior to the NBBO by more than the price matching amount and instead is routed to the specialist for manual handling. On the assumption that the specialist would always be responsible for representing such orders as an agent, Commentary .01(b) provides for automatic price matching series that “[i]f the Exchange’s best bid or offer is inferior to the NBBO displayed by another options exchange by more than the price matching amount, the order will be routed to the specialist and not automatically executed.” In addition, this Commentary also provides that if a customer order exceeds the established order size parameter, it will be routed to the specialist and not automatically executed. However, because the Exchange has set the order size parameter to 25,001 contracts, orders should rarely exceed the established order size parameter, and therefore, would not be routed to the specialist for manual handling. Similarly, for automatic price improvement series, Commentary .01(c) provides that a “customer order that exceeds the established order size parameter will be either automatically executed at the Exchange’s best bid or offer if it is within the automatic matching and execution order size parameters . . . , or it will be routed to the specialist and not automatically executed.”

Commentary .01(e) to Amex Rule 933–ANTE further provides instances in which an order is re-routed to the specialist and not automatically executed. These situations are as follows: (i) where the current best bid or offer for a series is crossed (e.g., 4.20 bid, 4 asked) or locked (e.g., 4 bid, 4 asked);<sup>14</sup> (ii) the specialist in conjunction with a Floor Governor or two Floor Officials determined quotes in such options or options exchange(s) are not reliable; or (iii)

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<sup>14</sup> See Amex Rule 951–ANTE, Commentary .01.

the Exchange is experiencing communications or systems problems, non-firm markets or delays in the dissemination of quotes by the Options Price Reporting Authority.

In order to make Amex Rule 933–ANTE consistent with the proposal, Commentary .01(b), (c) and (e) to Amex Rule 933–ANTE would be revised to provide that an order that is not automatically executed will be routed to the ABC rather than the specialist.

Duty to Report Unusual Activity. Amex Rule 958A–ANTE also will require the ABC, as well as the specialist, to report to a Floor Official any unusual activity, transactions, or price changes or other unusual market conditions or circumstances with respect to the ABCs appointed option classes that may be detrimental to the maintenance of a fair and orderly market.

General Options Specialist Rules. There are also other Exchange rules relating to options specialists that must be amended to reflect the fact that options specialists will not be operating the customer limit order book or executing orders as agent with respect to their allocated option classes. For example, Amex Rule 154 states, “[n]o member or member organization shall place with a specialist, acting as broker, any order to effect on the Exchange any transaction except at the market or at a limited price.” The proposal would amend Amex Rule 950–ANTE(f) (incorporating Amex Rule 154 to options transactions) to state that Exchange specialists are prohibited from acting as a floor broker or in an agency capacity in connection with orders in his or her assigned options classes. Therefore, the proposal will require members to use an independent floor broker or book orders with the ABC when warranted. Rule 950–ANTE(f) would also be amended to make clear that ABCs, not options specialists, would accept stop, stop limit, spread or straddle orders. Additionally, Amex Rule 155 discusses the precedence specialists are to assign to orders entrusted to them as agents. The proposal would amend Amex Rule 950–ANTE(a) (incorporating Amex Rule 155 to options transactions) to impose the

precedence requirement on ABCs in the case of options transactions. Finally, Amex Rule 177 requires all specialists to report certain activities or information to a Floor Official. The proposal would amend Amex Rule 950–ANTE(a) (incorporating Rule 177 to options ) obligating the ABC, as well as an options specialist, to report to a Floor Official those activities and such information as delineated in Amex Rule 177.

c. Implementation

Finally, to ensure a smooth and orderly transition of the responsibility for operating customer limit order book and executing agency orders from options specialists to ABCs, the Exchange proposes to implement this rule change to all applicable trading posts over a 180-day period from the effective date of this rule change. During this 180-day transition period, any options specialist who continues to operate the customer limit order book would continue to be subject to the same agency obligations as currently provided under Amex Rules 950–ANTE(1) and 958A–ANTE(e), except that, upon the approval of this proposal, these prior obligations instead would be reflected in a Regulatory Circular during the 180-day transition period.

2. Statutory Basis

Amex believes the proposed rule change is consistent with Section 6(b) of the Act<sup>15</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>16</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

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

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 Exchange believes that this proposed rule change would 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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2006-107 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-2006-107. 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 the filing also will be available for inspection and copying at the principal office 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-2006-107 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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