

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56377; File No. SR-Amex-2007-84]

### Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Commentary .02 to Amex Rule 950-ANTE(d)

September 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 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 and II, below, which Items have been prepared substantially by the Exchange. On September 7, 2007, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A),<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</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 amend Commentary .02 to Rule 950-ANTE(d) to permit the member firm guarantee to be set at either 20% or 40% and to permit the guarantee to apply to certain specified solicited orders.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, 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 IV 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

The purpose of this proposed rule change is to permit the Facilitation Procedures Committee ("Committee"), appointed by the Board, on a class-by-class basis, to apply the member firm guarantee currently available for facilitation crosses, to solicited orders which improve the quoted market. The Exchange proposes either a 20% or a 40% guarantee, to be determined by the Committee. The current member firm guarantee provides that a member firm is entitled to a participation guarantee of 40% if the order is traded at a price that matches or improves the market. The Amex submits that the proposal is similar to amendments adopted by the Chicago Board Options Exchange, Incorporated ("CBOE").<sup>6</sup>

A solicited order is an order solicited by a member firm (floor broker) to trade with another order. The Amex submits that orders which improve the quoted market that are solicited in order to facilitate a public customer order should receive a similar guaranteed participation as a member firm facilitating its customer's order if so determined by the Facilitation Procedures Committee.

Pursuant to Commentary .02(a)-(c) to Rule 950-ANTE(d), a floor broker holding an order for its public customer and a facilitation order is permitted to cross the orders if (i) floor broker discloses on its order ticket for the public customer order which is subject to facilitation, all the terms of such order, including, if applicable, any contingency involving other options, underlying securities, or related securities; (ii) the floor broker requests bids and offers for the option series

subject to facilitation, then discloses the public customer order and any contingency respecting such order which is subject to facilitation and identifies the order as being subject to facilitation; and (iii) after providing an opportunity for such bids and offers to be made, the floor broker on behalf of the public customer whose order is subject to facilitation, either bids at or above the highest bid or at or below the lowest offer in the market. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the floor broker may cross all or any remaining part of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that he is crossing such orders, stating the quantity and price(s).

Notwithstanding the provisions provided for in Commentary .02(a)-(c) of 950-ANTE(d), in cases where a member firm is seeking to facilitate its own public customer's order, Commentary .02(d)(1) to Rule 950-ANTE(d) currently provides that member firms are entitled to participate in the firm's proprietary account as the contra-side of that order to the extent of 40% of the remaining contracts, after public customer orders on the specialist's book or customer orders represented by a floor broker in the crowd have been filled, provided the order trades at a price that matches or improves the market. This member firm guarantee provides, under certain conditions, the ability to cross 40% of the customer order on behalf of a member organization before the specialist and/or registered options traders in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is currently permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that size is not for fewer than 50 contracts.

The proposed amendments to Commentary .02(d) to Rule 950-ANTE would allow the Committee to (i) determine if solicited orders which improve the quoted market may be crossed in the same manner as facilitation cross transactions, including that the floor broker complies with the disclosure and quote request process described above and (ii) to establish smaller eligible order sizes (*i.e.*, less than 400 contracts but not less than 50 contracts), a determination that is currently made by the Exchange.

Current Commentary .02(d)(1) to Rule 950-ANTE(d) permits a member seeking to facilitate its own public customer's

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

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

<sup>3</sup> In Amendment No. 1, the Exchange made technical, non-substantive corrections to the filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 53543 (March 23, 2006), 71 FR 15780 (March 29, 2006) (SR-CBOE-2006-21).

option order to participate as the contra-side of that order to the extent of 40% of the remaining contracts provided certain criteria are satisfied. In February 2005, the Exchange received Commission approval to implement a member firm guarantee of 40% for facilitation crosses for orders traded at the market or better than the market.<sup>7</sup> The proposed changes would provide the Exchange with discretion by permitting participation to the extent of either 20% or 40% as determined on a class-by-class basis by the Committee. Additionally, the proposal would eliminate references to equity option orders and index options orders so that all options orders would be subject to the proposed changes.

The Exchange further proposes amendments to Commentary .02(d)(3) and (4) to Rule 950-ANTE(d) to include both facilitation and solicited orders.

Furthermore, the proposed amendments would also allow the Committee, under authority properly delegated by the Amex, to exempt a particular option class from the application of Commentary .02 to Rule 950-ANTE(d).

The Exchange also notes that Commentary .04 to Rule 950-ANTE(d) still applies to solicited orders. Notwithstanding Commentary .04 to Rule 950-ANTE(d), however, the participation guarantees of 20% or 40% set forth in amended Commentary .02(d)(1) will apply in those cases where a member firm is seeking to cross a public customer order with a solicited order.

Section 11(a)(1) of the Act<sup>8</sup> makes it unlawful for a member of an exchange to effect a transaction for its own account on that exchange unless a specific exception applies. The exceptions are set forth in Section 11(a)(1)<sup>9</sup> and in various rules adopted by the Commission subsequent to the enactment of Section 11(a). In connection with the use of affiliated or "house" floor brokers by Amex members, Section 11(a)(1)(G) of the Act<sup>10</sup> provides an exemption from the prohibitions of Section 11(a) for transactions effected for a member's own account ("G Orders"), if the member meets a business mix test that requires it to be primarily engaged in the business of underwriting and distributing securities, selling securities to customers and/or acting as a broker, and provided more than 50% of its gross

revenues is derived from such businesses and related activities.<sup>11</sup> However, all G Orders must yield priority to any bid or offer at the same price for the account of a person who is not or is not associated with a member. Therefore, if a G Order is entered by a floor broker as part of a solicited transaction, the G Order will not be permitted an execution ahead of any non-member order on the book.<sup>12</sup>

The Committee will meet quarterly and will be chaired by the Chairman of the Board ("Chairman") or his or her designee who will vote to break ties. Each quarter the composition of the Committee will be determined by the Chairman or his or her designee who will choose two (2) specialist representatives, two (2) ROT representatives and two (2) floor broker representatives from a pool annually chosen by the Board to serve on the Committee.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *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.

<sup>11</sup> Rule 11a1-1(T)(b) under the Act, 17 CFR 240.11a1-1(T)(b), provides additional guidance to members seeking to meet the business mix test requirements of Section 11(a)(1)(G)(i), 15 U.S.C. 78k(a)(1)(G)(i).

<sup>12</sup> Because the ANTE System is not programmed to recognize "G" orders and provide for the order to yield to all non-member accounts, affiliated floor brokers are prohibited from sending "G" orders in options into the ANTE System. This prohibition is necessary in order to prevent a violation of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), by a member using an affiliated broker to represent a "G" order.

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

Because the foregoing rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

At any time within 60 days of the filing of such 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.

Amex has asked that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>17</sup> Because the proposal would establish rules that are substantially similar to rules that have been adopted by another exchange,<sup>18</sup> the Commission believes that the proposal does not raise new regulatory issues, and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>19</sup>

## 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:

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> See *supra* note 6.

<sup>19</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> See Securities Exchange Act Release No. 51275 (February 28, 2005), 70 FR 10709 (March 4, 2005).

<sup>8</sup> 15 U.S.C. 78k(a)(1).

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78k(a)(1)(G).

*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-2007-84 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-2007-84. 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 am and 3 pm. 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-2007-84 and should be submitted on or before October 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56379; File No. SR-ISE-2007-79]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes**

September 10, 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 August 31, 2007, the International Securities Exchange, LLC ("ISE" 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 ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE 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 ISE proposes to amend the Schedule of Fees to clarify and amend its Trading Application Software Fees with respect to FIX and API sessions. The text of the proposed rule change is available on the ISE's Web site (<http://www.ise.com>), at the principal office of the ISE, 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 ISE 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 ISE 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 amend the Schedule of Fees with respect to Electronic Access Member ("EAM") Trading Application Software Fees. A member can connect via an Application Programming Interface ("API") session or a Financial Information eXchange ("FIX") session. The ISE uses an open API which members program to in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The API processes quotes, receives orders from EAMs, tracks activity in the underlying markets, when applicable, executes trades in the matching engine, and broadcasts trade details to the participating members. The ISE pays a licensing fee for the use of the options API, whereas ISE owns the proprietary rights to the equity API. Accordingly, fees are higher for options API sessions than they are for equity API sessions. FIX is an industry-wide messaging standard protocol. While the FIX specification is open and free, implementing FIX requires planning, software, and network services that ISE provides.

On December 5, 2006, the Exchange filed to adopt fees related to the trading of equity securities on the ISE Stock Exchange, LLC, a facility of ISE. In ISE-2006-76, the Exchange proposed to charge a Session/API<sup>5</sup> fee of \$250 per month to connect to the ISE Stock Exchange, with a waiver until June 30, 2007 for second and subsequent connections.<sup>6</sup> The Exchange allowed this waiver to expire on June 30, 2007, at which time the fee to connect to the ISE Stock Exchange, on a monthly basis, became \$250 per session, *i.e.*, for each connection to the ISE Stock Exchange, regardless of whether the Equity EAM is connected via FIX or API. Subsequent to the fee increase, the Exchange analyzed the impact of the fee increase on Equity EAMs and determined that the disparity between the increase in fees and the additional work required to assist the Equity EAMs in maintaining additional lines to the Exchange was not accurately

<sup>5</sup> Historically, the Schedule of Fees referred to "FIX" as "Session." However, in this filing the Exchange is proposing to clarify this by defining session fees as either FIX or API.

<sup>6</sup> See Securities Exchange Act Release No. 54897 (December 8, 2006), 71 FR 75593 (December 15, 2006) (SR-ISE-2007-76) (Notice of filing and immediate effectiveness of proposed rule change relating to ISE Stock Exchange fees).

<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>20</sup> 17 CFR 200.30-3(a)(12).