

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55499; File No. SR-Amex-2007-27)

March 21, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to an Amendment to the Options Marketing Fee

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 February 28, 2007, 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. On March 14, 2007, the Amex submitted Amendment No. 1 to the proposed rule change. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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.

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

The Exchange proposes to extend its marketing fee program to customer orders of 1,000 contracts or greater, which are executed in open-outcry (i.e., manual executions).

The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.amex.com](http://www.amex.com).

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 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 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. Amex has substantially 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

Currently, the options marketing fee is assessed on those specialists, registered options traders ("ROTs"), remote registered options traders ("RROTs"), and supplemental registered options traders ("SROTs") transactions involving electronically executed customer orders from firms that accept payment for directing their orders to the Exchange ("payment accepting firms") with whom a specialist or SROT has negotiated a payment for order flow arrangement.<sup>5</sup>

The Exchange is now proposing to charge specialists and ROTs a fee of \$0.40 per contract on customer orders of 1,000 contracts or greater executed in open-outcry (i.e., manual executions), that are from payment accepting firms with whom a specialist has negotiated a payment for order flow arrangement.<sup>6</sup>

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<sup>5</sup> For electronically executed customer orders, the fee is \$0.75 per contract on the transactions of specialists, ROTs, RROTs, and SROTs in equity options (except for SPDR options which will continue to remain subject to the current fee level of \$1.00 per contract) as well as Nasdaq 100 Index options (NDX) and Russell 2000 Index options (RUT). Likewise, the fee is \$0.35 per contract for those equity, exchange traded fund share and trust issued receipt options series that quote and trade in one cent increments under the penny pilot program.

<sup>6</sup> This fee is not applicable to SROTs and RROTs because their trades are only executed electronically.

As with electronically executed customer orders, the Exchange has no role with respect to the negotiations between specialists and payment accepting firms. The Exchange 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 notes that strategy trades (i.e., dividend spreads, merger spreads, short stock interest spreads) executed manually will not be eligible for payment under this proposal.<sup>7</sup>

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 payment accepting firms. Funds collected on manual orders would only be paid for the class they are collected, and to the order flow provider they are collected for. So long as it is within the foregoing 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.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is designed to provide

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<sup>7</sup> Amendment No. 1 clarified in the Exchange's Options Fee Schedule that the marketing fee does not apply to strategy trades executed manually.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

for the equitable allocation of reasonable dues, fees, and other charges among exchange members and issuers and other persons using exchange facilities.

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

The Exchange does not believe that the proposed rule change will 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 been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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 furtherance of the purposes of the Act.<sup>12</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 is consistent with the Act. Comments

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 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 March 14, 2007, the date on which the Exchange filed Amendment No. 1.

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-2007-27 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-2007-27. 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-2007-27 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.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).