

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52701; File No. SR-Amex-2005-101)

October 28, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment Nos. 1 and 2 thereto, Relating to Equity Transaction Charges

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 September 30, 2005, 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 prepared by the Amex. On October 18, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 27, 2005, the Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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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> On October 27, 2005, the Amex withdrew Amendment No. 1.

<sup>4</sup> In Amendment No. 2, the Exchange: (1) clarified its current practice of assessing equity fees on transactions rather than orders; (2) provided further explanation of how the proposed rule change will attract additional order flow to the Exchange; (3) changed the name of the current “Regulatory Fee” to a “Specialist Transaction Fee” and provided clarification as to the purpose of that change; (4) amended the rule text to specifically indicate that System Orders are subject to a transaction charge; and (5) generally provided clarification regarding the purpose of the proposed rule change.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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

The Exchange proposes to revise a variety of equity transaction fees that Exchange members are charged for executions on the Exchange. These fee changes will only apply to equity issues, and, accordingly will leave unchanged the current transaction charges for Portfolio Depository Receipts, Index Fund Shares and Trust Issued Receipts ("Exchange-Traded Funds" or "ETFs").

The text of the proposed rule change, as amended, is available on the Amex's Web site at <http://www.amex.com>, at the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to amend its Equity Fee Schedule to revise a variety of transaction fees applicable to Exchange members. These fee changes will be assessed on Exchange members commencing October 3, 2005.

The Exchange proposes the following changes to the Amex Equity Fee Schedule: (i) adoption of a monthly transaction charge of \$.0030 per share for up to 50 million shares and

\$.0025 per share for amounts over 50 million shares; (ii) elimination of transaction charges based upon the total gross dollar amount; (iii) clarification that transaction charges are calculated based on each transaction rather than each order; (iv) revision to the transaction charges so that only the first 5,000 shares of each executed transaction are assessed the charge; (v) elimination of transaction charges for transactions resulting from electronic orders of up to 500 shares;<sup>7</sup> (vi) elimination of the fee exemption for transactions by Amex option specialists and registered options traders (“ROTs”) in paired securities; (vii) elimination of the 50% fee exemption for proprietary trades in Canadian securities; and (viii) changing the name of the “Regulatory Fee” to the “Specialist Transaction Fee,” eliminating application of the fee to all market participants except specialists, and increasing the fee from \$.00005 to \$.00007 of the total value of all specialist transactions in equities.

The Amex currently charges members monthly fees for transactions in equity securities (excluding ETFs) executed on the Exchange. Although the current Equity Fee Schedule states that in calculating the transaction charges, each order is assessed on the first 25,000 shares only, the Exchange’s current process is to assess transaction charges on each transaction rather than on each order. In order to accurately reflect the manner in which equity transaction charges are presently assessed, in addition to revising the amount of the “Transaction Charges” as described below, the Exchange also is clarifying that assessment of transaction charges is based on each transaction (including transactions resulting from orders entered electronically) rather than on each order. The current transaction charges are shown in the table below.

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<sup>7</sup> The Commission notes that a clarifying change was made to item (v). Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on October 28, 2005.

## Transaction Charges

<b>Share - Based Charge: Total <u>Shares/Month</u></b>	<b>Rate <u>Per Share</u></b>
up to 16,500,000	\$.00225
16,500,001 - 25,000,000	.00200
25,000,001 - 33,000,000	.00175
over 33,000,000	.0015

  

<b>Value - Based Charge: Total Gross Dollar Value/Month</b>	<b>Rate <u>Per 1000</u></b>
up to \$200,000,000	.07500
\$200,000,001 - 300,000,000	.07000
\$300,000,001 - 400,000,000	.06500
over \$400,000,000	

The Exchange is largely proposing to revise the current equity transaction fee to clarify and simplify execution charges on the Exchange applicable to equity transactions. The proposed changes will not apply to transactions in ETFs. The Amex expects the proposal to generate additional revenue for ongoing operations while also being attractive to market participants and competitive with other exchanges. In particular, the Exchange believes that the proposal will attract additional order flow because the current transaction charge ceiling of 25,000 shares will be lowered to 5,000 shares. The Exchange believes that this is particularly significant for those market participants transacting in “lower-priced” stocks at the Exchange since the transaction fee as a percentage of the total transaction value will be significantly reduced.<sup>8</sup> Accordingly, although the proposal will increase specialist fees in connection with equity transactions, the Exchange submits that the reduction in aggregate transaction fees (even though the rate per share

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<sup>8</sup> For example, based on the current Equity Fee Schedule, the monthly maximum share-based transaction charge for up to 16.5 million shares is \$56.25 per transaction plus a maximum value-based charge of \$40 per trade. Under the proposal, the monthly maximum transaction charge for up to 16.5 million shares will be \$15 per transaction.

will increase) for all other market participants is expected to help attract additional order flow to the Exchange.

The Amex's equity transaction fee proposal also provides for the elimination of the graduated monthly transaction fees, as set forth above, and the adoption of monthly transaction fees that consist of a per share charge of \$.0030 for monthly transactions of shares of up to 50 million and a \$.0025 per share charge for monthly transactions of greater than 50 million shares. The current value-based charge assessed on the total gross dollar amount of a transaction would also be eliminated. The Exchange proposes to calculate the new transaction charges on the first 5,000 shares rather than the current 25,000 shares. The Exchange submits that the current Equity Fee Schedule does not properly reflect how transaction charges are assessed. Therefore, the Exchange proposes in its filing to clarify that the calculation of transaction charges will be assessed on each transaction, not on each order.

According to the Exchange, specialist trades will continue to be free of monthly per share transaction charges, while the current fee exemption for transactions by Amex options specialists and ROTs in paired securities<sup>9</sup> will be eliminated. The proposal also seeks to eliminate the 50% fee exemption for proprietary trades in Canadian securities. In both cases, the Exchange believes that the exemptions are unnecessary in order to attract order flow in equity securities.

In addition, transactions resulting from orders entered electronically into the Amex Order File from off the floor of the Exchange ("System Orders") of up to 500 shares (instead of the

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<sup>9</sup> The term "paired security" means a security that is the subject of securities trading on the Exchange and Exchange option trading, provided, however, that the term "paired security" does not mean an Exchange-Traded Fund Share or Trust Issued Receipt which is the subject of securities trading on the Exchange and Exchange option trading if the Exchange-Traded Fund Share or Trust Issued Receipt meet the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A, or approved by the Commission as eligible for trading arrangements under Rule 175(c)(2) and Rule 958(e).

current 2,099 shares) will not be assessed a transaction charge. The Exchange has also proposed to change the name of the “Regulatory Fee” to a “Specialist Transaction Fee.”<sup>10</sup> Pursuant to the Amex proposal, the Specialist Transaction Fee will only be applied to specialist transactions (unlike the “Regulatory Fee” that applied to all market participants) and will be increased from the current level of \$.00005 to \$.00007 of the total value of specialist transactions in equity securities.<sup>11</sup> In addition, the Exchange proposes to eliminate the exemption from assessment of the Regulatory Fee (now the “Specialist Transaction Fee”) for transactions resulting from System Orders of up to 2,099 shares. In this manner, all specialist system orders will be subject to the Specialist Transaction Fee. The Amex submits that the Specialist Transaction Fee is the only transaction-based fee that the Exchange charges specialists in connection with equity securities.

The revised equity transaction charges, as proposed, are set forth below.

<b>Transaction Charges</b>	<b>Rate</b>
<b>Share - Based Charge:</b>	<b><u>Per Share</u></b>
<b>Total</b>	
<b><u>Shares/Month</u></b>	
up to 50,000,000	\$.0030
over 50,000,000	\$.0025

According to the Exchange, the proposal to revise equity transaction fees applicable to Exchange members is consistent with Section 6(b)(4) of the Act.<sup>12</sup> The Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members largely through the elimination of various fee exemptions and a small increase in the specialist

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<sup>10</sup> The Exchange submits that its regulatory obligations are funded by numerous sources.

<sup>11</sup> The equity regulatory fee amount has remained relatively unchanged since 1994. See Securities Exchange Act Release No. 33456 (January 11, 1994), 59 FR 2886 (January 19, 1994).

<sup>12</sup> Section 6(b)(4) states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78(f)(b)(4).

transaction fee (formerly, the regulatory fee). Specifically, the increase in the specialist transaction fee that will be assessed on the total value of specialist transactions is the only transaction-based fee that specialists pay in connection with equity securities. In addition, the Exchange expects the proposal to attract additional order flow largely due to the reduction in the current transaction charge ceiling even though the transaction fee rate per share is slightly increased. Therefore, the Exchange maintains that the proposed equity transaction fee changes, in the aggregate, are an equitable allocation of reasonable fees among its members.

The Exchange believes that the proposed revision to equity transaction fees will better clarify for all market participants the transaction charges applicable to equity orders executed on the Exchange. In addition, the Exchange also submits that the revision will provide additional revenue to support ongoing operations as well as create greater incentives for market participants to send order flow to the Amex.

## 2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>14</sup> in particular, in that it is designed to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>16</sup> since it establishes or changes a due, fee or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 the furtherance of the purposes of the Act.<sup>17</sup>

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> The effective date of the original proposed rule change is September 30, 2005, and the effective date of Amendment No. 2 is October 27, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 27, 2005, the date on which Amex filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-101 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR-Amex-2005-101. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the 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 No. SR-Amex-2005-101 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Jonathan G. Katz  
Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).