

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55195; File No. SR-Amex-2006-117)

January 30, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Charges for Equities and ETFs

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 December 20, 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 substantially prepared by the Exchange. 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. On January 26, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.⁵ 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 revise the equities and Exchange Traded Fund Shares (“ETFs”) Fee Schedules to establish new transaction charges and revise the cancellation fee charged for cancellations of orders in equities and ETFs.

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).

⁵ In Amendment No. 1, the Exchange made clean-up changes to its proposed rule text.

The text of the proposed rule change is available on the Exchange's Web site (http://www.amex.com/atamex/ruleFilings/2006/SR_Amex_2006_117_initial.pdf), at the Exchange'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, the Exchange 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The implementation of the new hybrid market trading platform (known as "AEMI"), the adoption and implementation of Regulation NMS by the Commission, and changes in the competitive landscape have resulted in a review by the Exchange of the fee schedule for equities and ETFs. The full costs of execution are a major factor in determining where order flow providers direct their orders. The Exchange will impose the new transaction charges on its members and member organizations effective January 2, 2007. The Exchange is currently in the process of moving its equities and ETFs on to the AEMI trading system. The new fees will apply to all equities and ETFs regardless of whether they have been moved on to AEMI. It is expected that by January 2, 2007, approximately one-quarter of the Exchange's equities and ETFs will be trading on AEMI.

Transaction Charges for Equities and ETFs

Currently, Amex transaction charges for equities and ETFs are assessed for all market participants monthly on a per-share basis with the application of various caps and discounts. The Exchange proposes to revise the manner in which transaction charges are applied in order to encourage market participants to send order flow to the Exchange and provide liquidity (*i.e.*, quotes and limit orders) at and around the National Best Bid and Offer (“NBBO”). The Amex Fee Schedule currently has separate schedules for equities and ETFs, and although the proposed new fees will be the same for both product lines, the Exchange has decided to continue to maintain two separate Fee Schedules. Each Fee Schedule will be separated into two schedules one with the transaction charges for customers and the other with transaction charges for Specialists and Registered Traders.

Transaction Charges for Customers

Transaction charges for customers⁶ for executions in equities and ETFs will be divided into two tiers based on the average daily volume of each security as reported by the appropriate NMS Plan in the security industry-wide. As described below, the transaction charges will vary within each tier depending on the type of orders submitted for the customer account and the types of quotes and orders submitted for Specialist and Registered Trader accounts.

Tier One Pricing for Customers

Tier One pricing will be applied to all Amex-listed securities (equities and ETFs) whose industry-wide average daily trading volume is 500,000 shares or greater during the previous rolling quarter. In addition, Tier One pricing will apply to all securities traded on the Exchange

⁶ Customers will be defined for purposes of the proposed new fee schedule to include all market participants except Specialists and Registered Traders. Therefore, customers (and

pursuant to unlisted trading privileges (“UTP”) regardless of the their average daily trading volume. All new listings including IPOs, transfers, and dual listings will initially be categorized as Tier One securities until the next quarterly recalculation. Based on third quarter average daily trading volumes, 55 Amex listed equities, 84 ETFs, and over 100 UTP securities would have been eligible for Tier One pricing. These Tier One securities currently represent approximately 60% of Amex daily volume. Determining whether a security receives Tier One pricing will be based on 12 weeks of trading data. Two weeks prior to the start of a calendar quarter the Exchange will announce which securities will be eligible for Tier One pricing during the next quarter beginning with the first trading day of the calendar quarter. For example, Tier One securities (except UTP securities) for the second quarter of 2007 will be determined based on average daily trading volume for the period beginning December 13, 2006 and ending March 14, 2007. An announcement will be made on March 15, 2007 setting forth the securities eligible for Tier One pricing effective April 1, 2007. The list of Tier One eligible securities will also be available on the Amex Web site.

Transaction charges for executions by customers of Tier One securities will vary depending on the type of order submitted to Amex. There will be no transaction charges for the execution of cross orders⁷ occurring within the AEMI trading system (“electronic crosses”). The lowest fees will be charged for the execution of limit orders⁸ which are not immediately executable when submitted to the Exchange and whose limit is near, at, or improves the

the fees charged to them) will include members, off-floor proprietary accounts, competing market makers, and other member and non-member broker-dealers.

⁷ A cross order is defined in Amex Rule 131—AEMI(r) as “...an order submitted by a member or member organization to AEMI with buy and sell interest specified in a single order.”

⁸ A limit order is defined in Amex Rules 131(b) and 131—AEMI(b) as “...an order to buy or sell a stated amount of a security at a specified price, or at a better price if obtainable after the order is represented in the Trading Crowd or is received in the AEMI Book.”

prevailing national best bid (for buy orders) or the national best offer (for sell orders) (collectively, the NBBO) at the time of order entry. As set forth in the revised Fee Schedule, transaction charges for the execution of limit orders (1) at the current NBBO or that betters the current NBBO will be \$0.03 per 100 shares; (2) within three minimum price variations or “ticks” of the NBBO will be \$0.05 per 100 shares; and (3) all other limit orders at prices outside three ticks from the NBBO will be \$0.10 per 100 shares. Orders that are submitted prior to the opening of trading at 9:30 a.m. when NBBO data is not available will be charged as follows: the execution of market orders will be charged \$0.25 per 100 shares, and the execution of all limit orders will be charged \$0.03 per 100 shares (regardless of limit price). Transaction charges for negotiated⁹ and open-outcry cross transactions¹⁰ will be \$0.15 per 100 shares. Transaction charges for the execution of market,¹¹ marketable limit orders, and any other orders that take liquidity out of the market will be \$0.25 per 100 shares. Similarly, transaction charges for at the opening-only orders (OPG)¹² and at-the-close orders (MCC, MOC, and LOC)¹³ will be \$0.25 per 100 shares.

⁹ Negotiated Trades are one-to-one trades between two crowd members.

¹⁰ Open Outcry Cross Transactions are discussed in Amex Rule 151—AEMI and occur when a member executes a customer order to buy against a customer order to sell outside the AEMI system or in open outcry.

¹¹ A market order is defined in Amex Rules 131(a) and 131—AEMI(a) as “...an order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is presented in the trading crowd or is received in the AEMI Book.”

¹² An at the opening order is defined in Amex Rules 131(f) and 131—AEMI(e) as “...a market or limited price order which is to be executed on the opening in the stock on the Exchange or not at all, and any such order or portion thereof not so executed is to be treated as cancelled.”

¹³ At-the-close orders are defined in Amex Rules 131(e), 131, Commentary .03, 131—AEMI(d) and 131—AEMI, Commentary 03. There are three types of at the close orders, market-at-the-close, limit-at-the-close, and market-at-4:00-p.m. cash-close. A market-at-the-close (MOC) order is an order to buy or sell a stated amount of a security at the Exchange’s closing price. If the MOC order cannot be executed in its entirety at the Exchange closing price it will be cancelled. A limit-at-the-close (LOC) order is an order

The Exchange proposes to revise its traditional way of assessing transaction charges in order to provide incentives for liquidity providers to send limit orders in the most active securities to the Exchange at and around the NBBO. The Exchange believes that liquidity takers, market participants who send in market orders or marketable limit orders for immediate execution at the NBBO or better, should pay for the service of accessing liquidity at the best possible price.

Tier Two Pricing for Customers

Tier Two pricing will be applied to all Amex-listed securities (equities and ETFs) whose industry-wide average daily trading volume is less than 500,000 shares during the previous rolling quarter. Transaction charges for executions by customers of Tier Two securities will be \$0.30 per 100 shares for limit orders, market orders, and at-the-opening and at-the-close orders, and \$0.25 per 100 shares for electronic crosses, open-outcry cross transactions, and negotiated transactions.

Transaction Charges for Specialists and Registered Traders

Transaction charges for executions by Specialists and Registered Traders of all equities and ETFs will vary depending on the type of order or quote submitted to Amex. The lowest fee of \$0.03 per 100 shares will be charged for an execution against a Specialist or Registered Trader quote that had been entered at the NBBO and for negotiated trades. A transaction charge of \$0.05 per 100 shares will be charged for all other Specialist and Registered Trader executions, including executions against a Specialist or Registered Trader quote that is within three or more

to buy or sell a stated amount of a security at the Exchange's closing price if that closing price is at the order's limit price, or better. If the LOC order cannot be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. A market-at-4:00-p.m. cash-close (MCC) order is an order in an ETF that trades to 4:15, which is to

ticks of the NBBO, executions of hit-or-take orders,¹⁴ executions in which the Specialist and/or Registered Trader has participated in a percentage order,¹⁵ intraday pair-offs, and the pair-offs of at-the-opening or at-the-close orders. Transaction charges for Specialists and Registered Traders are at lower rates in order to encourage them to quote more competitively and make more liquid markets.

Revisions to Cancellation Fees

Currently, the executing clearing member is charged \$0.25 for every equities and ETF order sent for a mnemonic and cancelled through Amex systems in a given month when the total number of equities and ETF orders executed for that mnemonic is less than or equal to 10% of the equities and ETF orders cancelled through Amex systems for that mnemonic in that same month. The fee does not apply to mnemonics for which fewer than 100,000 orders were cancelled through Amex systems and does not apply to the first 100,000 cancellations submitted for a mnemonic. To align the Exchange's cancellation fee with others in the industry, the proposed cancellation fee for orders and cancellations sent to Amex in equities and ETFs will be revised to apply to each clearing member mnemonic whose ratio of cancellations to executions is greater than 50-to-one. However, the Exchange also proposes to eliminate the 100,000 cancellation threshold, and the charge of \$0.25 per cancellation will apply to all cancellations beyond the 50-to-one ratio for that mnemonic. Thus, the proposed cancellation fee will apply to

be executed at or as close as practicable to the close of the regular equity trading session on the Exchange (normally 4:00 p.m. Eastern Time.)

¹⁴ Hit-or-take orders are defined in Amex Rule 131—AEMI(t) and are available only for securities trading on the AEMI system. A hit-or-take order is a type of order that is available to any member to trade against the Amex Published Quote (“APQ”). It is an order that expires if not immediately executed but that is capable of generating away market obligations to clear better away markets.

¹⁵ A percentage order is defined in Rules 131(n) and 131—AEMI(m) as “...a limited price order to buy (or sell) 50% of the volume of a specified stock after its entry.”

fewer clearing member mnemonics since the ratio of cancellations to executions is higher than the current ratio and the proposed cancellation fees are applicable on a marginal basis. For example, if a clearing member executes two orders and cancels 120 orders in a mnemonic, the clearing member will be assessed a cancellation fee only on 20 cancellations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(4),¹⁷ 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. Specifically, the Exchange is proposing to establish new transaction charges for equities and ETFs and revise its cancellation fees.

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

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.

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 Act¹⁸ and Rule 19b-4(f)(2) thereunder¹⁹ because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 19b-4(f)(2).

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.²⁰

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 No. SR-Amex-2006-117 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-117. 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

²⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on January 26, 2007, the date on which the Exchange filed Amendment No. 1.

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-2006-117 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).