

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57578; File No. SR-Amex-2008-34)

March 28, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Give Retroactive Effect to Its Revenue Sharing Program for ETF Quoting Participants

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 27, 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 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 retroactively apply a previously-adopted revenue sharing program (“RSP”) for Designated Amex Remote Traders (“DARTs”), ETF specialists, and registered traders (collectively, “ETF quoting participants”) on the Exchange. The text of the proposed rule change is available at Amex’s principal office, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 retroactively apply its previously-adopted RSP for ETF quoting participants on the Exchange, as described below. The RSP was first put in place by the Exchange for ETF specialists and registered traders, effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.³ The Exchange then inadvertently failed to file to extend the RSP at the expiration of that time period, but, upon realizing the error (when recently expanding the RSP to DARTs), promptly filed to reinstate the RSP for all ETF quoting participants, effective March 18, 2008.⁴ The RSP is now in effect through the end of September 2008.

The purpose of the instant filing is to seek approval to retroactively apply the now-reinstated RSP for the time period January 1, 2008 through March 17, 2008 in order to effectively assure continuity of the RSP from its inception for all ETF quoting participants on the Exchange, who have continued to quote aggressively in the expectation of receiving RSP payments flowing therefrom. To date, the Exchange believes that the current RSP has been beneficial in creating incentives for ETF quoting participants and does not believe it fair to

³ See Securities Exchange Act Release No. 55893 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68) (“RSP Release”).

⁴ See Securities Exchange Act Release No. 57541 (March 20, 2008) (SR-Amex-2008-25), 73 FR 16400 (March 27, 2008) (reinstating RSP for all ETF quoting participants); see

withhold RSP payments for the retroactive period from ETF quoting participants solely because of the Exchange's inadvertent error. Retroactive application of the RSP will satisfy all ETF quoting participants' expectations.

For the retroactive period, the RSP will operate under the same terms established in the RSP Release.⁵ Specifically:

- RSP payments will be made from the Exchange's general revenues and not be limited to a particular revenue source.
- ETF specialists may receive an aggregate RSP payment (calculated monthly) of as much as \$0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or sells his specialty ETF on the Exchange and is a provider of liquidity in that transaction (e.g., the specialist's quote is traded against or the specialist offsets an order imbalance as part of an opening or closing transaction). The RSP payment is comprised of \$0.0004 per share (or 4 cents per 100 shares) for all shares executed on the Exchange in their specialty ETF (irrespective of whether the specialist is the provider of liquidity), plus another \$0.0020 (or 20 cents per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the RSP payment is limited to \$0.0004 per share executed on the Exchange in its specialty ETF.
- Registered traders in ETFs will receive an RSP payment of \$0.0010 per share (or 10 cents per 100 shares) whenever the registered trader either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.⁶

also Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR-Amex-2008-23) (expanding RSP to DARTs).

- No ETF quoting participant will receive an RSP payment when another ETF quoting participant is a contra-party to the same transaction.
- RSP payments will be made on transactions in securities trading at less than \$1.00 only in amounts proportionate to the amount on which the Exchange collects revenue.
- Customer transaction charges are capped at \$100 per transaction, meaning that the transaction charge of \$0.0023 per share is assessed only on the first 43,478 shares executed, and an ETF quoting participant would receive an RSP payment based only on the first 43,478 shares executed.

2. Statutory Basis

Amex believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange proposes

⁵ See supra note 3.

⁶ The RSP for DARTs, although described in SR-Amex-2008-23 and SR-Amex-2008-25 (see supra note 4), does not require any retroactive application because DARTs did not actually begin trading on the Exchange until after the effective date of Amex's filing reinstating the RSP.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

to retroactively apply the RSP to assure continuity of the program from its inception and to assure fairness for the ETF quoting participants.

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

The Exchange believes that 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 with respect to the proposed rule change.

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 Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (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 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 Number SR-Amex-2008-34 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-2008-34. 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 10:00 a.m. and 3:00 p.m. Copies of the 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-2008-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).