

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57952; File No. SR-Amex-2008-44)

June 11, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Modifying the Provisions Governing Contacts Between Specialists and Issuers

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 20, 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 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 Amex Rule 27 to (i) modify the provisions governing contacts between specialists and issuers or, in the case of exchange traded funds (“ETFs”) and structured products, sponsors, and (ii) clarify other procedures applicable to the allocation of securities to specialists.

The text of the proposed rule change is available on the Amex’s Web site at <http://www.amex.com>, the Amex’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Amex Rule 27 in order to better reflect the different treatment that is afforded ETFs and structured products in connection with the allocation of securities to specialists. This is reflected in the fact that ETFs and structured products are typically allocated to a specialist within a few days after approval of the issuer's application for listing on the Exchange. However, in the case of other equity securities, the allocation process may take a longer period of time so that allocation to a specialist may not occur within a few days of approval of the issuer's listing application.

Amex Rule 27 sets forth the procedures and policies pursuant to which the Allocations Committee allocates securities listing on the Exchange to specialists. In particular, paragraph (e) describes the Exchange's "issuer choice" program under which issuers or, in the case of an ETF or structured product, sponsors, select their specialists from a list of the most qualified specialists prepared by the Allocations Committee and is designed to be read in conjunction with Commentaries .02 and .03 thereto.

Commentaries .02 and .03 contain guidelines for communications between specialists and issuers or, in the case of ETFs and structured products, sponsors that have not yet listed a security on the Exchange, have applied to list a security on the Exchange and/or have a security that has been approved for listing on the Exchange.<sup>3</sup>

(i) Commentary .02

Commentary .02 prohibits equity specialists and other members from making direct or indirect contact with an issuer that has requested a listing qualification review<sup>4</sup> for the purpose of influencing the issuer's choice of a specialist. In addition, any communication between equity specialists and issuers is prohibited once an issuer has been approved for listing and the Allocations Committee has prepared the list of qualified specialists. The exception to such prohibition is Exchange-arranged interviews between an issuer approved for listing and any specialist(s) the issuer requests to interview.

The interviews are closely monitored by the Exchange and the Exchange will take appropriate action in the event an inappropriate communication is deemed by the Exchange to have occurred during the interview. The Exchange proposes to clarify that such appropriate action may include the disqualification of a specialist for the allocation. The proposed rule change will also make Commentary .02 more consistent with Commentary .03, which currently permits the Exchange to disqualify ETF and structured product specialists deemed to have made inappropriate representations.

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<sup>3</sup> See Securities Exchange Act Release Nos. 44972 (October 23, 2001), 66 FR 55031 (October 31, 2001) (SR-Amex-2001-19); and 45260 (January 9, 2002), 67 FR 2255 (January 16, 2002) (SR-Amex-2001-19).

<sup>4</sup> The listing qualification review is the process whereby an issuer undergoes review by the Exchange's Listing Qualifications Department. The listing qualification review will commence once the listing application is submitted to the Exchange.

The Exchange also proposes adding a provision to Commentary .02 addressing post-interview communications between specialists and issuers approved for listing on the Exchange. The proposed rule change would prohibit post-interview contacts between specialists and issuers and provide a means for issuers to obtain further information from the specialists through the Exchange's Equity Sales Group.

Finally, the Exchange proposes to simplify the description of the procedures set forth in Commentary .02 by adding defined terms and moving the provision concerning an issuer's ability to request specialists to be placed on the list of qualified specialists to paragraph (e)(i) of Rule 27. The Exchange believes that such changes will simplify Commentary .02 and avoid potential confusion for specialists and/or issuers engaged in the Amex listing process.

(ii) Commentary .03

Current Commentary .03, unlike Commentary .02, applies to ETFs and structured products and contains provisions governing contacts between specialists and other members and sponsors and issuers prior to such sponsor or issuer deciding to list a security on the Exchange. Pursuant to the current Commentary .03, specialists and other members must notify the Exchange in writing before any planned contact with a potential sponsor or issuer for the purpose of listing the ETFs or structured products of such sponsor or issuer on the Exchange, or within five (5) business days of unanticipated contact where discussions regarding the listing occur. Exchange approval of planned contact is required and the Exchange will grant such approval where it appears that the

contact will assist rather than impede the Exchange's effort to list the new ETF or structured product.<sup>5</sup>

The Exchange does not believe that the communication restrictions set forth in Commentary .03 are necessary, in that it is unlikely that such contact would impede the Exchange's effort to list an issuer. As a result, the Exchange proposes to delete such restrictions. The Commission previously approved a rule change to Commentary .02 removing similar restrictions on equity specialists.<sup>6</sup>

ETF and structured product specialists are also currently required to promptly report to the Exchange any representations or commitments that they, or an individual acting on their behalf, have made to an employee of, or any individual acting on behalf of, an issuer or sponsor. The Exchange proposes to amend Commentary .03 to require specialists to only disclose in their applications to be allocated an ETF or structured product representations or commitments that relate to the prospective listing of the ETF or structured product and that are made within the six (6) months preceding the date allocation applications are solicited with respect to that ETF or structured product. The Exchange further proposes, in the event an ETF or structured product is not allocated within five (5) days of the allocation application, to require specialists and other members to update their applications accordingly to report all representations or commitments since last reported to the Exchange.

While the disclosure requirement is intended to ensure the integrity of the allocation process, the Exchange believes that if it is interpreted too broadly, it could

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<sup>5</sup> See supra note 3.

<sup>6</sup> See Securities Exchange Act Release Nos. 47914 (May 23, 2003), 68 FR 32782 (June 2, 2003) (SR-Amex-2002-112); and 48132 (July 7, 2003), 68 FR 41665 (July 14, 2003) (SR-Amex-2002-112).

impair such process by requiring specialists to disclose every representation or commitment that they, or an individual acting on their behalf, have ever made to an employee of, or any individual acting on behalf of, an issuer or sponsor. By narrowing the time frame of the disclosure requirement to six (6) months prior to listing, the Exchange believes that specialists will be able to provide more detailed disclosures of any representations and/or commitments they have made with regard to a particular listing, thereby enabling the Exchange to better monitor the appropriateness of such representations and/or commitments.

Commentary .03 also includes procedures related to the interview process. The Exchange proposes to clarify that such procedures apply to issuers and sponsors whose securities have been approved for listing on the Exchange in accordance with Rule 27(e)(i).

(iii) Other Changes

Finally, the Exchange proposes to make technical revisions to paragraphs (c) and (e)(i) of Rule 27 in order to consistently use the term “issuer” as opposed to “company”, clarify the applicability of the provisions to equity, ETF and structured product listings<sup>7</sup> and, in general, to simplify the reading of the text.

The Exchange believes that the proposed rule change will enhance the clarity of and provide additional transparency to the Amex’s allocation policy and procedures. Such additional clarity and transparency to the provisions governing specialist-issuer communications will facilitate uniform application and ease administration of Rule 27.

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<sup>7</sup> See supra note 3.

## 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)(5) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 Number SR-Amex-2008-44 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-2008-44. 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, 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 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-2008-44 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.<sup>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).