

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57794; File No. SR-Amex-2008-34)

May 7, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change to Give Retroactive Effect to Its Revenue Sharing Program for ETF Quoting Participants

On March 27, 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 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposal to retroactively apply its revenue sharing program (“RSP”) for Designated Amex Remote Traders (“DARTs”), ETF specialists, and registered traders (collectively, “ETF quoting participants”). The proposal was published for comment in the Federal Register on April 4, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The RSP was first put in place by the Exchange for ETF specialists and registered traders, effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.⁴ The Exchange inadvertently failed to file to extend the RSP at the expiration of that time period, but, upon realizing the error, promptly filed to reinstate the RSP for all ETF quoting participants, effective March 18, 2008.⁵ The RSP is now in effect through the end of September 2008.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57578 (March 28, 2008), 73 FR 18592.

⁴ See Securities Exchange Act Release No. 55893 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68) (“RSP Release”).

⁵ See Securities Exchange Act Release No. 57541 (March 20, 2008) (SR-Amex-2008-25), 73 FR 16400 (March 27, 2008) (reinstating RSP for all ETF quoting participants); see

The Exchange now seeks to retroactively apply the RSP for the time period January 1, 2008 through March 17, 2008 (the “retroactive period”) in order to provide continuity in the RSP for all ETF quoting participants on the Exchange, who continued to quote aggressively during the retroactive period in the expectation of receiving RSP payments. RSP payments for the retroactive period will be made pursuant to the same terms established in the RSP Release.⁶

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.⁷ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁸ which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using Exchange facilities. In approving this proposal, the Commission notes the Exchange’s statements that ETF quoting participants have relied on the expectation of RSP payments during the retroactive period, and that the Exchange does not believe it fair to withhold RSP payments from ETF quoting participants for the retroactive period solely because of the Exchange’s inadvertent failure to extend the RSP.

also Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR-Amex-2008-23) (expanding RSP to DARTs).

⁶ See supra note 4.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(4).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-Amex-2008-34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).