

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57625; File No. SR-Amex-2008-28)

April 4, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates to Specialists for Options Transaction Fees Resulting from Linkage P/A Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² notice is hereby given that on March 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act, ³ and Rule 19b-4(f)(2) thereunder, ⁴ 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

Amex proposes to rebate options transaction fees incurred by specialists in connection with a principal acting as agent order (“P/A Order”)⁵ executed via the Intermarket Option

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A P/A Order as defined in Amex Rule 940(b)(10)(i) means 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. See Section 2(16)(a) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage.

Linkage (“Options Linkage” or “Linkage”). 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, 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 rebate options transaction fees incurred by specialists as a result of the obligation to send customer orders through the Linkage to the away options exchange disseminating the national best bid or offer (“NBBO”).⁶ A P/A Order is used by specialists for this purpose. Currently, a specialist will be charged two separate transaction fees upon completion of a transaction involving a P/A Order. First, the away options exchange will charge the P/A Order a transaction fee upon execution of the order. This fee varies by the particular options exchange. Second, in order to transfer the trade resulting from the P/A Order at the away options exchange into the customer account, the Amex specialist is then required to execute a trade on the Exchange. At this point, the Exchange will charge the applicable options

⁶ The proposed fee rebate of transaction fees incurred by specialists as a result of the obligation to send P/A Orders does not include the rebate of OCC fees and clearing firm fees associated with P/A Orders. See e-mail from the Jeff Burns, Vice President & Associate General Counsel, Amex, to Brian O’Neill, Attorney, and Molly Kim, Special Counsel, Division of Trading and Markets, Commission, on April 1, 2008 (“April 1 E-mail”).

transaction fees set forth in the Amex Options Fee Schedule to the specialist. This proposal seeks to rebate these exchange transaction fees incurred by specialists as a result of the obligations imposed by the Options Linkage.

The current Amex Options Fee Schedule imposes a charge of \$0.20 per contract side on specialist trades in equity options and \$0.31 per contract side on specialist trades for index options. In connection with transferring the P/A Order execution into the customer account, the Amex specialist will incur a charge of \$0.20 or \$0.31 per contract side, depending on whether the option is an equity option or index option. Under this proposal, the Exchange will rebate the transaction charges incurred by the specialist to transfer the P/A Order execution into the customer account.⁷ In addition, on a monthly basis, the Exchange will calculate the amount of the transaction fees incurred by the specialist in connection with his or her obligation to send P/A Orders to away options exchanges. This amount will also be credited to the specialist account for that month's charges.

In order for a specialist to be subject to the fee rebates under this proposal, the Exchange will require that specialists use the "Auto Route" functionality in ANTE for orders up to 1,000

⁷ The proposal to rebate transaction fees incurred by specialists as a result of the obligations imposed by the Options Linkage would also include any specialist subject to the BD Auto-Ex Fee. This could occur if a specialist submitted an order electronically through order-entry lines, such as CMS and/or FIX, for automatic execution, for the purpose of transferring a trade resulting from the P/A Order at the away options exchange into the customer account. The Exchange would then charge to the specialist, the BD Auto-Ex Fee together with the other applicable options transaction fees set forth in the Options Fee Schedule. The proposal set forth in this proposal seeks to rebate these transaction fees incurred by a specialist. See e-mail from the Jeff Burns, Vice President & Associate General Counsel, Amex, to Brian O'Neill, Attorney, and Molly Kim, Special Counsel, Division of Trading and Markets, Commission, on April 3, 2008.

contracts.⁸ Auto Route automatically sends a P/A Order through the Linkage to execute against the NBBO at another options exchange.⁹

The Exchange believes that this proposal to rebate specialist transaction charges associated with P/A Orders is necessary in order for the Exchange to remain competitive with other options exchanges that currently provide transaction fee rebates/credits for executing orders through the Linkage. The Exchange states that both the Chicago Board Options Exchange, Incorporated and the Philadelphia Stock Exchange, Inc. have fee rebate or credit programs for fees incurred executing orders through the Linkage.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4),¹¹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange believes that the proposal provides for an equitable allocation of reasonable fees among members consistent with Section 6(b)(4),¹² by rebating/crediting transaction fees incurred by a specialist as a result of the obligation imposed by the sending of P/A Orders through the Linkage.

⁸ As long as a specialist satisfies this condition, such specialist would be eligible for the fee rebate, regardless of the size of the order received. For example, if the specialist satisfies the rebate condition and sets the Auto Route functionality in ANTE for orders up to 1,000 contracts, such specialist would be eligible for the fee rebate even though the order received is greater than 1,000 contracts and thereby not subject to auto routing but to manual handling by the specialist. See April 1 E-mail, supra note 6.

⁹ Auto Route automatically sends a P/A Order through the Linkage to execute against the NBBO at another options exchange if such order is not executable against the Amex best bid or offer. See April 1 E-mail, supra note 6.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² Id.

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.

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 is effective upon filing pursuant to Section 19(b)(3)(A)(ii)¹³ of the Act and Rule 19b-4(f)(2)¹⁴ thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member 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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2008-28 on the subject line.

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-2008-28. 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 will also 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 No. SR-Amex-2008-28 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).