

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56238; File No. SR-Amex-2007-24)

August 10, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto to Retroactively Amend Transaction Charges for Equities, ETFs, and Nasdaq UTP Securities

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 22, 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 August 10, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. 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 retroactively apply the revised equities, Exchange Traded Funds and Trust Issued Receipts (“ETFs”) and Nasdaq UTP Fee Schedules (collectively, the “Fee Schedule”) to transactions in equities, ETFs and Nasdaq UTP securities from January 2, 2007 through February 21, 2007.

The text of the proposed rule change is available on the Exchange’s Web site (<http://www.amex.com>), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

In January 2007, the Exchange adopted new transaction charges for its members and member organizations largely relating to the Exchange's new hybrid market trading platform (known as AEMI), the upcoming implementation of Regulation NMS, and changes in the competitive landscape for equities and ETFs. These new transaction charges became effective January 2, 2007 and will be referred to herein as the "January Fee Schedule".<sup>3</sup> Under the January Fee Schedule, transaction charges for executions in equities and ETFs were divided into two tiers based on the average daily volume, as reported by the appropriate NMS Plan in the security industry-wide.<sup>4</sup> The transaction charges varied within each tier depending on the type of

---

<sup>3</sup> See Securities Exchange Act Release No. 55195 (January 30, 2007) 72 FR 5469 (February 6, 2007) (notice of filing and immediate effectiveness of SR-Amex-2006-117).

<sup>4</sup> Tier One pricing applied to equities and ETFs whose industry-wide average daily trading volume was 500,000 shares or greater during the previous rolling quarter. In addition, Tier One pricing applied to all securities traded on the Exchange pursuant to unlisted trading privileges ("UTP") (including Nasdaq UTP securities) regardless of their average daily trading volume. All new listings – including IPOs, transfers, and dual listings – were initially categorized as Tier One securities until the next quarterly recalculation. Tier Two pricing applied to all equities and ETFs whose industry-wide average daily trading volume was less than 500,000 shares during the previous rolling quarter.

orders submitted for the customer account and the types of quotes and orders submitted for specialist and registered trader accounts. Since the adoption of the January Fee Schedule, the Exchange began having difficulty with its billing system's ability to obtain the data necessary to calculate an accurate bill pursuant to the January Fee Schedule and provide data to the clearing firms in a timely manner so they could accurately pass these charges on to their customers. As a result, in a filing submitted on February 22, 2007 in conjunction with this filing, the Exchange proposed to eliminate the January Fee Schedule and revert back to the schedule for transaction charges for customers<sup>5</sup> in equities and ETFs in effect prior to January 2, 2007 (referred to herein as the "February Fee Schedule"). In addition, as an incentive to member firms to send order flow to the Exchange, the February Fee Schedule proposed a five percent discount to be applied to each firm's total charges for customer orders. Transaction charges for specialists in equities and specialists and registered traders in ETFs were to be made consistent across the product lines and were generally to be applied in the same manner as under the fee schedule in effect prior to the January Fee Schedule, but at a lower rate. The five percent discount was not applied to charges for specialists and registered traders. In addition, for transactions charges in Nasdaq UTP securities, the February Fee Schedule also reverted back to the fee schedule in effect prior to January 2, 2007 and applied the five percent discount to charges for member and non-member customer transactions.

The Exchange is now proposing that the February Fee Schedule be made retroactive for the period of January 2, 2007 through February 21, 2007. As noted above, due to data issues involving its billing system, the Exchange has been unable to obtain the data necessary to

---

<sup>5</sup> "Customers" are defined for purposes of the fee schedule to include all market participants except specialists and registered traders. Therefore, customer accounts include members' off-floor proprietary accounts and the accounts of competing market makers and other member and non-member broker-dealers.

calculate an accurate bill for the months of January and February 2007 or to provide the data necessary for the clearing firms to accurately bill their customers pursuant to the January Fee Schedule. In addition, since Exchange data indicates that a small number (less than ten) of the clearing members may pay a small amount more in fees based on the February Fee Schedule than they would have paid under the January Fee Schedule, the Exchange is proposing to credit the accounts of these clearing members in the amount of the overpayments. Thus, no clearing member will be disadvantaged by the retroactive application of fees.

2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act<sup>6</sup> regarding the 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 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

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 self-regulatory organization consents, the Commission will:

---

<sup>6</sup> 15 U.S.C. 78f(b)(4).

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2007-24 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-2007-24. 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, 100 F Street,

NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-24 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>7</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>7</sup> 17 CFR 200.30-3(a)(12).