

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56330; File No. SR-Amex-2007-92)

August 28, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Payment for Order Flow Plan to Apply the Current Marketing Fee to Orders Sent to Directed Order Participants

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 August 20, 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 Amex under 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. 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 amend its Payment for Order Flow Plan to apply the current marketing fee to orders sent to Directed Order Participants.⁵ The text of the proposed rule

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 The Exchange’s Directed Order Program (the “Program”) was recently approved by the Commission. See Securities Exchange Act Release No. 56269 (August 15, 2007), 72 FR 47086 (August 22, 2007) (Notice of Filing and Order Granting Accelerated Approval of SR-Amex 2007-75). A Directed Order Participant, as defined in proposed Rule 996-ANTE is any specialist, Registered Options Trader (“ROT”), Supplemental Registered Options Trader (“SROT”), and Remote Registered Options Trader (“RROT”) that enters into

change is available at the Exchange, the Commission’s Public Reference Room, and www.amex.com.

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

The Exchange proposes to amend the current fee schedule to apply the marketing fee charged to equity options (the “Payment for Order Flow Plan”) to orders sent to Directed Order Participants.⁶

arrangements with an Order Flow Provider, whereby they could receive directed orders upon meeting certain eligibility requirements.

⁶ Under the current plan, the Exchange charges an equity options marketing fee of \$0.75, \$0.35, or \$0.40 per contract solely to customer orders that are from payment accepting firms with whom a specialist or SROT has negotiated a payment for order flow arrangement. SPDR Options are currently subject to a \$1.00 or \$.40 per contract fee. The \$0.75 and \$0.35 fee solely applies to those orders that are executed electronically through the Exchange’s ANTE system, while the \$0.40 fee applies to those series of equity options, exchange traded fund share options (including SPY options), Trust Issued Receipt Options, NDX, and RUT options that are manually executed customer orders of 1,000 contracts or greater.

A Directed Order Participant may choose to opt in or opt out of the Payment for Order Flow Plan.⁷ If the Directed Order Participant chooses to opt into the Payment for Order Flow Plan, the Exchange will collect the applicable marketing fee per contract from the participating specialists, ROTs, RROTs, and SROTs, for all electronic customer orders directed to that Directed Order Participant. The pool of funds collected would be used to fund Payment for Order Flow arrangements with payment accepting firms.

A Directed Order Participant who chooses to opt into the Payment for Order Flow Plan must notify the Exchange of the election to participate in the Payment for Order Flow Plan no later than two business days prior to the date on which the marketing fee would be assessed. Directed Order Participants may only opt into or out of the Exchange's Payment for Order Flow Plan one time in any given month. If at any time during a month a Directed Order Participant opts into the Payment for Order Flow Plan, the marketing fee would be assessed for that remaining portion of the month commencing on the third business day following notice to the Exchange.

Directed Order Participants who enter into a Payment for Order Flow arrangement with an Order Flow Provider will be given instructions as to how to submit their payment directions. The Exchange will not be involved in negotiating the terms governing the orders that qualify for payment or the amount of any payment. The Exchange will, however, pay the requested amount to the Order Flow Provider on behalf of the Directed Order Participant. The requested amount is limited to the amount billed and collected for that month, plus any excess funds that were carried over from previous months (funds collected but not requested by a Directed Order Participant).

⁷ Once a Directed Order Participant opts into the Payment for Order Flow Plan, no notice to the Exchange is required in a subsequent month unless there is a change in the participation status.

The Exchange will further provide administrative support for the program in such matters as maintaining the funds, keeping track of the number of qualified orders each Directed Order Participant directs to the Exchange, and making payments to the Order Flow Providers on behalf of, and at the direction of, the Directed Order Participants.

Separate pools of funds will be available to each Directed Order Participant solely for those trades where the marketing fee was assessed, at the post it was collected. This pool of funds will be used by each Directed Order Participant to attract customer orders to the Exchange from Order Flow Providers.⁸ The Exchange notes that Directed Order Participants are limited to spending any funds collected from SROTs only in those options classes in which the SROT is able to trade. Directed Order Participants participating in the Exchange's current Payment for Order Flow Plan will be rebated any unused funds at the end of a quarter on a pro rata basis.⁹

Finally, the Exchange proposes to amend Footnote 11 in the Options Fee Schedule, to clarify that that the \$.40 options marketing fee, which only applies to manually executed orders, shall not be applicable to Directed Orders, since they are solely electronically executed orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and Section 6(b)(4) of the Act¹¹ in particular, in that it is designed to provide for an equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

⁸ The Exchange notes that if a specialist acts as a Directed Order recipient and specialist, there shall be two separate pools of funds collected for each.

⁹ Specialists, SROTs, RROTs, or ROTs participating in the Exchange's current marketing fee program are rebated any unused funds at the end of a quarter on a pro rata basis.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

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 Act¹² and Rule 19b-4(f)(2)¹³ 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.

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 Number SR-Amex-2007-92 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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-2007-92. 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 the Exchange. 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-2007-92 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.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).