

Under the Exchange's proposal, RROT's would also use an authorized or proprietary automated quote system to calculate and disseminate quotes. RROT's may not use the "join quote" feature in ANTE. The Exchange believes that requiring RROT's to submit their own quotes in options that an RROT is assigned will serve to further foster active quote competition. Finally, the Exchange proposes that RROT's, as well as ROT's and specialists, must compete with each other to improve the quoted markets in all series of option classes which they trade. The Exchange further proposes to remove the in-person requirement for RROT's as provided in paragraph (h) because the RROT may not be physically present.

xi. 958A—ANTE. Rule 958A—ANTE, the Exchange's Firm Quote Rule, currently provides that ROT's, when inputting their own quotes through an Exchange provided or proprietary automated quote calculation system, would each be considered a responsible broker or dealer for their bids or offers to the extent of their quotation size. The Exchange proposes to amend Rule 958A—ANTE (a)(ii)(C) to include RROT's as responsible broker-dealers to the extent of their quotation size for the purposes of this rule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change will impose no 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 by the Exchange on this proposal.

## 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, as amended, or
- (B) Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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-2005-100 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-2005-100. 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 Section, Station Place, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal

office of the 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-2005-100 and should be submitted on or before March 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53232; File No. SR-Amex-2006-008]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Specialist Transaction Fee

February 6, 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 February 1, 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 Amex. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under section 19(b)(3)(A),<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 Exchange proposes to revise its Specialist Transaction Fee. The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

<sup>12</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.

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

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

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

## 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 proposal. 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

Effective with transactions beginning October 3, 2005, the Exchange increased the Specialist Transaction Fee from \$.00005 to \$.00007 of the total value of a specialist's transactions in equities.<sup>5</sup> After further consideration, analysis of the impact of the fee increase and discussions with its members, the Exchange proposes to rollback the increase in the Specialist Transaction Fee to \$.00005. The increase in the Specialist Transaction Fee implemented in October 2005 was part of a number of changes to the Equity Fee Schedule, the purpose of which was to generate additional revenue for the Exchange and to create additional incentives for market participants to send order flow to the Amex. For market participants other than the specialists, the changes in the aggregate contributed to the increase in revenue for the Exchange. The changes to fees imposed on the specialists, which also generated an increase in revenue, included an increase in the Specialist Transaction Fee and the elimination of a rarely used exemption from the Transaction Fee for trades in paired securities.

According to the Exchange, the Specialist Transaction Fee is based on the dollar value of equity shares executed by the specialist. As a result, specialists trading high-priced and/or high volume securities account for a disproportionate amount of the revenue generated by the fee. The recent increase in the fee exacerbated this result. Rolling back the increase will alleviate, in part, this disproportionate impact on certain specialists. The rollback of the increase in the Specialist Transaction Fee will result in a decrease in the

additional revenues expected to be generated by the recent changes to the Equity Fee Schedule. The Exchange represents that this decrease will not result in an increase or other revisions to fees charged to other market participants.

Notwithstanding the proposed reduction in the Specialist Transaction Fee,<sup>6</sup> the Exchange believes that the recent changes to the Equity Fee Schedule continue to be an equitable allocation of reasonable fees among its members, issuers and other users of its facilities.

In a separate filing, submitted pursuant to section 19(b)(2) of the Act,<sup>7</sup> the Exchange is also requesting approval to rebate the amount of increase in the Specialist Transaction Fee collected since October 3, 2005.<sup>8</sup>

#### 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it is designed 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 is proposing to eliminate a recent fee increase that it believes disproportionately impacts some members.

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

The Amex does not believe that the proposed rule change will 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>6</sup> Amex clarified that although it refers in this sentence to the proposed rollback of the Specialist Transaction Fee from \$.00007 to \$.00005 as a "rebate," it is more accurately characterized here as a "reduction" in the Specialist Transaction Fee. Telephone conversation between Claire McGrath, Senior Vice President and General Counsel, Amex, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on February 6, 2006.

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

<sup>8</sup> See SR-Amex-2005-130.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>12</sup> since it establishes or changes a due, fee or other charge imposed by the Exchange.

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 the 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-008 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-2006-008. 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

<sup>5</sup> See Securities Exchange Act Release No. 52701 (October 28, 2005), 70 FR 67504 (November 7, 2005) (notice of filing and immediate effectiveness of SR-Amex 2005-101).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

Section. Copies of such filing also will be available for inspection and copying at the principal office of the 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 No. SR-Amex-2006-008 and should be submitted on or before March 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53222; File No. SR-CBOE-2005-60]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to an Automated Improvement Mechanism

February 3, 2006.

#### I. Introduction

On August 5, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt an electronic price improvement mechanism. On September 2, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on October 18, 2005.<sup>4</sup> On October 12, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The

Commission received two comment letters with respect to the amended proposal,<sup>6</sup> and on December 2, 2005, the Exchange filed its response to the comment letters.<sup>7</sup> This order approves the proposed rule change as amended by Amendment No. 1, notices and solicits comments on Amendment No. 2, and grants accelerated approval to Amendment No. 2.

#### II. Description of the Proposal

The Exchange proposes to establish an electronic auction system (Automated Improvement Mechanism or "AIM"), which would expose certain orders electronically in an auction to provide such orders with the opportunity to receive an execution at an improved price.

The AIM auction is available only for orders that an Exchange member represents as an agent ("Agency Order"). To initiate the electronic auction, the Exchange member ("Initiating Member") who represents an Agency Order would submit the Agency Order and a second order for the same size as the Agency Order (on the opposite side of the Agency Order) into the auction. If the Agency Order is for less than 50 contracts, the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of (A) the national best bid or offer ("NBBO") price improved by one minimum price improvement increment, which increment shall be determined by the Exchange but may not be smaller than one cent or (B) the Agency Order's limit price (if the Agency Order is a limit order). If the Agency Order is for 50 contracts or more, the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO or the Agency Order's limit price (if the Agency Order is a limit order). Thereafter, other

also would amend proposed CBOE Rule 6.74A.06 with respect to information that the Exchange may provide to the Commission regarding a pilot program that would end on July 18, 2006.

<sup>6</sup> See letters to Jonathan G. Katz, Secretary, Commission, from Matthew B. Hinerfeld, Managing Director & Deputy General Counsel, Citadel Investment Group, LLC on behalf of Citadel Derivatives Group LLC ("Citadel"), dated November 8, 2005 ("Citadel Letter") and from Annah Y. Kim, Chief Regulatory Officer, Boston Options Exchange Regulation ("BOX"), dated November 10, 2005 ("BOX Letter"). Citadel also commented on the American Stock Exchange LLC's ("Amex") proposal to implement the Amex New Trading Environment Price Improvement Auction ("PIA") (File No. SR-Amex-2004-107). This Order and Notice does not address the Amex proposal. A discussion of the comment letters is provided in section III below.

<sup>7</sup> See letter from Angelo Evangelou, Managing Senior Attorney, Legal Division, CBOE, to Jonathan G. Katz, Secretary, Commission, dated December 2, 2005 ("Response Letter").

Exchange participants would compete with the Initiating Member's second order to execute against the Agency Order. The second order submitted by the Initiating Member could be an order for the principal account of the Initiating Member ("principal order") or an order solicited by the Initiating Member to trade with another member or a non-member customer or broker-dealer ("solicited order").<sup>8</sup> Under the proposal, the Initiating Member may enter the second order in one of two formats: (1) At a specified single price or (2) with a non-price specific commitment to match as principal the price and size of all auction responses ("Auto-Match"). If the Initiating Member enters the second order with Auto-Match, then the Initiating Member would not have control over the prices at which it receives an allocation at the conclusion of the auction. After the commencement of an auction, the Initiating Member would not be able to cancel the auction.

Upon receipt of an Agency Order and the second order, the Exchange would commence the auction by issuing a request for responses ("RFR") detailing the side and size of the Agency Order.<sup>9</sup> The auction would last for a random time period, from 3 seconds to 5 seconds, determined by the Exchange's system. During such time period, any Exchange market maker with an appointment in the options class may submit RFR responses (including multiple responses). In addition, any Exchange member acting as an agent for customer orders resting at the top of the Exchange's book opposite the Agency Order, may submit RFR responses on behalf of such customer orders (such RFR responses may not exceed the size of the customer orders).<sup>10</sup> The RFR responses must specify price and size, and may not cross the Exchange's quote on the opposite side of the market as the Agency Order. All RFR responses would be "blind," *i.e.*, the RFR responses would not be visible to any other participants in the auction. Under the proposal, market makers may modify or cancel RFR responses prior to the conclusion of the auction. The Exchange may set the RFR response minimum price increment at no less than one cent. Normally, the auction would end at the conclusion of the random 3 seconds

<sup>8</sup> See CBOE Rule 6.9 for a definition of solicited order.

<sup>9</sup> The Exchange would send each RFR to all members electing to receive RFRs (*i.e.*, those members who have established the necessary systems connectivity to receive RFRs). Thus, an Exchange member's election to receive RFRs would not be on an auction-by-auction basis.

<sup>10</sup> See Amendment No. 2, *supra* note 5.

<sup>13</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.

<sup>3</sup> Amendment No. 1 superseded and replaced the proposed rule filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 52577 (October 7, 2005), 70 FR 60586.

<sup>5</sup> In Amendment No. 2, the CBOE proposes to amend proposed CBOE Rule 6.74A(b)(1)(E) so that members, not floor brokers, may submit RFR responses on behalf of customer orders resting at the top of the Exchange book. Amendment No. 2