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*Acting Advisory Committee Management Officer.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54618; File No. SR-Amex-2006-98]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Codification of Exchange Policy Regarding Specialist Commissions

October 18, 2006.

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 October 4, 2006, 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 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 amend Amex Rule 154 to codify policies regarding specialist commissions. The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange's Office of the Secretary, 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

The Exchange has a long-standing business policy, which describes the circumstances under which specialists may charge members and member organizations a commission for executing orders. Until recently, this policy had been posted on the Exchange's Web site so that both members and the investing public could know the types of orders for which they could be charged a specialist commission. According to the Exchange, the policy has been removed from the Web site since as a business policy it was not enforceable as a rule of the Exchange, which caused confusion among members and the public. The Exchange therefore proposes to codify in Amex Rule 154 its policy regarding the types of equity orders for which specialists can charge a commission. The Exchange believes that codifying this business policy in a rule would allow the policy to be enforceable across all specialist firms; would provide consistency and clarity to all members and the public that orders sent to the Amex would not be subject to excessive or arbitrary costs; and would preserve the cost competitiveness of the Exchange. The proposed rule, as described more fully below, would apply to equity securities only.

The Exchange proposes to codify in new subparagraph (b) to Amex Rule 154 its policies regarding situations where specialists may charge a commission for trades that are executed in whole or in part. Proposed Amex Rule 154(b) would prohibit specialists from charging a commission on off-floor orders that are electronically delivered to the specialist except in cases of orders that require special handling by the specialist or the specialist provides a service. The proposed rule would prohibit specialists from billing for electronically delivered orders that are executed automatically by the Exchange's order processing facilities upon receipt. Orders executed on an opening or reopening would not be "billable." In addition, proposed Amex Rule 154(b) would reference Amex Rule 152(c), which prohibits specialists from charging a commission where they act as principal in the execution of an order entrusted to them as agent. The proposed rule also would set forth the types of orders specialists

would be allowed (but not required) to bill a commission.

In general, "routine" orders are not subject to specialist commissions, while orders that require special handling or for which the specialist provides a service may be subject to a commission. Thus, proposed Amex Rule 154(b) would provide that specialists may (but are not required to) bill for limit orders that remain on the book for more than two minutes,<sup>3</sup> market on close or limit on close orders, tick sensitive orders (e.g., an order to sell short in a security subject to the Commission's "tick-test"), orders for non-regular way settlement, stop or stop limit orders, orders stopped at one price and executed at a better price, fill-or-kill, and immediate-or-cancel orders, and orders for the account of a competing market maker.

Specialist commissions increase the cost of doing business on the Exchange. The Exchange believes that these increased costs weaken the Exchange's competitive position relative to other markets as other markets do not need to compete as aggressively with the Exchange to cut their prices to investors. The Exchange consequently believes that the proposed rule would benefit investors if implemented and would strengthen the Exchange's competitive position.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act<sup>5</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of section 6(b)(4) of the Act,<sup>6</sup> which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and

<sup>3</sup> According to the Exchange, the NYSE's rules are similar to the Exchange's policy in this area. NYSE Rule 123B(b)(1) and Supplementary Material .10 generally prohibit NYSE specialists from charging a commission on orders sent to them electronically unless the order remains on the book for more than five minutes.

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

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

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

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

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

issuers and other persons using its facilities.

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

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the 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 regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

### **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 such 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-98 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-Amex-2006-98. 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. 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-2006-98 and should be submitted on or before November 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-54625; File No. SR-Amex-2006-95]**

#### **Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Vanguard Emerging Markets Stock Index Fund**

October 18, 2006.

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 September 29, 2006, 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 and II below, which Items have

been prepared by the Amex. On October 17, 2006, the Amex filed Amendment No. 1 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and is simultaneously approving the proposal, as amended, on an accelerated basis.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to substitute the index tracked by a class of exchange-traded securities (formerly referred to as Vanguard Emerging Market VIPERs, the "ETF Shares") issued by the Vanguard Emerging Markets Stock Index Fund ("Fund").<sup>3</sup> The complete filing is available on the Amex's Web site, <http://www.amex.com>, at the Amex's Office of the Secretary, 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 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 III below. The 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**

On August 12, 2004, the Commission approved the Exchange's proposal to list and trade the ETF Shares under Amex Rules 1000A *et seq.*<sup>4</sup> Amex Rules 1000A *et seq.* provide standards for the listing and trading of Index Fund Shares<sup>5</sup> issued by registered open-end investment companies, such as the Fund. In approving the ETF Shares for Exchange trading, the Exchange states that the Commission thoroughly

<sup>3</sup> In addition to the ETF Shares, the Fund offers a class of shares that are not exchange-traded, which are referred to as "Investor Shares."

<sup>4</sup> See Securities Exchange Act Release No. 50189, 69 FR 51723 (August 20, 2004) (SR-Amex-2004-05) ("Original Approval Order").

<sup>5</sup> Amex Rule 1000A defines "Index Fund Shares" as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

<sup>7</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.