

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57856; File No. SR-Amex-2008-38)

May 23, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fixed Return Option Transaction Fees

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 May 7, 2008, American Stock Exchange LLC (“Amex” or the “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 prepared substantially by Amex. The Exchange has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act³ 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 is proposing to amend its options fee schedule (the “Options Fee Schedule”) to adopt transaction fees in connection with Fixed Return Options (“FROs”). The text of the proposed rule change is available at www.amex.com, the principal offices of the Exchange, and the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

In August 2007, the Commission approved an Exchange proposal to list and trade FROs based on individual stocks and exchange-traded funds (“ETFs”).⁵ In connection with the ability to trade FROs, the Options Clearing Corporation (“OCC”) also filed proposed rule changes as well as a revision to the Options Disclosure Document (“ODD”). The Commission recently approved the ODD revisions so that FROs may commence trading on the Exchange.⁶ The Exchange expects to launch FROs on May 8, 2008.

Amex proposes to adopt transaction fees in connection with FROs of (i) \$0.20 per contract side for orders of the account of specialists and registered options traders (“ROT”), (ii) \$0.23 per contract side for orders of the account of supplemental registered options traders (“SROT”), (iii) \$0.30 per contract side for orders of the account of non-member market makers

⁵ See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007)(SR-Amex-2004-27).

⁶ See Securities Exchange Act Release No. 57744 (April 30, 2008)(SR-ODD-2008-01). The Commission previously approved proposed OCC rule changes in November 2007. See Securities Exchange Act Release No. 56875 (November 30, 2007), 72 FR 69274 (December 7, 2007)(SR-OCC-2007-08).

and (iv) \$0.26 per contract side for order of the account of non-member broker-dealers and member broker-dealers.⁷ Orders for the account of customers would not be subject to a transaction charge in FROs. In all cases, the fees are charged only to Exchange members through whom the orders are placed. These transaction charges are identical to the existing transaction charges for equity options. In addition, FROs would not be subject to the options marketing fee.

FROs would also be subject to the identical BD Auto-Ex Fee that currently exists for equity options, exchange-traded fund share (“ETF”) options, QQQQ options and trust issued receipt (“HOLDR”) options. Accordingly, the BD Auto-Ex Fee in connection with FROs would provide that orders for the account of specialists, ROTs and non-member market makers that are automatically executed on the Exchange be subject to (i) a \$0.50 per contract side options transaction fee, (ii) a \$0.05 per contract side options comparison fee and (iii) \$0.05 per contract side options floor brokerage fee.⁸ Similarly, FRO orders for the account of member broker-dealers (Firms) and non-member broker-dealers (Broker/Dealer) that are automatically executed on the Exchange would be subject to the BD Auto-Ex Fee as follows: (i) a \$0.50 per contract

⁷ The transaction charges for specialists and ROTs each would consist of an options transaction fee of \$0.10 per contract side, an options comparison fee of \$0.05 per contract side and an options floor brokerage fee of \$0.05 per contract side. With respect to SROTs and non-member market makers, transaction charges would consist of an options transaction fee of either \$0.13 per contract side or \$0.20 per contract side, respectively, and an options comparison fee of \$0.05 per contract side and an options floor brokerage fee of \$0.05 per contract side. The transaction charges for non-member broker-dealers (broker-dealers) and member broker-dealers (firms) each would consist of an options transaction fee of \$0.19 per contract side, an options comparison fee of \$0.04 per contract side and an options floor brokerage fee of \$0.03 per contract side.

⁸ See Securities Exchange Act Release No. 47216 (January 17, 2003), 68 FR 5059 (January 31, 2003)(SR-Amex-2002-114). The Exchange recently amended the Options Fee Schedule to clarify that BD Auto-Ex Fees apply to Options Linkage Orders that are automatically executed. See Securities Exchange Act Release No. 57589 (April 1, 2008), 73 FR 18827 (April 7, 2008)(SR-Amex-2008-09).

side options transaction fee; (ii) a \$0.04 per contract side comparison fee and (iii) a \$0.03 per contract side floor brokerage fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that the proposed transaction fees are similar to the fees currently charged in connection with transactions in equity options.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 Act¹¹ and Rule 19b-4(f)(2)¹² thereunder, because it establishes or changes a due, fee, or other charge imposed on members by Amex. Accordingly, the proposal is

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

effective 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. Please include File Number SR-Amex-2008-38 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Amex-2008-38. 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 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 publicly available. All submissions should refer to File Number SR-Amex-2008-38 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).