

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 type="checkbox"/>	Section 19(b)(3)(A) <input checked="" 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"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" 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 Vice President and Corporate Secretary
 (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

Add Remove View

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 (“Amex” or “Exchange”) proposes to adopt new Rule 996—ANTE providing for the limited liability of the Exchange in connection with the actions of Amex Book Clerks (“ABCs”). The text of the proposed rule change appears in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Exchange’s Board of Governors on September 27, 2006. 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 purpose of the proposed rule change is to permit members, member organizations and associated persons of member organizations to bring a claim or claims against the Exchange, in limited circumstances, for the actions of an ABC. The Commission, in April 2007, published for public comment in the *Federal Register* the Exchange’s proposal to eliminate the agency obligations of specialists and establish ABCs.¹ In connection with the adoption of the ABC proposal in the near future, the Exchange submits this filing relating to the liability of the Exchange for the actions of ABCs.

¹ See Securities Exchange Act Release No. 55583 (April 5, 2007), 72 FR 18695 (April 13, 2007).

The ABC will be an Exchange employee or independent contractor designated by the Exchange to be responsible for (i) maintaining and operating the customer limit order book and display book for assigned options classes; and (ii) effecting proper executions of orders placed in the customer order limit book. The ABC will be prohibited from having an affiliation with any member that is approved to act as a specialist, registered options trader (“ROT”), remote registered options trader (“RROT”) and supplemental registered options trader (“SROT”) on the Exchange. In addition, ABCs are also responsible for handling Linkage Orders² in all appointed options classes. As a result, the ABC will have the means to: (1) utilize an options specialist’s account to route P/A Orders and Satisfaction Orders to away markets based on prior instructions that must be provided by the options specialist to the ABC, and (2) handle all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed. The ABC also would have the means to utilize the options specialist’s account to fill Satisfaction Orders that result from a trade-through that the Exchange effects.

Article IV, Section 1(e) of the Amex Constitution provides that the Exchange, its affiliates, officers, Governors, committee members, employees or agents shall not be liable to a member, member organization, or a person associated with a member or a member organization for any loss, expense, damages or claims that arise out

² Linkage Order" means an immediate or cancel order routed through the Linkage as permitted under the Linkage Plan. There are three types of Linkage Orders: (i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agent acting within the scope of their authority. However, Article IV, Section 1(e) does permit the Board of Governors of the Exchange to provide by rule Exchange liability with respect to Exchange facilities which implement the electronic transmission of orders for the purchase or sale of securities traded on the Exchange to the floor of the Exchange or between the floor of the Exchange and other markets.

Accordingly, proposed Rule 996-ANTE would permit Exchange liability, in limited circumstances, relating to the actions of ABCs for (i) maintaining and operating the customer limit order book and display book; and (ii) effecting proper executions of orders placed in the customer order limit book.

Limitation of Liability

The liability of the Exchange for claims arising out of errors or omissions made by ABCs will be limited as follows:

- As to any one or more claims made by a single member on a single trading day, the Exchange shall not be liable in excess of the larger of \$75,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;
- As to the aggregate of all claims made by all members on a single trading day, the Exchange shall not be liable in excess of the larger of \$100,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;
- As to the aggregate of all claims made by all members during a single calendar month, the Exchange shall not be liable in excess of the larger of \$250,000 or the

amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

If all of the claims arising out of errors or omissions by an ABC cannot be fully satisfied because they exceed the applicable maximum amount of liability provided for above, then the maximum amount will be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, based upon the proportion that each such claim bears to the sum of all such claims.

Exchange liability will also be limited if a member, member organization or the Exchange fails to close out an uncomparated trade as set forth in Rule 960.³ In such a case, the opposing party's liability with respect to any claims arising from such trade will be limited to the lesser of (1) the loss which would have been experienced by the claimant if the uncomparated trade had been closed out at the opening off trading on the next business day as provided in Rule 960; or (2) the actual loss realized by the claimant.

Furthermore, the Exchange's potential liability is also limited if any damage is caused by an error or omission of an ABC which is the result of any error or omission of a member organization. Under such circumstances, the member organization will be required to indemnify the Exchange and hold it harmless from any claim of liability resulting from or relating to such damage.

Procedure

Absent reasonable justification or excuse, any claim by a member, member organization, or persons associated with a member or member organization for

³ Commentary .01(b) to Rule 960 provides that all rejected options transaction notices ("ROTNs") must be "OK'd" or "DK'd" not later than one-half hour prior to the opening of trading on the first business day following the trade date unless an agent (including a specialist) was involved in the execution of a transaction, where the time limit shall be extended to fifteen minutes prior to such opening (these time limits may be extended by a Floor Official).

losses arising from errors or omissions of an ABC, and any claim by the Exchange for indemnification under paragraph (g) of Proposed Rule 996—ANTE, must be presented in writing to the opposing party within ten (10) business days following the transaction giving rise to the claim; provided, that if an error or omission has resulted in an unmatched trade, then any claim based thereon shall be presented after the unmatched trade has been closed out but within ten (10) business days following such resolution of the unmatched trade.

For purposes of proposed Rule 996—ANTE, the term "transaction" means any single order or instruction which is placed with an ABC, or any series of orders or instructions, which is placed with an ABC at substantially the same time by the same member and which relates to any one or more series of options of the same class. All errors and omissions made by an ABC with respect to or arising out of any transaction will give rise to a "single claim" against the Exchange. The Exchange will retain any defenses to such claim or claims that it may have. In addition, no claim will be permitted to arise as to errors or omissions which are found to have resulted from any failure by a member or by any person acting on behalf of a member, to enter or cancel an order with such ABC on a timely basis or clearly and accurately to communicate to such ABC:

- (i) the description or symbol of the security involved; or
- (ii) the exercise price or option contract price; or
- (iii) the type of option; or
- (iv) the number of trading units; or
- (v) the expiration month; or
- (vi) any other information or data which is material to the transaction.

Arbitration

Pursuant to proposed Rule 996—ANTE, all disputed claims will be referred to binding arbitration with the decision of a majority of the arbitrators selected to hear and determine the controversy deemed final. There will be no appeal right to the Board of Governors from any decision of an arbitration panel. The arbitration panel will be composed of an odd number of panelists. Each of the parties to the dispute will select one Exchange member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are members of the Exchange and that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official chosen by a random draw who has no direct or indirect financial interest in the claim. The NASD Code of Arbitration Procedure for Industry Disputes (Article VIII of the Amex Constitution) shall apply to any arbitration proceeding.

(b) *Basis*

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in particular in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

4. **Self-Regulatory Organization's Statement on Burden on Competition**

The proposed rule change will impose no 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 1934 Act.⁶

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

(a) This filing is made pursuant to Paragraph (A) of Section 19(b)(3) of the Act and Rule 19b-4(f)(6) thereunder

(b) The proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors or the public interest. The Exchange has complied with the 5-day pre-filing requirement by submitting a written notice of its intent to file the proposed rule change pursuant to Rule 19b-4(f)(6) on May 24, 2007. The Exchange respectfully requests that the Commission waive the thirty (30) day period for

⁶ 15 U.S.C. 78f(b)(2).

this filing to become operative so that it may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)⁷ of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder. The Exchange believes that expedited effectiveness of this proposed rule change is consistent with the protection of investors and the public interest for the purpose of implementing the Exchange's proposal to establish ABCs and remove specialist agency obligations in options.⁸ In this manner, this proposed rule change will be effective upon the rollout of ABCs permitting limited Exchange liability for the actions or omissions of ABCs.

This proposal is substantially similar to the limitation of liability provisions of the CBOE. The Exchange believes that expedited effectiveness of the proposal is appropriate because it raises no new regulatory issues, and is concerned solely with a matter that is not likely to engender adverse comments or require the degree of review attendant with more controversial filings.

(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 based, in part, on Rule 7.11 of the Rules of the Chicago Board Options Exchange, Inc.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ See supra note 1.

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. Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-Amex-2007-122)

Self-Regulatory Organizations; Notice of a Proposed Rule Change by American Stock Exchange LLC Relating to Exchange Liability for the Actions or Omissions of Amex Book Clerks

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 _____, 2007, 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 adopt new Rule 996—ANTE providing for the limited liability of the Exchange in connection with the action of Amex Book Clerks ("ABCs").

The text of the proposed rule change is available on the Amex's website at <http://amex.com>, the Amex 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 purpose of the proposed rule change is to permit members, member organizations and associated persons of member organizations to bring a claim or claims against the Exchange, in limited circumstances, for the actions of an ABC. The Commission, in April 2007, published for public comment in the *Federal Register* the Exchange's proposal to eliminate the agency obligations of specialists and establish ABCs.¹ In connection with the adoption of the ABC proposal in the near future, the Exchange submits this filing relating to the liability of the Exchange for the actions of ABCs.

The ABC will be an Exchange employee or independent contractor designated by the Exchange to be responsible for (i) maintaining and operating the customer limit order book and display book for assigned options classes; and (ii) effecting proper executions of orders placed in the customer order limit book. The ABC will be prohibited from having an affiliation with any member that is approved to act as a specialist, registered options trader ("ROT"), remote registered options trader ("RROT") and supplemental registered options trader ("SROT") on the Exchange. In addition, ABCs are also responsible for handling Linkage Orders² in all appointed options classes.

¹ See Securities Exchange Act Release No. 55583 (April 5, 2007), 72 FR 18695 (April 13, 2007).

² Linkage Order" means an immediate or cancel order routed through the Linkage as permitted under the Linkage Plan. There are three types of Linkage Orders: (i) "Principal Acting as Agent ("P/A") Order,"

As a result, the ABC will have the means to: (1) utilize an options specialist's account to route P/A Orders and Satisfaction Orders to away markets based on prior instructions that must be provided by the options specialist to the ABC, and (2) handle all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed. The ABC also would have the means to utilize the options specialist's account to fill Satisfaction Orders that result from a trade-through that the Exchange effects.

Article IV, Section 1(e) of the Amex Constitution provides that the Exchange, its affiliates, officers, Governors, committee members, employees or agents shall not be liable to a member, member organization, or a person associated with a member or a member organization for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agent acting within the scope of their authority. However, Article IV, Section 1(e) does permit the Board of Governors of the Exchange to provide by rule Exchange liability with respect to Exchange facilities which implement the electronic transmission of orders for the purchase or sale of securities traded on the Exchange to the floor of the Exchange or between the floor of the Exchange and other markets.

which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

Accordingly, proposed Rule 996-ANTE would permit Exchange liability, in limited circumstances, relating to the actions of ABCs for (i) maintaining and operating the customer limit order book and display book; and (ii) effecting proper executions of orders placed in the customer order limit book.

Limitation of Liability

The liability of the Exchange for claims arising out of errors or omissions made by ABCs will be limited as follows:

- As to any one or more claims made by a single member on a single trading day, the Exchange shall not be liable in excess of the larger of \$75,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;
- As to the aggregate of all claims made by all members on a single trading day, the Exchange shall not be liable in excess of the larger of \$100,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;
- As to the aggregate of all claims made by all members during a single calendar month, the Exchange shall not be liable in excess of the larger of \$250,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

If all of the claims arising out of errors or omissions by an ABC cannot be fully satisfied because they exceed the applicable maximum amount of liability provided for above, then the maximum amount will be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, based upon the proportion that each such claim bears to the sum of all such claims.

Exchange liability will also be limited if a member, member organization or the Exchange fails to close out an uncomparated trade as set forth in Rule

960.³ In such a case, the opposing party's liability with respect to any claims arising from such trade will be limited to the lesser of (1) the loss which would have been experienced by the claimant if the uncomparing trade had been closed out at the opening off trading on the next business day as provided in Rule 960; or (2) the actual loss realized by the claimant.

Furthermore, the Exchange's potential liability is also limited if any damage is caused by an error or omission of an ABC which is the result of any error or omission of a member organization. Under such circumstances, the member organization will be required to indemnify the Exchange and hold it harmless from any claim of liability resulting from or relating to such damage.

Procedure

Absent reasonable justification or excuse, any claim by a member, member organization, or persons associated with a member or member organization for losses arising from errors or omissions of an ABC, and any claim by the Exchange for indemnification under paragraph (g) of Proposed Rule 996—ANTE, must be presented in writing to the opposing party within ten (10) business days following the transaction giving rise to the claim; provided, that if an error or omission has resulted in an unmatched trade, then any claim based thereon shall be presented after the unmatched trade has been closed out but within ten (10) business days following such resolution of the unmatched trade.

³ Commentary .01(b) to Rule 960 provides that all rejected options transaction notices ("ROTNs") must be "OK'd" or "DK'd" not later than one-half hour prior to the opening of trading on the first business day following the trade date unless an agent (including a specialist) was involved in the execution of a transaction, where the time limit shall be extended to fifteen minutes prior to such opening (these time limits may be extended by a Floor Official).

For purposes of proposed Rule 996—ANTE, the term "transaction" means any single order or instruction which is placed with an ABC, or any series of orders or instructions, which is placed with an ABC at substantially the same time by the same member and which relates to any one or more series of options of the same class. All errors and omissions made by an ABC with respect to or arising out of any transaction will give rise to a "single claim" against the Exchange. The Exchange will retain any defenses to such claim or claims that it may have. In addition, no claim will be permitted to arise as to errors or omissions which are found to have resulted from any failure by a member or by any person acting on behalf of a member, to enter or cancel an order with such ABC on a timely basis or clearly and accurately to communicate to such ABC:

- (i) the description or symbol of the security involved; or
- (ii) the exercise price or option contract price; or
- (iii) the type of option; or
- (iv) the number of trading units; or
- (v) the expiration month; or
- (vi) any other information or data which is material to the transaction.

Arbitration

Pursuant to proposed Rule 996—ANTE, all disputed claims will be referred to binding arbitration with the decision of a majority of the arbitrators selected to hear and determine the controversy deemed final. There will be no appeal right to the Board of Governors from any decision of an arbitration panel. The arbitration panel will be composed of an odd number of panelists. Each of the parties to the dispute will select one Exchange member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional

panelist(s) so selected are members of the Exchange and that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official chosen by a random draw who has no direct or indirect financial interest in the claim. The NASD Code of Arbitration Procedure for Industry Disputes (Article VIII of the Amex Constitution) shall apply to any arbitration proceeding.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in particular in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

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.

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

The foregoing rule change has become immediately effective pursuant to Section

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(6)⁷ under the Act because: (i) it does not significantly affect the protection of investors or the public interest; (ii) it does not impose any significant burden on competition; and (iii) by its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Furthermore, the Exchange provided the Commission with written notice of its intent to file the proposed rule change on May 24, 2007, along with a brief description and text of the proposed rule change, which was at least five business days prior to the date of filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to thirty (30) days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested a waiver of the thirty (30) day period for this filing to become operative so that it may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)⁸ of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.

The Exchange believes that expedited effectiveness of this proposed rule change is consistent with the protection of investors and the public interest for the purpose of implementing the Exchange's proposal to establish ABCs and remove specialist agency obligations in options.⁹ In this manner, this proposed rule change will be effective upon the rollout of ABCs permitting limited Exchange liability for the actions or omissions of

⁶ 15 U.S.C. Section 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ See supra note 1.

ABCs. In addition, the proposal is substantially similar to the limitation of liability provisions of the Chicago Board Options Exchange Inc. The Exchange believes that expedited effectiveness of the proposal is appropriate because it raises no new regulatory issues, and is concerned solely with a matter that is not likely to engender adverse comments or require the degree of review attendant with more controversial filings.

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 rulecomments@sec.gov. Please include File Number SR-Amex-2007-122 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-2007-122. 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, 100 F Street, NE., Washington, DC 20549-1090. 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-2007-122 and should be submitted on or before [insert date 21 days from date of publication].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Nancy M. Morris
Secretary

Dated:

¹⁰ 17 CFR 200.30-3(a)(12).

SR-Amex-2007-122
EXHIBIT 5

AMERICAN STOCK EXCHANGE LLC.
Proposed Rule Change

It is proposed that the following provisions of the rules of the American Stock Exchange be amended as set forth below. [Brackets] indicates text to be deleted and underlining indicates text to be added.

Liability of the Exchange for the Actions of Amex Book Clerks

Rule 996—ANTE. (a) Except to the extent provided in paragraph (d) of this Rule, the Exchange shall not be liable to members or persons associated with a member or member organization for any loss, expense, damages or claims arising out of any errors or omissions of an Amex Book Clerk or his or her assistants or clerks (the “ABCs”).

(b) As used in this paragraph, the term "transaction" shall mean any single order or instruction which is placed with an ABC, or any series of orders or instructions, which is placed with an ABC at substantially the same time by the same member and which relates to any one or more series of options of the same class. All errors and omissions made by an ABC with respect to or arising out of any transaction shall give rise to a "single claim" against the Exchange for losses resulting therefrom as provided in this paragraph (b) and in paragraph (c), and the Exchange shall be free to assert any defense to such claim it may have. No claim shall arise as to errors or omissions which are found to have resulted from any failure by a member (whether or not the member is claiming against the Exchange pursuant to this paragraph (b)), or by any person acting on behalf of a member, to enter or cancel an order with such ABC on a timely basis or clearly and accurately to communicate to such ABC:

- (i) the description or symbol of the security involved; or
- (ii) the exercise price or option contract price; or
- (iii) the type of option; or
- (iv) the number of trading units; or
- (v) the expiration month; or
- (vi) any other information or data which is material to the transaction.

In addition, no claim shall be allowed if, in the opinion of the arbitration panel provided for in paragraph(e), the member or other person making such claim did not take promptly, upon discovery of the errors or omissions, all proper steps to correct such errors or omissions and to establish the loss resulting therefrom.

(c) Absent reasonable justification or excuse, any claim by a member or persons associated with members for losses arising from errors or omissions of an ABC, and any claim by the Exchange made pursuant to paragraph(g) of this Rule, shall be presented in writing to the opposing party within ten (10) business days following the transaction giving rise to the claim; provided, that if an error or omission has resulted in an unmatched trade, then any claim based thereon shall be presented after the unmatched trade has been closed out in accordance with Rule 960 within ten (10) business days following such resolution of the unmatched trade.

(d) Anything in this Rule to the contrary notwithstanding, the liability of the Exchange for claims arising out of errors or omissions made by ABCs, shall not exceed the following limits:

(i) As to any one or more claims made by a single member on a single trading day, the Exchange shall not be liable in excess of the larger of \$75,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;

(ii) As to the aggregate of all claims made by all members on a single trading day, the Exchange shall not be liable in excess of the larger of \$100,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;

(iii) As to the aggregate of all claims made by all members during a single calendar month, the Exchange shall not be liable in excess of the larger of \$250,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

If all of the claims arising out of errors or omissions by an ABC cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for above, then such maximum amount shall be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, based upon the proportion that each such claim bears to the sum of all such claims.

(e) All disputed claims shall be referred for binding arbitration to an arbitration panel and the decision of a majority of the arbitrators selected to hear and determine the controversy shall be final and there shall be no appeal to the Board of Governors from the decision of such panel. The arbitration panel shall be composed of an odd number of panelists. Each of the parties to the dispute shall select one Exchange member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are members of the

Exchange and that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official chosen by lot who has no direct or indirect financial interest in the claim. To the extent not inconsistent with the provisions of this Rule, the provisions governing arbitration contained in Article VIII of the Constitution shall apply to proceedings under this paragraph.

(f) Liability under this Rule shall be limited as follows:

Should a member, member organization, or the Exchange fail to close out an uncompered trade in the period of time provided in Rule 960, then the opposing party's liability with respect to any claims arising from such trade shall be limited to the lesser of (1) the loss which would have been experienced by the claimant if the uncompered trade had been closed out at the opening of trading on the day provided in Rule 960 for the closing out of such uncompered trade; or (2) the actual loss realized by the claimant.

(g) If any damage is caused by an error or omission of an ABC which is the result of any error or omission of a member organization, then such member organization shall indemnify the Exchange and hold it harmless from any claim of liability resulting from or relating to such damage.

(h) Except to the extent this Rule expressly provides to the contrary, nothing contained in this Rule shall in any way limit, waive, or proscribe any defenses the Exchange may have to any claim, demand, liability, action or cause of action, whether such defense arises in law or equity, or whether such defense is asserted in a judicial, administrative, or other proceeding.

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