

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56805; File No. SR-Amex-2007-122)

November 16, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Liability for the Actions or Omission of Amex Book Clerks

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 16, 2007, 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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 adopt new Rule 996—ANTE providing for the limited liability of the Exchange in connection with the actions of Amex Book Clerks (“ABCs”). The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and <http://amex.com>.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 purpose of the proposed rule change is to permit members, member organizations, and associated persons of member organizations to bring a claim or claims against the Exchange, in limited circumstances, for the actions of an ABC. The Commission, in April 2007, published for public comment in the Federal Register the Exchange's proposal to eliminate the agency obligations of specialists and establish ABCs.<sup>5</sup> In connection with the approval of the ABC proposal, the Exchange submits this filing relating to the liability of the Exchange for the actions of ABCs.

The ABC will be an Exchange employee or independent contractor designated by the Exchange to be responsible for: (i) maintaining and operating the customer limit order book and display book for assigned options classes; and (ii) effecting proper executions of orders placed in the customer order limit book. The ABC will be prohibited from having an affiliation with any member that is approved to act as a specialist, registered options trader ("ROT"), remote registered options trader ("RROT") and supplemental registered options trader ("SROT") on the

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<sup>5</sup> See Securities Exchange Act Release No. 55583 (April 5, 2007), 72 FR 18695 (April 13, 2007) (notice of filing of SR-Amex-2006-107).

Exchange. In addition, ABCs are also responsible for handling Linkage Orders<sup>6</sup> in all appointed options classes. As a result, the ABC will have the means to: (1) utilize an options specialist's account to route P/A Orders and Satisfaction Orders to away markets based on prior instructions that must be provided by the options specialist to the ABC, and (2) handle all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed. The ABC also would have the means to utilize the options specialist's account to fill Satisfaction Orders that result from a trade-through that the Exchange effects.

Article IV, Section 1(e) of the Amex Constitution provides that the Exchange, its affiliates, officers, Governors, committee members, employees or agents shall not be liable to a member, member organization, or a person associated with a member or a member organization for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agent acting within the scope of their authority. However, Article IV, Section 1(e) does permit the Board of Governors of the Exchange to provide, by rule, Exchange liability with respect to Exchange facilities which implement the electronic transmission of

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<sup>6</sup> "Linkage Order" means an immediate or cancel order routed through the Linkage as permitted under the Linkage Plan. There are three types of Linkage Orders: (i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

orders for the purchase or sale of securities traded on the Exchange to the floor of the Exchange or between the floor of the Exchange and other markets. Accordingly, proposed Rule 996— ANTE would permit Exchange liability, in limited circumstances, relating to the actions of ABCs for: (i) maintaining and operating the customer limit order book and display book; and (ii) effecting proper executions of orders placed in the customer order limit book.

Limitation of Liability. The liability of the Exchange for claims arising out of errors or omissions made by ABCs will be limited as follows:

- As to any one or more claims made by a single member on a single trading day, the Exchange shall not be liable in excess of the larger of \$75,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.
- As to the aggregate of all claims made by all members on a single trading day, the Exchange shall not be liable in excess of the larger of \$100,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.
- As to the aggregate of all claims made by all members during a single calendar month, the Exchange shall not be liable in excess of the larger of \$250,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

If all of the claims arising out of errors or omissions by an ABC cannot be fully satisfied because they exceed the applicable maximum amount of liability provided for above, then the maximum amount will be allocated among all such claims arising on a single trading day or

during a single calendar month, as applicable, based upon the proportion that each such claim bears to the sum of all such claims.

Exchange liability will also be limited if a member, member organization or the Exchange fails to close out an uncompered trade as set forth in Rule 960.<sup>7</sup> In such a case, the opposing party's liability with respect to any claims arising from such trade will be limited to the lesser of: (1) the loss which would have been experienced by the claimant if the uncompered trade had been closed out at the opening off trading on the next business day as provided in Rule 960; or (2) the actual loss realized by the claimant.

Furthermore, the Exchange's potential liability is also limited if any damage is caused by an error or omission of an ABC which is the result of any error or omission of a member organization. Under such circumstances, the member organization will be required to indemnify the Exchange and hold it harmless from any claim of liability resulting from or relating to such damage.

Procedure. Absent reasonable justification or excuse, any claim by a member, member organization, or persons associated with a member or member organization for losses arising from errors or omissions of an ABC, and any claim by the Exchange for indemnification under paragraph (g) of Proposed Rule 996—ANTE, must be presented in writing to the opposing party within ten (10) business days following the transaction giving rise to the claim; provided, that if an error or omission has resulted in an unmatched trade, then any claim based thereon shall be

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<sup>7</sup> Commentary .01(b) to Rule 960 provides that all rejected options transaction notices ("ROTNs") must be "OK'd" or "DK'd" not later than one-half hour prior to the opening of trading on the first business day following the trade date unless an agent (including a specialist) was involved in the execution of a transaction, where the time limit shall be extended to fifteen minutes prior to such opening (these time limits may be extended by a Floor Official).

presented after the unmatched trade has been closed out but within ten (10) business days following such resolution of the unmatched trade.

For purposes of proposed Rule 996—ANTE, the term “transaction” means any single order or instruction which is placed with an ABC, or any series of orders or instructions, which is placed with an ABC at substantially the same time by the same member and which relates to any one or more series of options of the same class. All errors and omissions made by an ABC with respect to or arising out of any transaction will give rise to a “single claim” against the Exchange. The Exchange will retain any defenses to such claim or claims that it may have. In addition, no claim will be permitted to arise as to errors or omissions which are found to have resulted from any failure by a member or by any person acting on behalf of a member, to enter or cancel an order with such ABC on a timely basis or clearly and accurately to communicate to such ABC:

- (i) the description or symbol of the security involved; or
- (ii) the exercise price or option contract price; or
- (iii) the type of option; or
- (iv) the number of trading units; or
- (v) the expiration month; or
- (vi) any other information or data which is material to the transaction.

Arbitration. Pursuant to proposed Rule 996—ANTE, all disputed claims will be referred to binding arbitration with the decision of a majority of the arbitrators selected to hear and determine the controversy deemed final. There will be no appeal right to the Board of Governors from any decision of an arbitration panel. The arbitration panel will be composed of an odd number of panelists. Each of the parties to the dispute will select one Exchange member to serve

as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are members of the Exchange and that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official chosen by a random draw who has no direct or indirect financial interest in the claim. The NASD Code of Arbitration Procedure for Industry Disputes (Article VIII of the Amex Constitution) shall apply to any arbitration proceeding.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 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 would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

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

The Exchange believes that the proposed rule change will 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.

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

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

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal is substantially identical to the Chicago Board Options Exchange's ("CBOE") rules regarding limitation of exchange liability for acts and omission of CBOE Par Officials,<sup>13</sup> previously

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> The Exchange has satisfied the requirement under Rule 19b-4(f)(6)(iii) that it give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing.

<sup>13</sup> See CBOE Rules 6.7, "Exchange Liability," and 7.11, "Liability of Exchange for Actions of Order Book Officials, and PAR Officials."



published for comment and approved by the Commission,<sup>14</sup> and the Exchange's proposal raises no new issues of regulatory concern. Waiving the operative delay will allow the proposal to become effective simultaneously with Amex's proposal to establish ABCs, which we are approving separately today.<sup>15</sup> Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.<sup>16</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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2006-67 on the subject line.

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<sup>14</sup> See Securities Exchange Act Release Nos. 52017 (July 12, 2005), 70 FR 41453 (July 19, 2005) (notice of filing of SR-CBOE-2005-46) and 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (order approving SR-CBOE-2005-46).

<sup>15</sup> See Securities Exchange Act Release No. 56804 (November 16, 2007) (order approving SR-Amex-2006-107).

<sup>16</sup> For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper comments:

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

All submissions should refer to File Number SR-Amex-2007-122. 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 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-2007-122 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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