



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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**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 to eliminate the Nasdaq UTP Equity Fee Schedule. The text of the proposed changes to the Amex Fee Schedule is attached as Exhibit 5.

(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 April 17, 2002. 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 eliminate the Nasdaq UTP Equity Fee Schedule for transactions in connection with the Exchange’s Nasdaq UTP Program. As a replacement for the Nasdaq UTP Equity Fee Schedule, the Exchange proposes to charge members for transactions in Nasdaq UTP securities pursuant to the Exchange’s existing Equity Fee Schedule.

Currently, transaction fees for Nasdaq UTP securities are differentiated between specialist trades (\$.10 per 100 shares), member competing market maker trades (\$.15 per 100 shares), non-member competing market maker trades (\$.15 per 100 shares), Amex equity traders (\$.15 per 100 shares), non-member customer trades (\$.15 per 100

shares) and member customer trades (\$.15 per 100 shares).<sup>1</sup> In addition, the Exchange waives transaction charges for specialist transactions fees for those specialists that do not charge a commission to customers. With respect to crosses, there is a maximum charge of \$50 per side per trade. The Exchange does not charge for Nasdaq UTP securities transactions executed at a price per share of less than \$1.00.

This proposal would eliminate the separate Nasdaq UTP Equity Fee Schedule and instead charge members for Nasdaq UTP transactions pursuant to the existing Equity Fee Schedule. As a result, transaction charges for customers would be based on the number of shares executed per month. The current rate is \$.0030 for shares executed in a month of up to 50 million and \$.0025 for shares executed in a month over 50 million. The transaction charge is only assessed on the first 5,000 shares per month. In addition, transactions resulting from orders entered electronically into the Amex Order File from off the floor (“System Orders”) for up to 500 shares are not assessed a transaction charge. The fee for shares that execute with a share price below \$1.00 is 0.3% of the total dollar value of the transaction.

Specialist charges under the Equity Fee Schedule are \$.0003 per share side or \$0.03 per 100 shares. Nasdaq UTP securities would also be subject to the equities order cancellation fee which provides that the executing clearing member is charged \$0.25 for every additional equities and ETF order sent for a mnemonic and cancelled through Amex systems in a given month when the total number of equities and ETF orders cancelled for that mnemonic is more than 50 times the equities and ETF orders executed through Amex systems for that mnemonic in that same month. Cancellations resulting from “Immediate or Cancel” or “Fill or Kill” orders and cancellations entered to

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<sup>1</sup> These fees are charged only to Exchange members.

cancel at the opening orders not executed at the opening are not be counted towards the number of cancellations used to determine whether the fee should be applied to a mnemonic and will not be counted when determining the amount of the cancellation fee charged to an executing clearing member. Executions of “Immediate or Cancel” and “Fill or Kill” orders will however be counted towards the number of executions.

Clearing charges for orders routed to and executed on another exchange or market center are assessed at a monthly rate of \$0.0004 per share (\$.04 per 100 shares). In addition, the Equity Fee Schedule also charges members for orders routed to and executed on another exchange or market center at the monthly rate of \$.0030 per share (\$.30 per 100 shares). This routing charge for shares that execute with a share price below \$1.00 is 0.3% of the total dollar value of the transaction.

The elimination of the Nasdaq UTP Equity Fee Schedule would be effective immediately.

(b) *Basis*

The proposed rule change is consistent with Section 6(b) of the Act<sup>2</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>3</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 believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members through the elimination of a separate fee schedule applicable to the Exchange’s Nasdaq UTP Program. Members engaging in transactions in Nasdaq UTP securities would be subject to the Exchange’s Equity Fee Schedule.

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<sup>2</sup> 15 U.S.C. 78f(b)

<sup>3</sup> 15 U.S.C. 78f(b)(4).

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) This filing is made pursuant to Paragraph (A) of Section 19(b)(3).

(b) The filing relates solely to charges imposed on members by a self-regulatory organization and as such takes effect upon filing pursuant to Paragraph (A)(ii) of Section 19(b)(3) and Rule 19b-4(f)(2) thereunder.

(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. Text of changes to the Amex Fee Schedule.

**EXHIBIT 1****SECURITIES AND EXCHANGE COMMISSION****(Release No. 34-                   ; File No. SR-Amex-2008-21)****Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to the Nasdaq UTP Equity Fee Schedule**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act”)<sup>1</sup>, 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 eliminate the Nasdaq UTP Equity Fee Schedule.

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-

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

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 eliminate the Nasdaq UTP Equity Fee Schedule for transactions in connection with the Exchange's Nasdaq UTP Program. As a replacement for the Nasdaq UTP Equity Fee Schedule, the Exchange proposes to charge members for transactions in Nasdaq UTP securities pursuant to the Exchange's existing Equity Fee Schedule.

Currently, transaction fees for Nasdaq UTP securities are differentiated between specialist trades (\$.10 per 100 shares), member competing market maker trades (\$.15 per 100 shares), non-member competing market maker trades (\$.15 per 100 shares), Amex equity traders (\$.15 per 100 shares), non-member customer trades (\$.15 per 100 shares) and member customer trades (\$.15 per 100 shares).<sup>2</sup> In addition, the Exchange waives transaction charges for specialist transactions fees for those specialists that do not charge a commission to customers. With respect to crosses, there is a maximum charge of \$50 per side per trade. The Exchange does not charge for Nasdaq UTP securities transactions executed at a price per share of less than \$1.00.

This proposal would eliminate the separate Nasdaq UTP Equity Fee Schedule and instead charge members for Nasdaq UTP transactions pursuant to the existing Equity Fee Schedule. As a result, transaction charges for customers would be based on the number of shares executed per month. The current rate is \$.0030 for shares

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<sup>2</sup> These fees are charged only to Exchange members.

executed in a month of up to 50 million and \$.0025 for shares executed in a month over 50 million. The transaction charge is only assessed on the first 5,000 shares per month. In addition, transactions resulting from orders entered electronically into the Amex Order File from off the floor (“System Orders”) for up to 500 shares are not assessed a transaction charge. The fee for shares that execute with a share price below \$1.00 is 0.3% of the total dollar value of the transaction.

Specialist charges under the Equity Fee Schedule are \$.0003 per share side or \$0.03 per 100 shares. Nasdaq UTP securities would also be subject to the equities order cancellation fee which provides that the executing clearing member is charged \$0.25 for every additional equities and ETF order sent for a mnemonic and cancelled through Amex systems in a given month when the total number of equities and ETF orders cancelled for that mnemonic is more than 50 times the equities and ETF orders executed through Amex systems for that mnemonic in that same month. Cancellations resulting from “Immediate or Cancel” or “Fill or Kill” orders and cancellations entered to cancel at the opening orders not executed at the opening are not be counted towards the number of cancellations used to determine whether the fee should be applied to a mnemonic and will not be counted when determining the amount of the cancellation fee charged to an executing clearing member. Executions of “Immediate or Cancel” and “Fill or Kill” orders will however be counted towards the number of executions.

Clearing charges for orders routed to and executed on another exchange or market center are assessed at a monthly rate of \$0.0004 per share (\$.04 per 100 shares). In addition, the Equity Fee Schedule also charges members for orders routed to and executed on another exchange or market center at the monthly rate of \$.0030 per share

(\$.30 per 100 shares). This routing charge for shares that execute with a share price below \$1.00 is 0.3% of the total dollar value of the transaction.

The elimination of the Nasdaq UTP Equity Fee Schedule would be effective immediately.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>4</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 believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members through the elimination of a separate fee schedule applicable to the Exchange's Nasdaq UTP Program. Members engaging in transactions in Nasdaq UTP securities would be subject to the Exchange's Equity Fee Schedule.

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.

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

<sup>4</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 immediately pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder. 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 of 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 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-2008-21 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 20549-9303.

All submissions should refer to File No. SR-Amex-2008-21. 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

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<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-2008-21 and should be submitted on or before [insert date 21 days from publication in the *Federal Register*].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Dated:

Nancy M. Morris  
Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

**SR Amex 2008-21**  
**EXHIBIT 5**

**AMERICAN STOCK EXCHANGE LLC**

**Proposed Rule Change**

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It is proposed that the following provisions of the Amex Fee Schedule be amended as set forth below. Underlined text indicates material to be added. [Bracketed] text indicates material to be deleted.

**[Nasdaq UTP Equity Fee Schedule**

Specialist trades:	\$.10 per 100 shares
Member Competing Market Maker trades:	\$.15 per 100 shares
Non-Member Competing Market Maker trades:	\$.15 per 100 shares
Trades by Amex Equity Traders:	\$.15 per 100 shares
Non-Member Customer trades	\$.15 per 100 shares
Member Customer trades:	\$.15 per 100 shares

**Notes:**

1. The Exchange will waive the transaction charge for specialist transactions for those specialists that do not charge commissions to customers in Nasdaq UTP securities.
2. A “competing market maker” is defined as a specialist or market maker registered as such on a registered stock exchange (other than the Amex) or on Nasdaq, or a market maker bidding and offering over-the-counter, in an Amex traded security.
3. The term “customer” includes any market participant other than a “competing market maker.”
4. The transaction charge for crosses is subject to a maximum charge of \$50 per side per trade.
5. There shall be no charge for Nasdaq UTP securities executed at a per price share of less than \$1.00.]