

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52533; File No. SR-Amex-2005-085)

September 29, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Implementation of a Cancellation Fee 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 September 20, 2005, 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 Amex. On September 23, 2005, Amex filed Amendment No. 1 to the proposed rule change.³ On September 26, 2005, Amex filed Amendment No. 2 to the proposed rule change.⁴ 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,⁵ and Rule 19b-4(f)(2)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange: (1) clarified that cancellations resulting from “Immediate or Cancel” and “Fill or Kill” orders will not be counted when determining the amount of the cancellation fee to be charged to an executing clearing member and updated the corresponding proposed rule text; and (2) stated that Amex plans to begin billing the cancellation fee in November 2005 based on order cancellations and executions occurring in October 2005.

⁴ In Amendment No. 2, the Exchange made technical corrections to the proposed rule text. The effective date of the original proposed rule change is September 20, 2005, the effective date of Amendment No. 1 is September 23, 2005, and the effective date of Amendment No. 2 is September 26, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 23, 2005, the date on which Amex filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

thereunder,⁶ 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 parties.

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

Amex proposes to establish a fee based on the number of order cancellations in equities, Exchange Traded Fund Shares and Trust Issued Receipts (hereinafter referred to as "equities and ETFs") routed through Amex systems. Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deletions are in [brackets].

* * * * *

Amex Equity Fee Schedule

I. Transaction Charges

No change.

II. Equities Order Cancellation Fee

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 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. In addition, cancellations resulting from "Immediate or Cancel" or "Fill or Kill" orders will not be counted towards the number of cancellations used to determine whether the fee should be applied to a mnemonic and will not be counted when determining the amount of the cancellation fee

⁶ 17 CFR 240.19b-4(f)(2).

charged to an executing clearing member. Executions of “Immediate or Cancel” and “Fill or Kill” orders will however be counted towards the number of executions.

[II.] III. Regulatory Fee

No change.

* * * * *

Amex Exchange Traded Funds and Trust Issued Receipts Fee Schedule

Exchange Traded Funds (ETFs) include Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts. The fee imposed for executing trades in these securities will vary depending on for whom the trade is executed as follows:

I. Transaction Charges for ETFs Without Unreimbursed Fees to a Third Party

No change.

II. Transaction Charges for ETFs for which the Exchange Pays Unreimbursed Fees to a Third Party

No change.

III. Transaction Charges for SPDR O-Strip

No change.

IV. Transaction Charges for iShares FTSE/Xinhua China 25 Index Fund

No change.

Notes:

No change.

V. ETF Order Cancellation Fee

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 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. In addition, cancellations resulting from “Immediate or Cancel” or “Fill or Kill” orders will not be counted towards the number of cancellations used to determine whether the fee should be applied to a mnemonic and will not be counted when determining the amount of the cancellation fee charged to an executing clearing member. Executions of “Immediate or Cancel” and “Fill or Kill” orders will however be counted towards the number of executions.

[II.] VI. Regulatory Fee

No charge

Note:

1. This exemption does not apply to System Orders of a member or member organization trading as agent for the account of a non-member competing market maker, who will be charged $$.000075 \times \text{Total Value}$

* * * * *

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. Amex 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 Exchange proposes to establish a fee on the cancellation of orders in equities and ETFs. The Amex believes that this fee is necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of immediately following an order routed through exchange systems with a cancel request for that order. These order cancellations utilize system capacity and may require manual processing by specialist unit personnel, which may unnecessarily distract specialist staff from other responsibilities. Cancellations often come in large numbers creating backlogs in Amex systems, increasing Exchange costs, adversely impacting public customers, their clearing firms and specialists and resulting in less than timely executions of customer orders. The large volume of order cancellations requires an increase in Exchange spending on systems and related hardware used to process increased message traffic.

The cancellation fee for equities and ETFs is similar in structure to the options order cancellation fee adopted by the Exchange in 2001.⁷ The fee will apply to the executing clearing member when the number of cancellations of equity and ETF orders exceeds certain parameters. The cancellation fee for equities and ETFs will be calculated and applied on a “mnemonic-by-mnemonic” basis for each clearing member. Mnemonics are reference numbers or codes used by executing clearing members to designate: (1) either the branch, trading desk or account from which orders, cancellations or other messages are sent to Amex; or (2) the types of products for which orders, cancellations or other types of messages are sent to Amex. For example, some

⁷ See Securities Exchange Act Release No. 45110 (November 27, 2001), 66 FR 63080 (December 4, 2001).

clearing firms use one mnemonic to send equity orders and cancellations and another mnemonic to send ETF orders and cancellations. Each executing clearing member has at least one mnemonic, while many executing clearing members have two or more. Calculating and applying the cancellation fee for equities and ETFs on a mnemonic-by-mnemonic basis provides a more precise way of billing executing clearing members.

Specifically, an executing clearing member will be 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. For example, in August 2005, an executing clearing member submitted, for one mnemonic, 313,511 orders in Amex equities. For that same mnemonic, the executing clearing member cancelled 286,556 of those orders and executed 26,955. Pursuant to the proposed cancellation fee, the executing clearing member would have been subject to a fee of \$46,639 ($286,556 - 100,000 \times \0.25) for that mnemonic. Cancellations resulting from “Immediate or Cancel” or “Fill or Kill” orders⁸ will not be counted towards the number of cancellations, since those order types, which combine an order with its cancellation in one message, do not add to the message traffic sent through Exchange systems. Cancellations resulting from “Immediate or Cancel” and “Fill or Kill” orders will not be counted when determining the amount of the

⁸ A “Fill or Kill” order is a market or limited price order which is to be executed in its entirety as soon as it is represented in the trading crowd, and such order, if not so executed, is to be treated as cancelled. An “Immediate or Cancel” order is a market or limited price order which is to be executed in whole or in part as soon as such order is represented in the trading crowd, and the portion not so executed, is to be treated as cancelled. See Amex Rules 131(i) and (k).

cancellation fee charged to an executing clearing member.⁹ Executions of “Immediate or Cancel” and “Fill or Kill” orders will, however, be counted towards the number of executions.

Amex plans to begin billing the cancellation fee in November 2005 based on order cancellations and executions occurring in October 2005.¹⁰

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² 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 its facilities. In particular, Amex believes that the proposed cancellation fee will allow the Exchange to more equitably recover systems capacity costs from its members.

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

Amex does not believe that the proposed rule change, as amended, will impose any burden on competition.

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.

⁹ See Amendment No. 1, supra note 3.

¹⁰ Id.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁴ since 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 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.¹⁵

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. Please include File Number SR-Amex-2005-085 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-085. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ See supra note 4.

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 the 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-2005-085 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.¹⁶

Jonathan G. Katz
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).