

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53341; File No. SR-Amex-2006-15)

February 21, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the Options Marketing Fee Applicable to Certain Types of Equity Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 15, 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 prepared by the Amex. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal 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 increase the options marketing fee applicable to certain equity options. The text of the proposed rule change is available on the Amex’s website at <http://www.amex.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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 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 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

In June 2003, the Exchange re-instated its options marketing fee of \$0.40 per contract on the transactions of specialists and registered options traders ("ROTs") in equity options.⁵ Currently, the options marketing fee is eligible to be assessed on all equity options transactions (including options on exchange-traded funds and trust issued receipts). The Exchange now proposes to amend the equity options marketing fee to increase the fee from the current level of \$0.40 to \$0.75 per contract (except for SPDR options, which will continue to remain subject to the current fee level of \$1.00 per contract).⁶ The Exchange also proposes to revise the equity options marketing fee by limiting its assessment to customer orders that are from payment accepting firms with whom a specialist has negotiated a payment for order flow arrangement and that are executed electronically (i.e., through the Exchange's ANTE system).⁷ The current

⁵ See Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003).

⁶ See Securities Exchange Act Release No. 51685 (May 11, 2005), 70 FR 28587 (May 18, 2005).

⁷ Telephone conversation between Caroline McCaffery, Assistant General Counsel, Amex, and Hong Anh Tran, Special Counsel, Division of Market Regulation, on February 17, 2006.

equity options marketing fee is assessed on all executed customer orders (whether electronically or manually executed) of payment accepting firms. This revision further limits the assessment of the marketing fee to electronic executions.

The Exchange represents that it has no role with respect to the negotiations between specialists and payment accepting firms. The Exchange states that it collects and administers the payment of the fee collected on those transactions for which the specialist has advised the Exchange that it has negotiated with a payment accepting firm to pay for the firm's order flow. Included in this general administrative support, the Exchange tracks the number of qualified orders sent by a payment accepting firm, bills specialists and ROTs through their clearing firms and issues payments to payment accepting firms to reflect the collection and payment of the marketing fee. The Exchange rebates to specialists and ROTs, on a quarterly basis, the amount of marketing fees collected that have not been paid to order flow providers.

The Exchange further states that the specialists are solely responsible, but are not required, to negotiate payment for order flow agreements with payment accepting firms and are responsible for any arrangements made with the payment accepting firms. The specialists will use the funds that are collected from a particular post on the Exchange to market for those specific products traded at that particular post on the Exchange. So long as it is within the above described parameters, the specific terms governing the orders that qualify for payment and the amount of any payments are determined by the specialists in their discretion.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.⁸ In connection with the revision to the equity options marketing fee, the Exchange notes

⁸ Section 6(b)(4) of the Act, 15 U.S.C. 78f(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.

that increasing the fee from \$0.40 to \$0.75 per contract (except for SPDR options, which will continue to remain subject to the current fee level of \$1.00 per contract) and limiting assessment to the electronic executions of customer orders from payment accepting firms is reasonable given the competitive pressure to attract options order flow. In addition, the Exchange submits that those trading crowds that benefit from a payment for order flow arrangement negotiated by the specialist should contribute to the success of the particular products. Accordingly, the Exchange believes that the proposal is an equitable allocation of reasonable fees among Exchange members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ 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 facilities.

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

The Exchange believes that the proposed rule change will 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

The Exchange has neither solicited nor received comments on the proposed rule change. The Amex has not received any unsolicited written comments from members or other interested parties.

⁹ 15 U.S.C. 78f(b).

¹⁰ 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 pursuant to Section 19(b)(3)(A)(ii) of the Act,¹¹ and paragraph (f)(2) of Rule 19b-4 thereunder¹² because it establishes or changes a due, fee, or other charge. 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. Please include File Number SR-Amex-2006-15 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-2006-15. 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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 such filing also will be available for inspection and copying at 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 Number SR-Amex-2006-15 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.¹³

Nancy M. Morris
Secretary

¹³ 17 CFR 200.30-3(a)(12).