

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57641; File No. SR-Amex-2007-107)

April 9, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 3 Thereto, Relating to Section 31 Related 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 October 2, 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 Amex filed Amendment No. 2 to the proposed rule change on March 19, 2008.³ The Amex filed Amendment No. 3 to the proposed rule change on April 7, 2008.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Commentary to Rule 393 to allow member firms to voluntarily submit, during a six-month period after the effective date of this rule proposal, funds previously accumulated by the member firms pursuant to Rule 393. In addition, the proposed rule change would allow the Exchange to use accumulated funds to pay its current Section 31 fees or, to the extent of any surplus, offset other Exchange regulatory costs.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Amex previously filed and withdrew Amendment No. 1 to the proposed rule change.

⁴ Amendment No. 3 replaces all previous amendments in their entirety. Amendment No. 3 added new effective dates of the proposed rule change and would eliminate non-substantive and extraneous text from proposed Commentary .01 to Rule 393.

The text of the proposed rule change is available at the Amex's principal office, from the Commission's Public Reference Room, and on the Amex's Web site at www.amex.com.

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 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

Pursuant to Section 31 of the Act⁵ and Rule 31 thereunder,⁶ national securities exchanges and associations (collectively "SROs") are required to pay a transaction fee to the Commission that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, the Amex assesses its clearing and self-clearing members a regulatory fee in accordance with Rule 393, which mirrors Section 31 in both scope and amount. Clearing members may in turn seek to charge a fee to their customers or correspondent firms. Any allocation of the fee between a clearing member and its correspondent firm or customer is the responsibility of the clearing member.

Reconciling the amounts reported to the Amex and the amounts collected from the customers historically had been difficult for member firms, causing surpluses to accumulate at some member firms (referred to as "accumulated funds"). These accumulated funds were not

⁵ 15 U.S.C. 78ee.

⁶ 17 CFR 240.31.

remitted to the Amex by certain members, despite the fact that these charges may have been previously identified as “Section 31 Fees” or “SEC Fees” by the firms.⁷ In addition, since the Amex uses a “self-reporting” methodology for its members to report and remit amounts payable pursuant to Rule 393, the Amex has and continues to accumulate amounts in excess of the amounts paid by the Amex to the Commission pursuant to Section 31 and Rule 31 (“Exchange accumulated funds”).

In November 2004, the Amex and the other SROs received a letter from the Commission’s Division of Market Regulation requesting, among other things, that each SRO conduct an analysis to ascertain the amount of accumulated funds and present a plan for broker-dealers to dispose of or otherwise resolve title to such accumulated funds.⁸ The NASD was asked by the Commission to take the lead in coordinating this effort with the other SROs. To ascertain the amount of accumulated funds, the NASD surveyed 240 clearing and self-clearing member firms to review their practices regarding the collection of such fees from customers. After compiling and analyzing the data provided by these firms, the NASD staff found that fewer

⁷ The Commission stated in its release adopting new Rule 31 and Rule 31T that “it is misleading to suggest that a customer or [SRO] member incurs an obligation to the Commission under Section 31.” Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). In response to this statement, the Exchange issued a notice to members regarding its Rule 393 Fee and the Commission’s “Section 31 Fee,” and provided guidance for members and member organizations that choose to charge their customers fees. See Amex Notice REG 2004-42 Finance (October 29, 2004).

⁸ In its response to the Division of Market Regulation’s letter, the Amex advised that it is in possession of accumulated funds collected from its members as Section 31 fees. Previous to the adoption of Rules 31 and 31T, all monies received by the Amex pursuant to Rule 393 were forwarded to the Commission. However, with the recalculation of Section 31 fees for the whole of the Commission’s fiscal year 2004, the Amex found that its members reported and submitted fees exceeding the amount billed by the Commission for fiscal year 2004. See Letter to Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, dated January 11, 2005.

than half the firms surveyed had an accumulated fund balance. The NASD worked with the other SROs to recommend a potential solution to allow the clearing and self-clearing firms to resolve title to the accumulated funds. It was determined, based upon information provided in connection with the NASD's survey, that it would be virtually impossible to return customer-related accumulated funds to the customers that had paid these funds to the firms.⁹

The proposed rule change is aimed at enabling those fees that may have been collected for purposes of paying an "SEC Fee" or "Section 31 Fee" to be used to pay such fees. The Exchange is proposing a new Commentary to Rule 393 that will allow firms, on a one-time-only basis, voluntarily to remit historically accumulated funds to the Exchange. These funds then would be used to pay the Exchange's current Section 31 fees in conformity with prior representations made by member firms. In addition, a member or member organization may designate all or part of the Exchange-accumulated excess held by the Exchange and allocated to such member be used by the Exchange in accordance with the new Commentary to Rule 393. Finally, to the extent the payment of these historically accumulated funds or Exchange accumulated funds is in excess of the Section 31 fees due the Commission from the Amex, such surplus shall be used by the Exchange to offset regulatory costs.

The Amex proposes that the effective date of the proposed rule change would be the date the Commission Order approving the proposed rule filing is published in the Federal Register and the effectiveness of Commentary .01 to Rule 393, once approved, would be for a period of six months.

⁹ The NASD had asked all surveyed firms whether they could "identify and relate the funds to specific customers on a transaction by transaction basis." The surveyed firms universally stated that tracking fractions of a penny to individual customers would be impossible and any over-collections could not be passed back at the customer level. See Securities Exchange Act Release No. 55886 (June 8, 2007), 72 FR 32935 (June 14, 2007) (Order approving SR-NASD-2007-027).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will provide a transparent way of addressing the issue of accumulated funds held by member firms and by the Exchange.

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

The Exchange believes that 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. 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-107 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-2007-107. 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 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 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-2007-107 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).