

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57540; File No. SR-Amex-2008-23)

March 20, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Designated Amex Remote Traders to Amex's Revenue Sharing Program

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 March 13, 2008, the American Stock Exchange LLC ("Exchange" or "Amex") 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 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 add Designated Amex Remote Traders ("DARTs") to Amex's existing revenue sharing program for ETF specialists and registered traders and to make related changes to its Exchange Traded Funds and Trust Issued Receipts Fee Schedule. The text of the proposed rule change is available on the Exchange's Web site at <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

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

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

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

On June 28, 2007, the Exchange: (i) amended its Exchange Traded Funds and Trust Issued Receipts Fee Schedule to eliminate charges for ETF transactions by ETF specialists and registered traders (collectively, "ETF market makers"); and (ii) implemented a revenue sharing program whereby the Exchange would make certain payments, on a per-share executed basis out of general Exchange revenues, to ETF market makers which either buy or sell ETFs on the Exchange and provide liquidity in such transactions (e.g., the specialist's quote is traded against or the specialist offsets an order imbalance as part of an opening or closing transaction).<sup>3</sup> The Exchange enacted the revenue sharing program to provide incentives to the ETF market makers to quote aggressively in Amex-traded ETFs.

On January 31, 2008, the Commission approved the Exchange's DARTs program, which established DARTs as a third category of ETF market maker. Like ETF specialists and registered traders, DARTs provide liquidity to the Exchange in the ETFs in which they are assigned.<sup>4</sup>

Because DARTs operate similarly to ETF specialists and registered traders—in that they will also exclusively be quoting in their assigned ETFs—the Exchange proposes to fold DARTs

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<sup>3</sup> See Securities Exchange Act Release No. 55983 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68) ("RSP Filing").

<sup>4</sup> See Securities Exchange Act Release No. 57241 (January 31, 2008), 73 FR 7335 (February 7, 2008) (SR-Amex-2007-138).

into the existing revenue sharing program described above to provide DARTs similar incentives to provide liquidity on the Exchange. Amex proposes that a DART will receive a revenue sharing payment of \$0.0015 per share (or 15 cents per 100 shares) whenever the DART either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction, which places the DART rate between the specialist rate of \$0.0020 per share and the registered trader rate of \$0.0010 per share.<sup>5</sup> Further, like specialists and registered traders, a DART:

- will not be assessed any transaction fees for “taking” liquidity;<sup>6</sup>
- will not receive revenue sharing payments when another ETF market maker is a contra-party to the same transaction (i.e., a specialist buying shares from a DART);
- will receive revenue sharing payments on transactions in securities trading at less than \$1.00, but only on the portion of a transaction for which the Exchange collects revenue;
- will receive revenue sharing payments based only on the first 43,478 shares it executes in any particular transaction, given that customer transaction charges are capped at \$100 per transaction (which means the transaction charge of \$0.0023 per share is assessed on only the first 43,478 shares executed by a customer).

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<sup>5</sup> Revenue sharing payments for DARTs are set at a higher rate than for registered traders to compensate for the fact that DARTs, unlike registered traders, will not participate in any post-trade allocations in connection with auction trades under Rule 128B—AEMI(b). See e-mail from Daniel Mollin, Associate General Counsel, Amex, to Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, dated March 19, 2008.

<sup>6</sup> In the proposed rule change, the Exchange amended its Exchange Traded Funds and Trust Issued Receipts Fee Schedule to exclude DARTs from the customer transaction charges for transactions in ETFs. Specialists and registered traders were previously excluded from this fee pursuant to the terms of the revenue sharing program. See RSP Filing, supra note 3.

The revisions to the ETF Fee Schedule and the addition of DARTs to the revenue sharing program for ETF specialists and registered traders were implemented March 17, 2008, the date that DARTs were scheduled to commence trading on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> 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 is proposing to adopt for the DARTs, a new class of quoting participants in the Amex ETF marketplace, a fee structure and revenue sharing program similar to the one already in place for ETF specialists and registered traders, which are similarly-situated quoting participants.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that 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 proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder.<sup>10</sup> At any time within 60 days

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<sup>7</sup> 15 U.S.C. 78f(b)

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 19b-4(f)(2).

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.

#### 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-2008-23 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-2008-23. 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, 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 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-2008-23 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 Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).