

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56766; File No. SR-Amex-2007-114)

November 7, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Collection of the Activity Assessment Fee

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 October 26, 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, II, and III below, which Items have been substantially prepared by Amex. Amex filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, as establishing or changing a due, fee, or other charge applicable to a member, which renders the proposed rule change 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 proposes to amend Amex Rule 393 and the Amex Fee Schedule to revise the procedures by which the Exchange collects fees from its members and member organizations to offset its fee obligations under Section 31 of the Act.<sup>5</sup> The text of the proposed rule change is available on the Amex’s Web site at [www.amex.com](http://www.amex.com), Amex’s principal office, and 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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> 15 U.S.C. 78ee.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Effective August 6, 2004, the Commission established new procedures that govern the calculation, payment, and collection of fees and assessments on securities transactions owed by each national securities exchange and association.<sup>6</sup> Pursuant to the new procedures, each exchange and association must provide data on its securities transactions to the Commission using Form R31. Generally, only data obtained from a registered clearing agency may be submitted to the Commission for this purpose.<sup>7</sup> The Commission in turn, calculates the amount of fees and assessments based on the aggregate dollar volume of these transactions and the fee rate in effect at that time and bills the exchange or association that amount twice annually.

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<sup>6</sup> See Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 1060 (July 7, 2004).

<sup>7</sup> In connection with these new procedures the Commission concluded that the data collected by a registered clearing agency is the most reliable and auditable source for covered sales information. The National Securities Clearing Corporation ("NSCC") is the primary source of data for equity transactions and the Options Clearing Corporation ("OCC") is the primary source of data for option transactions.

Historically, the Exchange has funded the payment of these fees by requiring members pursuant to Rule 393 to: (i) report on a monthly basis the aggregate volume of equity sales, aggregate sales price of those equity sales, and the amount of the fee owed; and (ii) submit along with the monthly report a check in the amount of the fee owed. The funds collected by the Exchange pursuant to Rule 393 for all equity securities are then remitted to the Commission in accordance with Rule 31. In addition, the Exchange uses the OCC to collect the funds to offset the payment of Section 31 fees owed based on the sales of options and sales of securities resulting from the exercise of physical delivery options. OCC collects fees directly from Exchange members through their clearing firms and remits the amount collected to the Commission on behalf of Amex.

#### Proposal

The Exchange now proposes to amend Rule 393 and the Amex Fee Schedule to revise the current procedures used to collect funds from its members to offset its obligations under Section 31 of the Act. On December 1, 2007, the Exchange will end the current “self-reporting” procedures using the Rule 393 Form for most transactions and will begin directly billing all members’ and member organizations’ designated clearing firms for the amount owed by the member to the Exchange. The fee will be identified as the Activity Assessment Fee and will be assessed monthly for all covered securities transactions (other than options transactions or sales of securities resulting from options exercises) whose settlement dates fall within the applicable computational period (which is generally a month). If the Section 31 fee rate changes in the middle of a computational period (i.e., in the middle of a month), the computational period may be broken up to facilitate the appropriate application of the old and new fee rates. The Activity Assessment Fee will be calculated based on securities transaction data reported by the NSCC

(which is the same data used by the Exchange to prepare Form R31 to report its obligations under Section 31 to the Commission). Included in the Activity Assessment Fee will be covered sales resulting from orders entered on Amex but executed on another exchange through its private linkage.

The Exchange will, however, continue to require firms participating in its After-Hours Trading program to continue self-reporting, on the Rule 393 Form, the aggregate volume and sales price of Aggregate Price-Coupled orders. The execution of covered sales resulting from Aggregate Price-Coupled orders will not be included in the Exchange's calculation of the monthly Activity Assessment Fee.<sup>8</sup>

It is the Exchange's initial intention to collect or receive from the membership the Activity Assessment Fee in an amount that, as accurately as possible equals the Exchange's Section 31 obligation (for equities transactions). The Exchange, however, has incurred, and continues to incur, the costs of developing systems necessary for compliance with the Commission's Section 31 procedures and for calculating and billing the Activity Assessment Fee. Therefore, the Exchange might in the future determine to bill the membership some form of assessment to offset these or other Section 31 costs. The proposed amendment to Rule 393 will also provide that, to the extent the Exchange may collect more from members under Rule 393 than is due from the Exchange to the Commission pursuant to Section 31 of the Act, for example due to rounding differences, the excess monies collected may be used by the Exchange to fund its regulatory expenses.

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<sup>8</sup> Firms participating in Amex's After-Hours Trading program will continue to submit, with their filings of the Rule 393 Form, payment of the Activity Assessment Fee for their self-reported Aggregate Price-Coupled orders. Telephone conversation between Claire McGrath, Senior Vice President and General Counsel, Amex and David Michehl, Special Counsel, Division of Market Regulation, Commission on November 7, 2007.

In addition, as discussed above, the OCC will continue to collect and remit to the Commission on Amex's behalf, the funds to offset the payment of Section 31 fees owed based on the sales of options and sales of securities resulting from the exercise of physical delivery options. Therefore, sales of options and exercises will not be included in the monthly Activity Assessment Fee.

2. Statutory Basis

The proposed rule change is consistent with the objectives of Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to assess a monthly Activity Assessment Fee to its members to fund its obligation pursuant to Section 31 of the Act.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in 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-2007-114 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-2007-114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2007-114 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).