

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56459; File No. SR-Amex-2007-24)

September 18, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto to Retroactively Amend Transaction Charges for Equities, ETFs, and Nasdaq UTP Securities

I. Introduction

On February 22, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to retroactively apply a revised fee schedule to transactions in equities, exchange-traded funds (“ETFs”), and Nasdaq UTP securities from January 2, 2007 through February 21, 2007. On August 10, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on August 17, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Effective January 2, 2007, the Exchange adopted new transaction charges for its members and member organizations largely relating to the Exchange’s new hybrid market trading platform (known as AEMI), the upcoming implementation of Regulation NMS, and changes in the competitive landscape for equities, ETFs, and Nasdaq UTP securities (this fee schedule referred

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56238 (August 10, 2006), 72 FR 46253.

to herein as the “January Fee Schedule”).⁴ The Exchange has represented that it had difficulty obtaining the data necessary to calculate an accurate bill pursuant to the January Fee Schedule and providing that data to its clearing firms in a timely manner so the firms could accurately pass those charges on to their customers. For this reason, the Exchange submitted a filing on February 22, 2007, in conjunction with this filing, to eliminate the January Fee Schedule and revert to the schedule for transaction charges in equities, ETFs, and Nasdaq UTP securities in effect prior to January 2, 2007 (referred to herein as the “February Fee Schedule”).⁵ The February Fee Schedule also included a five percent discount for customer orders.⁶ The proposed rule change would make the February Fee Schedule effective retroactively for the period of January 2, 2007 through February 21, 2007.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act⁸ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members. The Exchange has represented that a small number

⁴ See Securities Exchange Act Release No. 55195 (January 30, 2007) 72 FR 5469 (February 6, 2007) (SR-Amex-2006-117).

⁵ See Securities Exchange Act Release No. 55458 (March 13, 2007), 72 FR 13320 (March 21, 2007) (SR-Amex-2007-23).

⁶ “Customers” are defined for purposes of the fee schedule to include all market participants except specialists and registered traders. Therefore, customer accounts include members’ off-floor proprietary accounts and the accounts of competing market makers and other member and non-member broker-dealers.

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(4).

(less than ten) of its clearing members may owe a small amount more in fees based on the February Fee Schedule than they would have owed under the January Fee Schedule, and that the Exchange will credit their accounts in the amount of the additional sum owed. Thus, the retroactive application of the February Fee Schedule will not result in an increase in the transaction fees owed on these past transactions.⁹ Therefore, the Commission believes the fee change to be equitable and thus consistent with Section 6(b)(4) of the Act.¹⁰

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-Amex-2007-24), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

⁹ Transaction fees are generally an important factor that a market participant considers when routing its orders. If a market participant had known that a higher transaction fee would apply, it might have made different decisions about where to route.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).