

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55533; File No. SR-Amex-2007-13]

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

March 26, 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 January 29, 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 Amex. 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 Rules 154-AEMI and 154-AEMI One to extend its rule regarding specialist commissions. The text of the proposed rule change is available at <http://www.amex.com>, at the Exchange’s principal office, 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 recently adopted Rule 154(b) setting forth the circumstances under which specialists may charge members and member organizations a

commission for executing orders in equities.<sup>3</sup> The Exchange adopted this rule to provide consistency and clarity to all members and the public that orders sent to the Amex will not be subject to excessive or arbitrary costs; and to preserve the cost competitiveness of the Exchange.

The Exchange now proposes to adopt subparagraph (k) to Rule 154-AEMI and to Rule 154-AEMI One to: (1) Extend the application of the prohibitions on specialist commissions to Exchange Traded Fund Shares (“ETFs”) and equities trading on the AEMI System; (2) expand the prohibition on specialist commissions to market at the close orders and limit at the close orders; and (3) specify that specialist commissions can only be charged for orders that are executed and not for orders that are cancelled or expire unexecuted. Thus proposed Rules 154-AEMI (k) and 154-AEMI One (k) would prohibit specialists from charging a commission for orders or portions of orders that have not been executed. This includes but is not limited to, a prohibition on specialists charging for order cancellations and orders that expire due to the passage of time.<sup>4</sup> As noted above, the proposed rule will extend the prohibitions in Rule 154(b) to ETFs and equities now trading on the AEMI System which include prohibiting 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 for which the specialist provides a service. The proposed rule would also 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 Rules 154-AEMI (k) and 154-AEMI One (k) will reference Rule 152-AEMI (c) or Rule 152-AEMI One (c), respectively, 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 will also set forth the types of orders specialists would be allowed (but not required) to bill a commission.

<sup>3</sup> See, Securities Exchange Act Release No. 55008 (December 22, 2006), 72 FR 597 (January 5, 2007) (Order approving SR-Amex 2006-98).

<sup>4</sup> The Commission made minor clarifications to this sentence pursuant to a telephone call with the Exchange. See telephone call by and between Rahman Harrison, Special Counsel, Division of Market Regulation, Commission, and Claire P. McGrath, Senior Vice President and General Counsel, Amex, on February, 28, 2007.

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 Rules 154-AEMI (k) and 154-AEMI One (k) (consistent with the recently adopted Rule 154(b)) will provide that specialists may (but are not required to) bill for: (i) Limit orders that remain on the book for more than two minutes; (ii) tick sensitive orders (*e.g.*, an order to sell short in a security subject to the Commission’s “tick-test”); (iii) stop or stop limit orders; (iv) fill-or-kill and immediate-or-cancel orders; and (v) orders for the account of a competing market maker.<sup>5</sup> It should be noted that the proposed rules eliminate the following order types from the list of orders for which the specialist may bill a commission as set forth in Rule 154(b) since these order types are not used in the AEMI System: (i) A non-regular way settlement (market or limit) order; and (ii) a market or marketable limit order stopped at one price and executed at a better price.

Specialist commissions increase the cost of doing business on the Exchange. 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)<sup>6</sup> of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5)<sup>7</sup> of the Act 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

<sup>5</sup> The Commission made minor conforming changes to this sentence pursuant to a telephone call with the Exchange. See telephone call by and between Rahman Harrison, Special Counsel, Division of Market Regulation, Commission, and Claire P. McGrath, Senior Vice President and General Counsel, Amex, on February, 28, 2007.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

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

the provisions of Section 6(b)(4),<sup>8</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 issuers and other persons using its facilities.

#### *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 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 Amex 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-2007-13 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-2007-13. 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-2007-13 and should be submitted on or before April 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55529; File No. SR-BSE-2007-13]

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

March 26, 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 March 5, 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.

<sup>9</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.

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 the Boston Equities Exchange ("BeX") fee schedule to include a smart order routing fee to be charged to BSE Members where a third-party broker-dealer serves as the "give-up" on an away Trading Center when the Member on whose behalf the order is being routed is not also a member of the away Trading Center. The text of the proposed rule change is available at [www.bostonstock.com](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. File No. SR-BSE-2006-44 resulted in, among other things, the deletion of all Transaction Fees, Electronic File Access and Processing Fees, and Floor Operation Fees from the BSE fee schedule. The Transaction Fees and Electronic File Access and Processing Fees that were deleted from the BSE fee schedule were transferred to the BeX fee schedule. In addition to the transfer of existing fees from the BSE fee schedule

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).