

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54324; File No. SR-Amex-2006-63)

August 16, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Transaction Based Fees for Supplemental Registered Options Traders

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”), and Rule 19b-4² thereunder, notice is hereby given that on August 15, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amex has designated the proposed rule change as establishing or changing a due, fee, or other charge applicable only to members, pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2)⁴ thereunder, 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

Amex proposes to amend its Options Fee Schedule to adopt transaction-based fees for Supplemental Registered Options Traders (“SROT”).

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).

The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at Amex's Office of the Secretary, 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, 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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex proposes to amend its Options Fee Schedule to subject SROTs to the Exchange's options transactions fee, options comparison fee, options floor brokerage fee, options marketing fee and options licensing fee. SROTs are members of the Exchange.⁵

The Exchange proposes to adopt an aggregate transaction-based fee for SROTs of \$0.23 per contract side (consisting of an options transaction fee of \$0.13 per contract side, an options comparison fee of \$.05 per contract side and an options floor brokerage fee of \$0.05 per contract side) for equity options, ETF options, and trust issued receipt options. In addition, an aggregate transaction-based fee for SROTs of \$0.36 per contract side (consisting of an options transaction fee of \$0.26 per contract side, an options

⁵ See Securities Exchange Act Release No. 53635 (April 12, 2006), 71 FR 20144 (April 19, 2006).

comparison fee of \$0.05 per contract side and an options floor brokerage fee of \$0.05 per contract side) for index options (including MNX and NDX options) is also proposed by the Exchange. The aggregate transaction-based fee for SROTs is set higher than the specialist and Registered Options Trader (“ROT”) transaction fees because the Exchange will incur additional systems and logistical costs in order to establish and maintain the infrastructure needed to enable the participation of a SROT.

The Exchange further proposes that the current options marketing fee for specialists and ROTs of \$0.75 per contract side for equity options, ETF options (excluding SPY options), trust issued receipt options, and NDX and RUT Options, and \$1.00 per contract side for SPY options, be equally applicable to SROTs.

In addition, the Exchange also proposes that the options licensing fee on certain index options and ETF options be applicable to SROTs. The options licensing fee proposal for SROTs in connection with equity options, ETF options, and trust issued receipt options will equal the current charges applicable to specialists, ROTs, firms, non-member market makers, and broker-dealers. This options licensing fee varies in amount from \$0.05 to \$0.20 per contract side, depending on the particular index or ETF option.

Both the options order cancellation fee and broker-dealer auto-ex fees will be inapplicable to SROTs and RROTs, according to current footnote 4 and proposed footnote 10. Pursuant to footnote 4, cancellation fees are currently charged only to orders sent through the Amex Order File (“AOF”), which are not typically delivered in a market making capacity by an Amex specialist or ROT. Since, according to Amex rules, SROTs and RROTs act only in a market making capacity, and their orders are not delivered to the Exchange through AOF, the cancellation fee shall not apply to these participants.

Likewise, broker-dealer auto-ex fees are typically charged only to orders for the accounts of firms, broker-dealers and non-member market makers because these orders are not delivered to the Exchange in a market making capacity.⁶ Currently, orders from ROTs and specialists in their market making capacity (i.e., liquidity providers) are not charged a broker-dealer auto-ex fee. However, orders of ROTs and specialists, if delivered to the Exchange via AOF, would be charged a broker-dealer auto-ex fee because these orders would not be part of their market making function. RROT and SROT orders will not be charged the broker-dealer auto-ex fee because these market participants act only in a market making capacity, and their orders are not delivered through AOF.

Finally, the Exchange proposes to amend several of the footnotes to its Options Fee Schedule. Footnote 3 provides that the marketing fee will also be collected on SROT transactions involving electronically executed customer orders from firms accepting payment for directing their orders to the Exchange. Furthermore, if a specialist has negotiated a payment to a firm of less than the marketing fee, the difference between the marketing fee and the actual payment will also be refunded to the SROT. Footnote 7 currently states that transactions by specialists and ROTs in connection with the Exchange's Broker-Dealer Auto-Ex Program are not subject to the options transactions fee, the options comparison fee, the options floor brokerage fee, the options marketing fee and the options licensing fee. The Exchange proposes to amend footnote 7 to provide that options allocated to SROTs and RROTs, in addition to specialists and ROTs, in

⁶ Telephone conversation between Kristie Diemer, Special Counsel, Division of Market Regulation, Commission and Jeffrey P. Burns, Vice President and Associate General Counsel, Exchange, on August 16, 2006.

connection with the Exchange's Broker-Dealer Auto-Ex Program are not subject to the options transactions fee, the options comparison fee, the options floor brokerage fee, the options marketing fee, and the options licensing fee.⁷ The Exchange also proposes to add footnote 10 to its Options Fee Schedule to provide that the fees applicable to specialists and market makers (ROT) also include RROT, except for the broker-dealer auto-ex fee and the cancellation fee, as discussed above.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b)(4) of the Act⁸ because it is an equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

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

The Exchange believes that 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.

⁷ The inapplicability of these fees acts as a rebate for those market participants acting as liquidity providers including, in this filing, SROT and RROT. See Securities Exchange Act Release No. 48219 (July 23, 2003), 68 FR 44823 (July 30, 2003).

⁸ 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,⁹ and Rule 19b-4(f)(2)¹⁰ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange, applicable only to members. 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-2006-63 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.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Amex-2006-63. 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 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-2006-63 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.¹¹

Nancy M. Morris,
Secretary

¹¹ 17 CFR 200.30-3(a)(12).