

Exclusive Common Rules are specifically annotated in the List of Common Rules and include those rules for which FINRA and NYSE will each bear their respective regulatory responsibilities, consistent with the scope of the 17d-2 Plan. Notably, such rules are “non-exclusive” in the sense that they have aspects that may relate to member firm regulation (for which FINRA would assume regulatory responsibility) and aspects that may relate to matters other than member firm regulation (for which the NYSE would retain regulatory responsibility).<sup>30</sup> Accordingly, both NYSE and FINRA will bear responsibility for the application of each Non-Exclusive Common Rule as it relates to their particular regulatory responsibilities.

According to the Plan, whenever either NYSE or FINRA wishes to make a change to the substance of any Common Rule, before filing such proposed rule change with the Commission, it will inform the other party of the intended change to determine whether the other party will propose a conforming change to its version of the Common Rule. If the Parties do not agree to propose conforming changes, the Parties agree to file with the Commission an amendment to the 17d-2 Plan to delete such rule from the list of Common Rules.<sup>31</sup> Similarly, the Parties anticipate that when FINRA creates a consolidated rulebook, it is likely that the new FINRA rules that would replace existing Incorporated NYSE Rules might be substantially different from the then-existing NYSE rules. In such case, the NYSE would need to submit a proposed rule change and seek approval from the Commission to amend its corresponding rule to conform to the new FINRA rule.<sup>32</sup>

Plan does not adversely affect NYSE's ability to ensure compliance with the outstanding undertakings contained in two recent settlement orders relating to trading violations by certain NYSE floor members. See Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934, Making Findings, Ordering Compliance with Undertakings, and Imposing a Censure and Cease-and-Desist Order, File No. 3-11892, Release No. 34-51524 (April 12, 2005); and Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Ordering Compliance with Undertakings, File No. 3-9925, Release No. 34-41574 (June 29, 1999).

<sup>30</sup> For example, a Non-Exclusive Common Rule may contain multiple provisions, certain of which relate to matters of NYSE's retained responsibilities under the Plan, such as trading-related provisions.

<sup>31</sup> See Paragraph 2(b) of the Plan.

<sup>32</sup> See Paragraph 2(c) of the Plan. Further, the Parties thereafter would need to consider whether any amendments to the Plan or the List of Common Rules are required.

Additionally, the Commission notes that, since the Plan allocates regulatory responsibility to FINRA for the oversight and enforcement of all NYSE rules on the list of Common Rules to the extent that such responsibilities involve member firm regulation, any additions to, deletions from, or other changes to the List of Common Rules pursuant to the aforementioned provisions or otherwise would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.

The Plan permits NYSE and FINRA to terminate the Plan at any time, subject to 180 days written notice to the other party. The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d-2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with, and approved by, the Commission.<sup>33</sup>

Finally, the Plan also requires the Parties to share information on a number of matters. Specifically, the Parties must provide information to one another relating to possible financial or operational problems that may affect the ability of any Dual Member to conduct business and must also, upon request, make available to one another certain reports and documents set forth in the Plan, such as existing files, copies of examination reports, examination work papers, or investigative materials. Further, the Parties must promptly provide one another with copies of third-party complaints that relate to the other party's regulatory responsibilities under the Plan. The Parties also must promptly share information relating to any formal disciplinary actions or informal disciplinary actions taken involving a Dual Member or other certain individuals. The Commission believes that the information sharing provisions contained in the Plan further foster cooperation and coordination between NYSE and FINRA, thereby promoting investor protection and removing impediments to the development of a national market system.

## V. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-544. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

<sup>33</sup> The Commission notes that paragraph 14 of the Plan reflects the fact that Commission approval of any termination of the Plan is required.

*It is therefore ordered*, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act, that the Plan in File No. 4-544, between NASD, NYSE, and NYSE Regulation filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

*It is therefore ordered* that NYSE is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-544.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56127; File No. SR-Amex-2007-63]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Order Cancellation Fee

July 24, 2007.

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 June 27, 2007, 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 Amex has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under 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 options order cancellation fee. The text of the proposed rule change is available at Amex, the Commission's Public

<sup>34</sup> 17 CFR 200.30-3(a)(34).

<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)(ii).

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

Reference Room, and <http://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 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 Exchange proposes to revise the existing options order cancellation fee set forth in the Options Fee Schedule. The proposed revision would change the manner in which the fee is determined or calculated so that the cancellation fee of \$1.00 is assessed to the executing Clearing Member for each order cancelled through the Amex Order File ("AOF") in excess of the number of orders that the executing Clearing Member executes through AOF in a given month.<sup>5</sup>

The current options order cancellation fee set forth in the Options Fee Schedule differs in how the fee is assessed against executing Clearing Members. The fee of \$1.00 is currently charged against an executing Clearing Member for every order that it cancels through the AOF in a given month when the total number of orders the executing Clearing Member canceled through AOF in that month exceeds the total number of orders that same Clearing Member executed through AOF in that same month. The fee does not apply to executing Clearing Members that cancel fewer than 500 orders through AOF in a given month. Accordingly, an executing Clearing Member is charged \$1.00 for each cancelled order in a given month when such cancelled orders exceed executed orders through AOF unless the executing Clearing Member cancels fewer than 500 orders in such given month. The proposal seeks to change how the executing Clearing Member is assessed the order cancellation fee so that the fee pertains only to the excess of order cancellations versus order executions.

<sup>5</sup> The operative date of the proposal was designated by Amex as July 1, 2007.

The Exchange believes that the proposal will simplify the application of the options order cancellation fee and provide greater clarity to market participants. In addition, the Exchange submits that the proposal is similar to the order cancellation fee of other options exchanges.

The Exchange believes that charging an options order cancellation fee, where applicable, for excess order cancellations is reasonable given the increase in costs to the Exchange that may occur as a result of a large volume of order cancellations. Accordingly, the Exchange seeks, through this proposal, to better manage the application of its options order cancellation fee.

#### 2. Statutory Basis

The Exchange asserts that the proposal is equitable as required by section 6(b)(4) of the Act.<sup>6</sup> In addition, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5),<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

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 by the Exchange on this proposal.

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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. At any time within 60 days of the filing of the proposed rule change the

<sup>6</sup> Section 6(b)(4) states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 19b-4(f)(2).

Commission may summarily abrogate such proposed 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-2007-63 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-2007-63. 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, 100 F. Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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-2007-63 and should

be submitted on or before August 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56129; File No. SR-BSE-2007-29]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Existing Fee Schedules

July 25, 2007.

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 June 28, 2007, the Boston Stock Exchange, Inc. ("BSE" 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 BSE has designated this proposal as one changing a due, fee, or other charge under 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 BSE proposes to amend certain transaction fees set forth in the Boston Equities Exchange ("BeX") fee schedule. The text of the proposed rule change is available at <http://www.bostonstock.com>, at the BSE, 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

On November 20, 2006, the BSE filed File No. SR-BSE-2006-44, a rule filing that amended the existing BSE fee schedule and established a fee schedule for the BeX, a facility of the Exchange. On March 5, 2007, a subsequent filing, SR-BSE-2007-13, was made to add a new Smart Order Routing fee. This fee is charged to Members on whose behalf an order is routed and who are also not members or subscribers of the away market center and, as a result, must utilize the give-up services provided through the Exchange. In this filing, the Exchange proposes to revise the rate for this service from \$0.0050 per share to \$0.0040 per share, with an operative date of July 1, 2007. The cost to the Exchange to provide this service has been reduced and, as a result, the Exchange proposes to pass these cost savings on to its Members.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

##### 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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder,<sup>8</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.

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-BSE-2007-29 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-BSE-2007-29. 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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<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)(ii).

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).