

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57902; File No. SR-Amex-2008-45)

June 2, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange-Traded Note Transaction Fees

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 May 23, 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 apply the Exchange-Traded Fund and Trust-Issued Receipts Fee Schedule (“ETF Fee Schedule”) to transactions in exchange-traded notes (“ETNs”).

The text of the proposed rule change is available on Amex’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 proposed rule change. The text of these statements may be examined at the places specified in

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

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

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 apply the ETF Fee Schedule to transactions in ETNs beginning June 1, 2008.

ETNs are securities listed under Sections 107D (Index-Linked Securities), 107E (Commodity-Linked Securities), 107F (Currency-Linked Securities), 107G (Fixed Income-Linked Securities), 107H (Futures-Linked Securities), or 107I (Combination-Linked Securities) of the Amex Company Guide that offer redemption at least weekly to holders of such securities. In February 2008, the Commission approved an Exchange proposal to permit ETNs to be subject to the AEMI trading rules specific to exchange-traded funds ("ETFs").<sup>3</sup> Currently, ETNs are subject to the transaction charges for equities traded on the Exchange. The instant proposal would provide that ETNs be subject to the identical fees that currently apply to ETFs traded on the Exchange.

Currently, ETF transaction charges differ from equity transaction charges relating to customer accounts<sup>4</sup> and are \$0.0023 per share (or \$0.23 per 100 shares), subject to a \$100 per transaction cap, resulting in transaction charges being assessed only on the first 43,478 shares.

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<sup>3</sup> See Securities Exchange Act Release No. 57400 (February 29, 2008), 73 FR 12234 (March 6, 2008) (SR-Amex-2007-109).

<sup>4</sup> Customer accounts are defined for purposes of the fee schedule to include accounts for all market participants except specialists, Registered Traders, and Designated Amex Remote Traders (DARTs). Therefore, customer accounts (and the fees charged to them) include members' off-floor proprietary accounts, competing market makers on other exchanges, and other member and non-member broker-dealers.

ETF and equity transaction charges both include: (i) a \$0.0004 per share (or \$0.04 per 100 shares) clearing charge for orders routed to and executed at another market center; (ii) a \$0.0030 per share (or \$0.30 per 100 shares) charge for orders routed to and executed at another market; and (iii) 0.3% of the total dollar value for transactions in a security with a share price of less than \$1.00 (for ETFs the per transaction maximum fee of \$100 applies). Transactions in both ETFs and equities also are subject to an order cancellation fee.<sup>5</sup>

Consistent with the Exchange's current ETF revenue sharing program, the Exchange proposes to distribute revenue to the specialists, Registered Traders, and DARTs as outlined below. This is identical to the revenue sharing program that exists in connection with ETFs.

ETN specialists may receive an aggregate revenue sharing program payment (calculated monthly) of as much as \$0.0024 per share (or \$0.24 per 100 shares) whenever the specialist either buys or sells its specialty ETN on the Exchange and is a provider of liquidity in that transaction (e.g., whose quote is traded against or who offsets an order imbalance as part of an opening or closing transaction). The revenue sharing program payment is comprised of \$0.0004 per share (or \$0.04 per 100 shares) for all shares executed on the Exchange in its specialty ETN

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<sup>5</sup> The ETF and equity order cancellation fee 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 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. The Equities Order Cancellation Fee and ETF Order Cancellation Fee set forth in the Equity Fee Schedule and ETF Fee Schedule, respectively, would be revised under this proposal to clarify that ETN orders be included as part of the calculation to determine whether the order cancellation fee applies to a particular executing clearing member.

(irrespective of whether the specialist is the provider of liquidity), plus another \$0.0020 (or \$0.20 per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the revenue sharing program payment is limited to \$0.0004 per share executed on the Exchange in its specialty ETN.<sup>6</sup>

A Registered Trader in ETNs will receive a revenue sharing payment of \$0.0010 per share (or \$0.10 per 100 shares) whenever the Registered Trader either buys or sells an ETN on the Exchange and is a provider of liquidity in that transaction. A DART in ETNs will receive a revenue sharing payment of \$0.0015 per share (or \$0.15 per 100 shares) whenever the DART either buys or sells an ETN on the Exchange and is a provider of liquidity in that transaction.<sup>7</sup> Neither the specialist, Registered Trader, nor DART will receive a payment when it is a contra-party to the same transaction. It should be noted that revenue sharing will also be paid on transactions in securities trading at less than \$1.00 equal to the amount collected by the Exchange. However, the revenue sharing payment will be paid only on the portion of a transaction for which the Exchange collects revenue.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and

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<sup>6</sup> See e-mail from Jeffrey Burns, Vice President and Associate General Counsel, Amex, to Nathan Saunders, Special Counsel, and Linda Jeng-Braun, Attorney, Division of Trading and Markets, Commission, dated May 29, 2008.

<sup>7</sup> DARTs were recently added to the revenue sharing program for ETFs. See Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR-Amex-2008-23).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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 application of existing ETF transaction charges to ETNs.

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>10</sup> and Rule 19b-4(f)(2) thereunder.<sup>11</sup> 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.

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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2008-45 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-45. 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 Commissions 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 No. SR-Amex-2008-45 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>12</sup>

Florence E. Harmon  
Acting Secretary

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