

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55458; File No. SR-Amex-2007-23)

March 13, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to 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. 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 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 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, Exchange Traded Funds and Trust Issued Receipts (“ETFs”), and Nasdaq UTP Fee Schedules (collectively, the “Fee Schedule”) to modify transaction charges in equities, ETFs, and Nasdaq UTP securities.

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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).

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.

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 Exchange recently 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.<sup>5</sup> These new transaction charges became effective January 2, 2007.<sup>6</sup> Since the adoption of the new transaction fees, the Exchange has been having difficulty with its billing system's ability to obtain the data necessary to calculate an accurate bill and provide data to the clearing firms in a timely manner so they can accurately pass these charges

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<sup>5</sup> See Securities Exchange Act Release No. 55195 (January 30, 2007) 72 FR 5469 (February 6, 2007) (Amex File No. 2006-117).

<sup>6</sup> This discussion originally stated, at various points, that the new transaction charges became effective January 3, 2007; however, the approved date of effectiveness was actually January 2, 2007. E-mail communication between Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, and Claire P. McGrath, Senior Vice President and General Counsel, Amex, on March 2, 2007.

on to their customers. As a result, the Exchange in this filing proposes to revert back to transaction charges for customers<sup>7</sup> in equities and ETFs in effect prior to January 2, 2007. In addition, as an incentive to member firms to send order flow to the Exchange, a five percent discount will be applied to each firm's total charges for customer orders. Transaction charges for specialists in equities and specialists and registered traders in ETFs will be made consistent across the product lines and will generally be applied in the same manner as under the prior schedule, but at a lower rate. The five percent discount will not be applied to charges for specialists and registered traders. In addition, for transactions charges in Nasdaq UTP securities, the Exchange will also revert back to the fee schedule in effect prior to January 2, 2007 and will apply the five percent discount to charges for member and non-member customer transactions.

Currently, under the recently adopted fee schedule, transaction charges for equities, ETFs, and Nasdaq UTP securities differ based on whether the charge is for a customer or specialist and registered trader. Transaction charges for executions in equities and ETFs are divided into two tiers based on the average daily volume as reported by the appropriate NMS Plan in the security industry-wide.<sup>8</sup> Transaction charges for all securities traded by Amex

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<sup>7</sup> Customers are defined for purposes of the Equity and ETF Fee Schedules to include all market participants except specialists and registered traders. Therefore, customers (and the fees charged to them) include members' off-floor proprietary accounts, competing market makers and other member and non-member broker-dealers. The Nasdaq UTP Fee Schedule defines customers to include any market participant other than a "competing market maker."

<sup>8</sup> Tier One pricing is applied to 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 applies to all securities traded on the Exchange pursuant to unlisted trading privileges ("UTP") (including Nasdaq UTP securities) regardless of the their average daily trading volume. All new listings including IPOs, transfers, and dual listings are initially categorized as Tier One securities until the next quarterly recalculation. Tier Two pricing is applied to all equities and ETFs whose industry-wide average daily trading volume is less than 500,000 shares during the previous rolling quarter.

pursuant to unlisted trading privileges (including Nasdaq UTP securities) regardless of average daily trading volume are priced based on one of the tiers as noted below. The transaction charges 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.

#### Transaction Charges for Equities

The Exchange is now proposing that transaction charges for equities be assessed based generally on the previous fee schedule for all market participants on a per-share basis with the application of various caps and discounts. Specifically, the Exchange is proposing the following changes to the current Equity Fee Schedule: (i) adoption of a monthly transaction charge to customers of \$0.0030 per share for up to 50 million shares and \$0.0025 per share for amounts over 50 million shares; (ii) adoption of a fee cap so that transaction charges are assessed only on the first 5,000 shares of each executed transaction; (iii) adoption of a fee waiver of transaction charges for certain electronic orders of up to 500 shares (this fee waiver will not apply to electronic orders of a member or member organization trading as an agent for the account of a non-member competing market maker);<sup>9</sup> and (iv) adoption of a five percent discount on total amount of customer transaction charges. For transaction charges assessed to specialists in equities, the Exchange will not revert back to the previous fee schedule where the per-share charge was waived and a charge based on the total dollar value of specialist transactions was

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<sup>9</sup> A “competing market maker” is defined as a specialist or market maker registered as such on a registered stock exchange (other than Amex), or a market maker bidding and offering over-the-counter, in an Amex-traded security. The Exchange has subsequently filed another proposed rule change (SR-Amex-2007-30) to remove the provision barring the application of the fee waiver to non-member competing market makers retroactively to March 1, 2007. Hence, as of March 1, 2007, non-member competing market makers are eligible for the fee waiver.

imposed, but will instead impose a specialist transaction charge at the rate of \$0.03 per 100 shares.

The other provisions of the current Equity Fee Schedule including the “Equities Order Cancellation Fee,” “Clearing Charges for Orders Routed to Another Market Center,” and “Pass-Through Charges to Orders Routed to Another Market Center Through the NMS Linkage Plan” will remain the same.

#### Transaction Charges for ETFs

Similar to equities as set forth above, Amex is proposing that transaction charges for ETFs be assessed based generally on the previous fee schedule for all market participants monthly on a per-share basis with the application of various caps and discounts. Specifically, the Exchange is proposing the following changes to the current ETF Fee Schedule: (i) adoption of transaction charges for customers of \$0.34 per 100 shares for all ETFs;<sup>10</sup> (ii) adoption of a \$100 cap on the fee charged per transaction for each customer trade; (iii) adoption of a waiver of transaction charges for electronic orders of up to 2,400 shares (this fee waiver will not apply to electronic orders of a member or member organization trading as an agent for the account of a non-member competing market maker);<sup>11</sup> (iv) adoption of a five percent discount on the total amount of customer transaction charges; (v) adoption of an additional value-based fee for transactions of non-member competing market makers of \$0.000075 times the total value of orders entered by a member or member organization trading as agent for the account of a non-

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<sup>10</sup> This charge was reduced to \$0.30 by a subsequent filing that the Exchange submitted, SR-Amex-2007-28.

<sup>11</sup> SR-Amex-2007-30 also eliminates the provision barring the application of the fee waiver to non-member competing market makers retroactively to March 1, 2007. Hence, as of March 1, 2007, non-member competing market makers are eligible for this fee waiver.

member competing market makers;<sup>12</sup> (vi) adoption of transaction charges for specialists and registered traders of \$0.03 per 100 shares per trade for all ETFs; and (vii) adoption of a monthly specialist fee cap of \$400,000.

The other provisions of the current ETF Fee Schedule including the “Order Cancellation Fee,” “Clearing Charges for Orders Routed to Another Market Center,” and “Pass-Through Charges to Orders Routed to Another Market Center Through the NMS Linkage Plan” will remain the same.

#### Nasdaq UTP Equity Fee Schedule

The separate Nasdaq UTP Equity Fee Schedule was eliminated with the adoption of the new Equity Fee Schedule since all securities traded on the Exchange based on unlisted trading privileges (including Nasdaq UTP securities) were covered under the Tier One pricing provisions of the new Equity Fee Schedule. The Exchange is now proposing to revert back to the Nasdaq UTP Equity Fee Schedule in place prior to January 2, 2007. Specifically, the Exchange proposes to: (i) adopt a transaction charge for specialists of \$0.10 per 100 shares; however, the Exchange will waive this transaction charge to those specialists that do not charge commissions to customers in Nasdaq UTP securities; (ii) adopt a transaction charge for member and non-member customers of \$0.15 per 100 shares; (iii) adopt a five percent discount on the total amount of customer transaction charges; (iv) adopt a transaction charge for member and non-member competing market makers of \$0.15 per 100 shares; (v) adopt a transaction charge for Amex Equity Traders of \$0.15 per 100 shares; and (vi) adopt a \$50 cap on the fee charged for each side of a cross transaction.

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<sup>12</sup> This fee was subsequently eliminated by SR-Amex-2007-28.

The Exchange will impose these transaction charges on its members and member organizations effective February 22, 2007.

2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act<sup>13</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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2) thereunder<sup>15</sup> 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 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.

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<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 19b-4(f)(2).

#### 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-2007-23 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-2007-23. 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 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-2007-23 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.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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