

of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person. Applicant states that to the extent that the In-Kind Tender Offers would constitute the purchase or sale of securities by an Affiliated Shareholder, the transactions would be prohibited by section 17(a). Accordingly, applicant requests an exemption from section 17(a) of the Act to the extent necessary to permit the participation of Affiliated Shareholders in the In-Kind Repurchase Offers.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions, from any provision of the Act or rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant asserts that the terms of the In-Kind Tender Offers meet the requirements of sections 17(b) and 6(c) of the Act. Applicant asserts that neither the Fund nor an Affiliated Shareholder has any choice as to the portfolio securities to be received as proceeds from the In-Kind Tender Offers. Instead, shareholders will receive their *pro rata* portion of each of the Fund's portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 ("Securities Act"); (b) securities issued by entities in countries that restrict or prohibit the holdings of securities by non-residents other than through qualified investment vehicles, or whose distribution would otherwise be contrary to applicable local laws, rules or regulations; and (c) certain portfolio assets (such as forward currency exchange contracts and repurchase agreements) that although they may be liquid and marketable, include the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction in order to effect a change in beneficial

ownership. Moreover, applicant states that the portfolio securities to be distributed in the In-Kind Tender Offer will be valued according to an objective, verifiable standard, and the In-Kind Tender Offers are consistent with the investment policies of the Fund. Applicant also believes that the In-Kind Tender Offers are consistent with the general purposes of the Act because the interests of all shareholders are equally protected and no Affiliated Shareholder would receive an advantage or special benefit not available to any other shareholder participating in the In-Kind Tender Offers.

#### Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Applicant will distribute to shareholders participating in the In-Kind Tender Offers an in-kind *pro rata* distribution of portfolio securities of applicant. The *pro rata* distribution will not include: (a) Securities that, if distributed, would be required to be registered under the Securities Act; (b) securities issued by entities in countries that restrict or prohibit the holdings of securities by non-residents other than through qualified investment vehicles, or whose distribution would otherwise be contrary to applicable local laws, rules or regulations; and (c) certain portfolio assets (such as forward currency exchange contracts and repurchase agreements) that although they may be liquid and marketable, include the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for any portion of applicant's assets represented by cash and cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, applicant may pay cash for fractional shares and/or odd lots of securities and/or amounts attributable to any cash positions (including short-term non-equity securities); distribute odd lots and any cash position to shareholders; or round off (up or down) fractional shares so as to eliminate them prior to distribution. Applicant may also distribute a higher *pro rata* percentage of other portfolio securities to represent such items.

2. The securities distributed to stockholders pursuant to the In-Kind Tender Offers will be limited to

securities that are traded on a public securities market or for which quoted bid and asked prices are available.

3. The securities distributed to stockholders pursuant to the In-Kind Tender Offers will be valued in the same manner as they would be valued for purposes of computing applicant's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on a public securities market, or, if the securities are not listed on an exchange or a public securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

4. Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any In-Kind Tender Offer occurs, the first two years in an easily accessible place, a written record of such In-Kind Repurchase Offer, that includes the identity of each shareholder of record that participated in such In-Kind Repurchase Offer, whether that shareholder was an Affiliated Shareholder, a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,  
Secretary.

[FR Doc. E6-21166 Filed 12-12-06; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54885; File No. SR-Amex-2006-105]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Relating to Fees for the Routing of Orders to Other Market Centers Through a Private Linkage

December 6, 2006.

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 November 30, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with

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

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

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 imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 revise the equities and Exchange Traded Fund Shares (“ETFs”) Fee Schedules to provide for various fees related to the routing of orders to other market centers through a private linkage.

The text of the proposed rule change is available on the Exchange’s Web site (<http://www.amex.com>), at the Exchange’s Office of the Secretary, 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 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 establish fees for the routing of orders between market centers using its “private linkage.” Private linkages are broker-dealer members of other market centers trading Amex-listed equities and ETFs through which Amex will route orders to access protected quotes (*i.e.*, quotes being disseminated by an “automated

trading center”<sup>5</sup>) when those quotes are better than those available at Amex. Use of a private linkage will begin with the implementation of the Exchange’s new hybrid market trading platform (known as “AEMI”). The AEMI trading platform will become operative prior to the final date set by the Commission for full operation of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS (the date known as the “Trading Phase Date”). The Exchange has adopted rules for the use of AEMI prior to the Regulation NMS Trading Phase Date<sup>6</sup> and has obtained exemptive relief<sup>7</sup> from its obligation to use the ITS electronic communications network to route orders to other markets and use the private linkage instead. Amex will incur charges for routing orders to other market centers through the private linkage and proposes to pass some of those charges on to its members. The charges to be passed on include clearing and market access charges.

Amex has entered into a contract with a broker-dealer and a clearing firm to route orders to other market centers and to clear the resulting executions. The contract provides that clearing charges will be assessed monthly based on the average size of the order routed to the other market centers. The average size of the order ticket routed to the other market centers is based on the total volume of shares routed on behalf of Amex each trading day divided by the number of order tickets routed that resulted in an execution. For example, if 100 order tickets representing 100,000 shares are routed on behalf of Amex on a given day resulting in 80 executions, the clearing fee charged per share, as set forth on the following chart, would be \$0.0005 (100,000 ÷ 80 = 1,250, the average order ticket size) resulting in a total clearing fee of \$50 incurred by Amex for that trading day:

Average size of outbound order tickets	Clearing price per share
>= 0–150 .....	\$0.001
>= 150 and < 300 .....	0.0008
>= 300 and < 500 .....	0.0007
>= 500 and < 750 .....	0.0006
>= 750 and < 1500 .....	0.0005
>= 1500 and < 2500 .....	0.0004

<sup>5</sup> The terms “automated trading center” and “protected quotation” are defined in Rule 600(b) of Regulation NMS, 17 CFR 242.600(b).

<sup>6</sup> See Securities Exchange Act Release No. 54709 (November 3, 2006), 71 FR 65847 (November 9, 2006) (order approving SR-Amex 2006-72).

<sup>7</sup> See Letter to Claire P. McGrath, Senior Vice President and General Counsel, Amex, from David S. Shillman, Associate Director, Division of Market Regulation, Commission, dated November 3, 2006.

Average size of outbound order tickets	Clearing price per share
>= 2500 and < 6000 .....	0.0003
>= 6000 .....	0.000275

The clearing charge of \$50 would be divided among the orders executed that trading day based upon the number of shares executed. Thus, for example, on that trading day a member submitted two orders—one order for 100 shares and one order for 1,000 shares. Both orders were executed in full through the private linkage. The clearing charges assessed to the member for the 100 share order would be \$0.05 (100 × \$0.0005) and the clearing charge assessed to the member for the 1,000 share order would be \$0.50 (1,000 × \$0.0005). Amex would accumulate the daily clearing charges and bill members monthly the daily accumulated charges.

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 issuers and other persons using its facilities. Specifically, the Exchange is proposing to pass through clearing charges it has incurred for orders routed to other market centers through the Exchange’s private linkage.

*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**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and paragraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> because it establishes or

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

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

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

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

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

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

changes a due, fee, or other charge imposed by the Exchange. 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-105 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-Amex-2006-105. 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. 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-2006-105 and should be submitted on or before January 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E6-21161 Filed 12-12-06; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54882; File No. SR-Amex-2006-80]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change To Amend Rule 777 Regarding Depository Eligibility

December 6, 2006.

#### I. Introduction

On August 21, 2006, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-Amex-2006-80 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on September 21, 2006.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change as amended.

#### II. Description

In general, Amex is amending its depository eligibility requirement. The rule change: (i) Deletes a reference to a distinction between domestic and foreign issuers; (ii) deletes an exception for securities whose terms cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories; and (iii) deletes additional requirements imposed by the rule that are no longer necessary.

Previously, before an issue of securities could be listed, Rule 777(a) required only a domestic issuer to represent to Amex that a CUSIP number identifying the securities had been included in the file of eligible issues maintained by a securities depository registered with the Commission as a clearing agency under section 17A of the Act.<sup>3</sup> The same requirement did not

apply to foreign issuers. However, exclusion of foreign issuers is no longer necessary because they have the capacity to comply with Rule 777 and have been doing so voluntarily for years.

Amex's rule change also deletes the exception in Rule 777(a) for securities whose terms cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories. The exception was originally included in Rule 777(a) because, among other things, various states and countries precluded the book-entry issuance of securities. Following implementation of Rule 777(a), however, most, if not all, states have amended their corporate statutes to allow for book-entry issuance, and as a result the exception is no longer needed to accommodate such issuers.

Furthermore, Amex's rule change deletes a provision that prevented new issues distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate from becoming depository eligible because such a system has become available. Prior to the availability of such a system, a managing underwriter could delay the date a security was deemed depository eligible for up to three months after commencement of trading on Amex. Since the approval of Rule 777, The Depository Trust Company ("DTC")<sup>4</sup> implemented its Initial Public Offering Tracking System<sup>5</sup> that enables lead managers and syndicate members of equity underwritings to monitor repurchases of distributed shares in an automated book-entry environment. Since DTC has the capability to monitor repurchases of distributed shares, the requirements listed in Rule 777(b) are no longer necessary, and Amex has deleted Rule 777(b) in its entirety.

Finally, Amex has cross-referenced rules 776 and 777 in Part 1 of the Amex Company Guide to clarify that Rules 776 and 777 are initial and continued listing standards applicable to companies listed on Amex.

#### III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

<sup>4</sup> DTC is a securities depository registered with the Commission under sections 17A and 19 of the Act as a clearing agency.

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

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

<sup>2</sup> Securities Exchange Act Release No. 54442 (September 14, 2006), 71 FR 55229.

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>5</sup> Securities Exchange Act Release No. 37208 (May 13, 1996), 61 FR 25253 (May 20, 1996) [File No. SR-DTC-95-27].