

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57532; File No. SR-Amex-2008-21)

March 19, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate the Nasdaq UTP Equity Fee Schedule

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 March 10, 2008, 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. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member, pursuant to 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 eliminate the Nasdaq UTP Equity Fee Schedule. The text of the proposed rule change is available at the Exchange’s principal office, on the Exchange’s Web site at <http://www.amex.com>, 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

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).

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 proposes to eliminate the Nasdaq UTP Equity Fee Schedule for transactions in connection with the Exchange's Nasdaq UTP Program. As a replacement for the Nasdaq UTP Equity Fee Schedule, the Exchange proposes to charge members for transactions in Nasdaq UTP securities pursuant to the Exchange's existing Equity Fee Schedule.

Currently, transaction fees for Nasdaq UTP securities are differentiated between specialist trades (\$0.10 per 100 shares), member competing market maker trades (\$0.15 per 100 shares), non-member competing market maker trades (\$0.15 per 100 shares), Amex equity traders (\$0.15 per 100 shares), non-member customer trades (\$0.15 per 100 shares) and member customer trades (\$0.15 per 100 shares).⁵ In addition, the Exchange waives specialist transaction charges for those specialists that do not charge a commission to customers. With respect to crosses, there is a maximum charge of \$50 per side per trade. The Exchange does not charge for Nasdaq UTP securities transactions executed at a price of less than \$1.00 per share.

This proposal would eliminate the separate Nasdaq UTP Equity Fee Schedule and instead charge members for Nasdaq UTP transactions pursuant to the existing Equity Fee Schedule. As a result, transaction charges for customers would be based on the number of shares executed per month. The current rate is \$0.0030 for shares executed in a month of up to 50 million and

⁵ These fees are charged only to Exchange members.

\$0.0025 for shares executed in a month over 50 million. A transaction charge is assessed only on the first 5,000 shares of any transaction. In addition, transactions resulting from orders entered electronically into the Amex Order File from off the floor (“System Orders”) for up to 500 shares are not assessed a transaction charge. The fee for shares that execute with a price below \$1.00 per share is 0.3% of the total dollar value of the transaction.

Specialist charges under the Equity Fee Schedule are \$0.0003 per share side or \$0.03 per 100 shares. Nasdaq UTP securities would also be subject to the equities order cancellation fee which provides that the executing clearing member is charged \$0.25 for every additional 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 cancelled for that mnemonic is more than 50 times the equities and ETF orders executed through Amex systems for that mnemonic in that same month. Cancellations resulting from “Immediate or Cancel” or “Fill or Kill” orders and cancellations entered to cancel at the opening orders not executed at the opening are not 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.

Clearing charges for orders routed to and executed on another exchange or market center are assessed at a monthly rate of \$0.0004 per share (\$0.04 per 100 shares). In addition, the Equity Fee Schedule also charges members for orders routed to and executed on another exchange or market center at the monthly rate of \$.0030 per share (\$0.30 per 100 shares). This routing charge for shares that execute with a share price below \$1.00 is 0.3% of the total dollar value of the transaction.

The elimination of the Nasdaq UTP Equity Fee Schedule would be effective immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members through the elimination of a separate fee schedule applicable to the Exchange's Nasdaq UTP Program. Members engaging in transactions in Nasdaq UTP securities would be subject to the Exchange's Equity Fee Schedule.

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

Because the foregoing rule change is establishing or changing a due, fee, or other charge applicable only to a member, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder.⁹ At any time within 60 days of the filing of such

⁶ 15 U.S.C. 78f(b)

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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-2008-21 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-2008-21. 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 a.m. and 3:00 p.m. 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-2008-21 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).