

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57373; File No. SR-Amex-2008-09)

February 22, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Options Linkage Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 8, 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 Amex. On February 19, 2008, Amex submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to clarify the application of options transaction fees for trades executed through the intermarket options linkage (the “Options Linkage”) on the Exchange. The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and www.amex.com.

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

In its filing with the Commission, Amex 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below. Amex 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 Amex proposes to clarify the application of options transaction fees for trades executed through the Options Linkage on the Exchange. Currently, the Amex Options Fee Schedule (the "Options Fee Schedule") provides that, under the Linkage Fee Pilot Program that is effective through July 31, 2008, the fees applicable to specialists, registered options traders, and market maker apply to members of other options exchanges ("Non-Member Market Makers") executing Linkage transactions except for Satisfaction Orders. As a result, the fees for Principal Orders ("P Orders") and Principal Acting As Agent Orders ("P/A Orders") (collectively, "Linkage Orders") submitted through the Options Linkage are: (i) \$0.10 per contract side options transaction fee for equity options, exchange traded fund share ("ETF") options, QQQQ options and trust issued receipt options; (ii) \$0.21 per contract side options transaction fee for index options (including MNX and NDX options); (iii) \$0.05 per contract side options comparison fee; (iv) \$0.05 per contract side options floor brokerage fee; and (v) an options licensing fee for certain ETF and index option products ranging from \$0.15 per contract side to \$0.05 per contract side depending on the particular ETF or index option.³

However, the Options Fee Schedule also provides that broker-dealer orders that are automatically executed on the Exchange are subject to Broker-Dealer Auto-Ex Fees ("BD Auto-Ex Fee") that include: (i) \$0.50 per contract side options transaction fee for equity options, ETF

³ See Options Fee Schedule section of the Amex Price List available at <http://www.amex.com>. See also Securities Exchange Act Release No. 56102 (July 19, 2007), 72 FR 40908 (July 25, 2007) (SR-Amex-2007-64).

options, QQQQ options and trust issued receipt options; (ii) \$0.05 per contract side options comparison fee; and (iii) \$0.05 per contract side options floor brokerage fee.⁴ Broker-dealer orders that are subject to the BD Auto-Ex Fee include specialist orders, registered options trader orders, Non-Member Market Maker orders, and orders for the account of registered broker-dealers. The Exchange charges this fee to member firms through customary monthly billing. The BD Auto-Ex Fee was implemented prior to the introduction and roll-out of the Options Linkage which commenced on January 31, 2003 in two phases. The entire roll-out of the Options Linkage was completed by July 2003.

The Exchange in this proposal seeks to clarify the Options Fee Schedule to make clear that automatically executed Linkage Orders will be charged the BD Auto Ex Fee that includes: (i) \$0.50 per contract side options transaction fee; (ii) \$0.05 per contract side options comparison fee; and (iii) \$0.05 per contract side options floor brokerage fee. Accordingly, the total transaction fee would be \$0.60 per contract side. In contrast to the initial period of time when the Options Linkage was introduced, most Linkage Orders on the Exchange are automatically executed via the ANTE platform. The Exchange acknowledges that the current Options Fee Schedule does not clearly reflect the fact that for automatically executed Linkage Orders, the BD Auto-Ex Fee would apply. However, a specialist or registered options trader on the Exchange would be subject to the BD Auto-Ex Fee in those circumstances that such specialist or registered options trader submitted an order electronically through order-entry lines, such as CMS and/or FIX, for automatic execution.

⁴ See Securities Exchange Act Release No. 47216 (January 17, 2003), 68 FR 5059 (January 31, 2003) (SR-Amex-2002-114).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act⁵ in general and Section 6(b)(4)⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange submits that the proposal clarifies that automatically executed orders in ANTE, whether Linkage Orders or non-Linkage Orders on the behalf of broker-dealers, are subject to the BD Auto-Ex Fee set forth in the Options Fee Schedule. Accordingly, the Exchange asserts that the proposed clarification relating to Options Linkage Order transaction charges is an equitable allocation of reasonable fees among Exchange members.

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

The Exchange does not believe that the proposed rule change will 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

Written comments were neither solicited nor received.

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 self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

- 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, as amended, 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 No. SR-Amex-2008-09 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-2008-09. 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 a.m. and 3:00 p.m. Copies of such filing also will be

available for inspection and copying at the principal office of 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-2008-09 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.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).