

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54777; File No. SR-Amex-2006-89)

November 17, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish Fees For the Receipt and Use of Proprietary Market Data Disseminated by the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 22, 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 Exchange. On November 15, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend the Amex Fees Schedule to establish fees for the receipt and use of proprietary market data disseminated by the Exchange. The text of the proposed rule change is available on Amex's Web site (<http://www.amex.com>), at Amex's principal office, 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

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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> Amendment No. 1 replaces the original filing in its entirety.

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

Through the new Auction and Electronic Market Integration trading platform (known as AEMI), the Exchange's hybrid trading system, the Exchange plans to make available for dissemination on a real-time basis<sup>4</sup> a compilation of all visible limit orders resident in the AEMI central limit order book ("AEMI Depth of Book"). The Exchange proposes that AEMI Depth of Book information be made available to market data vendors, broker-dealers, private network providers, and other entities by means of data feeds. The Exchange believes that, by making the AEMI Depth of Book available, the Exchange would be enhancing market transparency and fostering competition among orders and markets. With the adoption of Regulation NMS, the Commission rescinded "the prohibition on SROs and their members from disseminating their trade reports independently." The Commission requires such dissemination to be fair, reasonable and not unreasonably discriminatory. The Exchange believes that the Exchange's data distribution and proposed fees would be consistent with these standards and reflect an equitable allocation of the Exchange's overall costs to users of its facilities.

The Exchange proposes to establish the Market Data Fee Schedule for the receipt and use of various forms of Amex market data. The Market Data Fee Schedule being proposed is limited

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<sup>4</sup> It should be noted that the Exchange makes available to vendors the best bids and offers that are included in the AEMI limit order book data no earlier than it makes those best bids and offers available to the processors under the CQ Plan and the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis (the "UTP Plan").

to market data for equities and exchange-traded fund shares ("ETFs") trading on the AEMI system. Amex plans to implement use of the AEMI system over a period of time, commencing with four products. The Exchange will monitor the operation of AEMI and will deploy additional products when appropriate. It is anticipated that all equity and ETF products will be trading on AEMI prior to the implementation of Regulation NMS in February 2007. The Exchange would begin charging for the AEMI Depth of Book data once all products are trading on the AEMI system and the market data is available for all products. When AEMI is expanded to other product lines, such as options, the Exchange may further amend its fee schedule to include fees for the receipt and use of Amex market data for those products. As the Market Data Fee Schedule details, the Exchange is proposing to assess data access fees and professional and nonprofessional device fees for the AEMI Depth of Book. The Exchange states that these categories of fees are consistent with fees the New York Stock Exchange's ("NYSE") charges for the receipt and use of their market data through the NYSE OpenBook<sup>5</sup> and the fees proposed to be charged for the NYSE Arca, Inc.'s ("NYSE Arca") ArcaBook.<sup>6</sup>

- **Data Access Fees.** Direct Access—The Exchange proposes to impose a monthly fee of \$2,000 for a data recipient to gain direct access to the data feeds through which the Exchange makes AEMI market data available.
- Indirect Access—The Exchange proposes to impose a monthly fee of \$1,500 for a data recipient to gain indirect access to the data feeds through which the Exchange makes AEMI market data available. "Indirect access" refers to access to an AEMI market data

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<sup>5</sup> NYSE OpenBook provides information relating to limit orders

<sup>6</sup> The ArcaBook provides a compilation of all limit orders resident in the NYSE Arca limit order book. See Securities Exchange Act Release No. 53952 (June 7, 2006), 71 FR 33496 (June 9, 2006) (notice of filing of proposed rule change for SR-NYSEArca-2006-21).

feed indirectly through one or more intermediaries, rather than by means of a direct connection or linkage with the Exchange's facilities.

The Exchange believes that these Data Access Fees compare favorably with fees charged by other exchanges for similar products. For example, NYSE charges \$5,000 per month for direct and indirect access to NYSE OpenBook. While NYSE Arca proposes to charge only \$750 per month for direct access to ArcaBook, that access is limited to four "Logons." Amex does not propose to place any limitation on the number of "Logons."

- **Device Fees.**—The Exchange proposes to establish device fees for professional and nonprofessional subscribers for the display of AEMI Depth of Book. In differentiating between professional and nonprofessional subscribers, the Exchange proposes to apply the same criteria for nonprofessional qualification as used by the CTA and CQ Plan Participants.

**a. Professional Subscribers.** For professional subscribers, the Exchange is proposing to establish a monthly fee of \$20 per device for the receipt of AEMI Depth of Book data relating to all securities traded on AEMI. The Exchange believes this fee compares favorably with fees charged by other exchanges for similar products. For example, for professional subscribers, Nasdaq charges \$76 for its combined TotalView<sup>7</sup>

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<sup>7</sup> Through TotalView, Nasdaq provides information relating to the displayed quotes and orders of Nasdaq participants in UTP Plan Securities. TotalView displays quotes and orders at multiple prices and is similar to AEMI Depth of Book.

and OpenView<sup>8</sup> products and NYSE charges \$60 for NYSE OpenBook.<sup>9</sup>

In addition, NYSE Arca proposes to charge a combined monthly professional subscriber device fee of \$30 for receipt of ArcaBook data.<sup>10</sup>

**b. Nonprofessional subscribers.** For nonprofessional subscribers, the Exchange is proposing to reduce those monthly fees to \$10 per device for the receipt of AEMI Depth of Book data for securities traded on AEMI. NYSE Arca proposes to charge a combined monthly nonprofessional subscriber device fee of \$10 for receipt of ArcaBook data.<sup>11</sup>

The Exchange would require each recipient of a data feed containing AEMI market data to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network B data feeds to enter. The agreement would authorize the data feed recipient to provide AEMI Market Data services to its customers or to distribute the data internally.

In addition, the Exchange would require each professional end-user that receives AEMI market data displays from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network B data to enter into. The Exchange would also require vendors and broker-dealers to subject

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<sup>8</sup> Through OpenView, Nasdaq provides information relating to the displayed quotes and orders of Nasdaq participants in CTA Plan Securities. OpenView displays quotes and orders at multiple prices and is similar to AEMI Depth of Book.

<sup>9</sup> Through NYSE OpenBook, NYSE provides information relating to limit orders.

<sup>10</sup> See Securities Exchange Act Release No. 53952 (June 7, 2006), 71 FR 33496 (June 9, 2006) (notice of filing of proposed rule change for SR-NYSEArca-2006-21).

<sup>11</sup> See id.

nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network B nonprofessional subscribers.

The Exchange proposes to provide its market data under the same contracts that the CTA and CQ Plans use since those contracts are drafted as generic, one-size-fits-all agreements and explicitly apply to the receipt and use of certain market data that individual exchanges make available in the same way as they apply to data made available under the CTA and CQ Plans. According to the Exchange, no amendments to those contracts are needed to cause them to govern the receipt and use of the Exchange's market data. Moreover, the Exchange is not imposing restrictions on the use or display of the AEMI market data beyond those set forth under these preexisting agreements.

The Exchange believes that the proposed market data fees would reflect an equitable allocation of its overall costs to users of its facilities. As described above, the Exchange believes that the fees are fair and reasonable because they compare favorably to fees that other markets charge for similar products.

## 2. Statutory Basis<sup>12</sup>

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>14</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent

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<sup>12</sup> See E-mail to David Hsu, Special Counsel, Division of Market Regulation, Commission, from Claire McGrath, Senior Vice President and General Counsel, Amex, dated November 17, 2006 (clarifying the statutory basis of the proposed rule change).

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,<sup>15</sup> which requires that the rules an exchange provide for 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

The proposed rule change would impose no 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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

#### 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-89 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-2006-89. 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 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-2006-89 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>16</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).