

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57829; File No. SR-Amex-2007-107)

May 16, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 3 and 4 Thereto, Relating to Section 31 Related Fees

On October 2, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposal to allow member firms to voluntarily submit, during a six-month period after the effective date of this 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. 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 proposed rule change was published for comment in the Federal Register on April 16, 2008.⁵ The Amex filed Amendment No. 4 to the proposed rule change on May 15, 2008.⁶ The Commission received no

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 replaced all previous amendments in their entirety, added new effective dates of the proposed rule change, would eliminate non-substantive and extraneous text from proposed Commentary .01 to Rule 393.

⁵ Securities Exchange Act Release No. 57641 (April 9, 2008), 73 FR 20724.

⁶ Amendment No. 4 makes minor changes, discussed in Amendment No. 3, to the proposed rule text to reflect that the date of effectiveness of the proposed rule change would be the date the Commission order approving the proposed rule change is published in the Federal Register and that the effectiveness of Commentary .01 to Rule 393, once

comment letters regarding the proposed rule change. This order approves the proposed rule change, as modified.

Pursuant to Section 31 of the Act⁷ and Rule 31 thereunder,⁸ 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 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.⁹ In addition, since the Amex uses a “self-reporting” methodology for its members to report and remit amounts payable

approved, would be for a period of six months. Amendment No. 4 is a technical amendment not subject to notice and comment.

⁷ 15 U.S.C. 78ee.

⁸ 17 CFR 240.31.

⁹ 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).

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”).

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.

After carefully considering the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ The Commission previously found a similar proposal from another SRO to be consistent with the Act.¹¹ The Commission is not aware of any issue that should cause it to revisit that finding or preclude the Commission from approving the

¹⁰ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ See Securities Exchange Act Release No. 55886 (June 8, 2007), 72 FR 32935 (SR-NASD-2007-027).

Amex proposal on the same basis. The Commission notes that, because the program is voluntary, it imposes no obligation on any Amex member that believes that accumulated funds should be retained or disposed of in another manner.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-AMEX-2007-107), as modified by Amendment Nos. 3 and 4 thereto, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).