

Proposed Rule Change by American Stock Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
 By  Senior Vice President and General Counsel  
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. **Text of the Proposed Rule Change**

(a) The American Stock Exchange LLC (the “Amex” or the “Exchange”) proposes retroactive application of a previously adopted revenue sharing program for ETF quoting participants on the Exchange.

(b) Not applicable.

(c) Not applicable.

2. **Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Exchange’s Board of Governors on May 31, 2007. No further action by the Board or by the membership of the Exchange is required to be taken.

3. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) *Purpose*

The Exchange proposes to retroactively apply a previously adopted revenue sharing program (“RSP”) for Designated Amex Remote Traders (“DARTs”), ETF specialists, and registered traders (collectively, “ETF quoting participants”) on the Exchange as described below. The RSP was first put in place by the Exchange for ETF specialists and registered traders, effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.<sup>1</sup> The Exchange then inadvertently failed to file to extend the RSP at the expiration of that time period, but, upon realizing the error (when recently expanding the RSP to DARTs), promptly filed to reinstate the RSP for all

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<sup>1</sup> Securities Exchange Act Release No. 55983 (June 29, 2007), 129 FR 37059 (July 6, 2007) (SR-Amex-2007-68).

ETF quoting participants on and effective March 18, 2008. The RSP is now in effect through the end of September 2008.<sup>2</sup>

The purpose of the instant filing is to seek approval to retroactively apply the now-reinstated RSP for the time period January 1, 2008 through March 17, 2008 in order to effectively assure continuity of the RSP from its inception for all ETF quoting participants on the Exchange, who have continued to quote aggressively in the expectation of receiving RSP payments flowing therefrom. To date, the Exchange believes that the current RSP has been beneficial in creating incentives for ETF quoting participants and does not believe it fair to withhold RSP payments from ETF quoting participants attributable to the retroactive period solely because of the Exchange's inadvertent error. Retroactive application of the RSP will preserve all ETF quoting participants' expectations.

For the retroactive period, the Exchange will apply the RSP in the same way the RSP was described in SR-Amex-2008-25 (see note 2 *supra*), to wit, that:

- RSP payments will be made from the Exchange's general revenues and not be limited to a particular revenue source.
- ETF specialists may receive an aggregate RSP payment (calculated monthly) of as much as \$0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or sells his specialty ETF on the Exchange and is a provider of liquidity in that transaction (e.g., whose quote is traded against or who offsets an order imbalance as part of an opening or closing transaction). The RSP payment is comprised of \$0.0004 per share (or 4 cents per 100 shares) for all shares

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<sup>2</sup> See Securities Exchange Act Release No. 57541 (March 20, 2008) (SR-Amex-2007-25) (reinstating RSP for all ETF quoting participants); see also Securities Exchange Act Release No. 57540 (March 20, 2008) (SR-Amex-2007-23) (initially expanding RSP to DARTS).

executed on the Exchange in their specialty ETF (irrespective of whether the specialist is the provider of liquidity), plus another \$0.0020 (or 20 cents per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the RSP payment is limited to \$0.0004 per share executed on the Exchange in their specialty ETF.

- Registered traders in ETFs will receive an RSP payment of \$0.0010 per share (or 10 cents per 100 shares) whenever the registered trader either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.<sup>3</sup>
- No ETF quoting participant will receive an RSP payment when another ETF quoting participant is a contra-party to the same transaction.
- RSP payments will only be made on transactions in securities trading at less than \$1.00 in amounts proportionate to the amount on which the Exchange collects revenue.
- As customer transaction charges are capped at \$100 per transaction, meaning that transaction charges are assessed on only the first 43,478 shares executed, ETF quoting participants will only receive RSP payments based on the first 43,478 shares executed.

(b) *Basis*

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular in that it is intended

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<sup>3</sup> The RSP for DARTs, although described in SR-Amex-2008-23 and SR-Amex-2008-25, does not require any retroactive application because DARTs did not actually begin trading on the Exchange until after the effective date of SR-Amex-2008-25.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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 proposes to retroactively apply the RSP to assure continuity of the program from its inception and to assure fairness for the ETF quoting participants.

4. **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 1934 Act.

5. **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.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission consideration of the proposed rule change specified in Section 19(b)(2) of the Act.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. **Exhibits**

List of Exhibits Filed:

1. Notice of Proposed Rule Change for publication in the **Federal Register**
2. Not applicable
3. Not applicable
4. Not applicable
5. Not applicable

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

**(Release No. 34- ; File No. SR-Amex-2008-34)**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Giving Retroactive Effect to Its Revenue Sharing Program For ETF Quoting Participants on the Exchange**

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Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on \_\_\_\_\_, 2008, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 retroactively apply a previously adopted revenue sharing program (“RSP”) for Designated Amex Remote Traders (“DARTs”), ETF specialists, and registered traders (collectively, “ETF quoting participants”) on the Exchange.

The text of the proposed rule change is available on the Amex’s website at <http://www.amex.com>, the Office of the Secretary, the Amex 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 self-regulatory organization 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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to retroactively apply its previously adopted RSP for ETF quoting participants on the Exchange as described below. The RSP was first put in place by the Exchange for ETF specialists and registered traders, effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.<sup>1</sup> The Exchange then inadvertently failed to file to extend the RSP at the expiration of that time period, but, upon realizing the error (when recently expanding the RSP to DARTs), promptly filed to reinstate the RSP for all ETF quoting participants on and effective March 18, 2008. The RSP is now in effect through the end of September 2008.<sup>2</sup>

The purpose of the instant filing is to seek approval to retroactively apply the now-reinstated RSP for the time period January 1, 2008 through March 17, 2008 in order to effectively assure continuity of the RSP from its inception for all ETF quoting

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<sup>1</sup> Securities Exchange Act Release No. 55983 (June 29, 2007), 129 FR 37059 (July 6, 2007) (SR-Amex-2007-68).

<sup>2</sup> See Securities Exchange Act Release No. 57541 (March 20, 2008) (SR-Amex-2007-25) (reinstating RSP for all ETF quoting participants); see also Securities Exchange Act Release No. 57540 (March 20, 2008) (SR-Amex-2007-23) (initially expanding RSP to DARTS).

participants on the Exchange, who have continued to quote aggressively in the expectation of receiving RSP payments flowing therefrom. To date, the Exchange believes that the current RSP has been beneficial in creating incentives for ETF quoting participants and does not believe it fair to withhold RSP payments from ETF quoting participants attributable to the retroactive period solely because of the Exchange's inadvertent error. Retroactive application of the RSP will preserve all ETF quoting participants' expectations.

For the retroactive period, the Exchange will apply the RSP in the same way the RSP was described in SR-Amex-2008-25 (see note 2 *supra*), to wit, that:

- RSP payments will be made from the Exchange's general revenues and not be limited to a particular revenue source.
- ETF specialists may receive an aggregate RSP payment (calculated monthly) of as much as \$0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or sells his specialty ETF on the Exchange and is a provider of liquidity in that transaction (e.g., whose quote is traded against or who offsets an order imbalance as part of an opening or closing transaction). The RSP payment is comprised of \$0.0004 per share (or 4 cents per 100 shares) for all shares executed on the Exchange in their specialty ETF (irrespective of whether the specialist is the provider of liquidity), plus another \$0.0020 (or 20 cents per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the RSP payment is limited to \$0.0004 per share executed on the Exchange in their specialty ETF.

- Registered traders in ETFs will receive an RSP payment of \$0.0010 per share (or 10 cents per 100 shares) whenever the registered trader either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.<sup>3</sup>
- No ETF quoting participant will receive an RSP payment when another ETF quoting participant is a contra-party to the same transaction.
- RSP payments will only be made on transactions in securities trading at less than \$1.00 in amounts proportionate to the amount on which the Exchange collects revenue.
- As customer transaction charges are capped at \$100 per transaction, meaning that transaction charges are assessed on only the first 43,478 shares executed, ETF quoting participants will only receive RSP payments based on the first 43,478 shares executed.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular in that it is intended 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 proposes to retroactively apply the RSP to assure continuity of the program from its inception and to assure fairness for the ETF quoting participants.

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<sup>3</sup> The RSP for DARTs, although described in SR-Amex-2008-23 and SR-Amex-2008-25, does not require any retroactive application because DARTs did not actually begin trading on the Exchange until after the effective date of SR-Amex-2008-25.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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 1934 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 self-regulatory organization 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 at <http://www.sec.gov/rules/sro.shtml> or send an e-mail to [rulecomments@sec.gov](mailto:rulecomments@sec.gov). Please include File No. SR-Amex-2008-34 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 20549-0609.

All submissions should refer to File No. SR-Amex-2008-33. 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 at <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. 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 available publicly. All submissions should refer to File No. SR-Amex-2008-34 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.<sup>6</sup>

Dated:

Nancy M. Morris  
Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).