

Dated: April 12, 2006.

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 8676]
[Securities Exchange Act of 1934 Release No. 53641]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2006

April 13, 2006.

The Sarbanes-Oxley Act of 2002 (the “Act”) established the Public Company Accounting Oversight Board (“PCAOB”) to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act. Under Section 109(f), the aggregate annual accounting support fee shall not exceed the PCAOB’s aggregate “recoverable budget expenses,” which may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB’s internal procedures, subject to approval by the Securities and Exchange Commission (the “Commission”).

The PCAOB adopted a budget for calendar year 2006 on November 22, 2005 and submitted it to the Commission for approval on January 24, 2006. In accordance with its responsibilities to oversee the PCAOB, the Commission reviewed the budget proposed by the PCAOB for 2006 and its aggregate accounting support fee for 2006, which will fund the PCAOB’s expenditures.

In an effort to address any issues relating to the PCAOB’s proposed

budget for 2006 before it was approved by the PCAOB and submitted to the Commission for review and approval, the Commission’s review of the PCAOB’s proposed budget for 2006 began in August 2005 with a meeting between Commission and PCAOB staffs to discuss the types of supporting information the Commission would need to begin its review of the PCAOB’s 2006 budget, including questions to be addressed by the PCAOB regarding its proposed budget and accounting support fee. Also, prior to the PCAOB’s final consideration of its 2006 budget estimates and approval of its proposed budget for 2006, the PCAOB board members met, either in person or by phone, with each Commissioner to discuss the PCAOB’s development of a strategic plan and other matters impacting the PCAOB’s budget. In December, shortly after the PCAOB approved its proposed budget for 2006, the PCAOB briefed the Commission staff on its inspection program for 2005 and its plans for 2006 and provided responses to the staff’s questions regarding its inspection program.

Over the course of the Commission’s review, staff from the Commission’s Offices of the Chief Accountant, Executive Director and Information Technology dedicated a substantial amount of time to the review and analysis of the PCAOB’s programs, projects and budget estimates, and attended several meetings with board members, management and staff of the PCAOB to develop an understanding of the PCAOB’s budget and operations. During the course of the Commission’s review, the Commission staff relied upon representations and supporting documentation from the PCAOB.

After considering the above, the Commission did not identify any proposed disbursements in the budget that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2006 annual accounting support fee does not exceed the PCAOB’s aggregate recoverable budget expenses for 2006.

Based on the foregoing, the Commission has determined that the PCAOB’s 2006 budget and annual accounting support fee are consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2006 are approved.

By the Commission.

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 8677]
[Securities Exchange Act of 1934 Release No. 53642]

Order Regarding Review of Financial Accounting Standards Board Accounting Support Fee for 2006 Under Section 109 of The Sarbanes-Oxley Act of 2002

April 13, 2006.

The Sarbanes-Oxley Act of 2002 (the “Act”) establishes criteria that must be met in order for the accounting standards established by an accounting standard-setting body to be recognized as “generally accepted” for purposes of the federal securities laws. Section 109 of the Act provides that all of the budget of an accounting standard-setting body satisfying these criteria shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Securities and Exchange Commission (the “Commission”). Under Section 109(f), the annual accounting support fee shall not exceed the amount of the standard setter’s “recoverable budget expenses.” Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (“FASB”) and its parent organization, the Financial Accounting Foundation (“FAF”), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB’s financial accounting and reporting standards as “generally accepted” under Section 108 of the Act.¹ As a consequence of that recognition, the Commission undertook a review of the FASB’s accounting support fee for calendar year 2006. In connection with its review, the Commission also reviewed the proposed

¹ Financial Reporting Release No. 70.

budget for the FAF and the FASB for calendar year 2006.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Government Accounting Standards Board ("GASB"), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB nor the GASB accept contributions from the accounting profession.

After its review, the Commission determined that the 2006 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53635; File No. SR-Amex-2005-075]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendments No. 2 and 3 Thereto Relating to the Establishment of a New Class of Registered Options Trader Called a Supplemental Registered Options Trader ("SROT")

April 12, 2006.

I. Introduction

On July 14, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a new class of Registered Options Trader called a Supplemental Registered Options Trader ("SROT"). On November 4, 2005,

the Amex filed Amendment No. 1 to the proposed rule change.³ On December 7, 2005, the Amex filed Amendment No. 2 to the proposed rule change.⁴ On January 13, 2006, the Amex filed Amendment No. 3 to the proposed rule change.⁵ The proposed rule change, as amended, was published for comment in the **Federal Register** on January 26, 2006.⁶ The Commission received no comments from the public in response to the proposed rule change. This order approves the proposed rule, as amended by Amendments No. 2 and 3.

II. Description

Amex proposes to adopt Amex Rule 993—ANTE to establish a new category of registered options trader called an SROT. Amex also proposes to adopt amendments to existing Amex Rules 900—ANTE, 918—ANTE, 935—ANTE, 936—ANTE, 936C—ANTE, 950—ANTE, 951—ANTE, 958—ANTE and 958A—ANTE to incorporate this new category of trader into relevant existing rules.

The Amex proposes to define an SROT as a ROT that is a member organization so designated by the Exchange and would be granted remote quoting rights to enter bids and offers electronically only from off the Exchange's physical trading floor,⁷ in at least 300 option classes. A member organization requesting approval to act as an SROT would file an application with the Exchange, and the Exchange would initially choose a maximum of six (6) SROTs, based upon criteria including adequacy of resources, operational history, market making and/or specialist experience in a broad array of securities, and the ability to interact with order flow in all types of markets. The Exchange proposes to designate a committee ("Committee") to make SROT approval decisions, including granting, withdrawing, denying, and deferring approval.⁸ The proposed rule

also includes provisions that govern SROT applicant withdrawal, as well as suspension and/or termination of SROT appointments.

The Exchange would determine the number and type of option classes assigned to an SROT, with a minimum of 300 option classes per SROT. SROTs would be required to purchase or lease one seat for every thirty (30) option classes quoted and would be required to provide continuous two-sided quotations in at least 60% of the series of their assigned classes. The proposed rule would require that SROTs maintain information barriers and that no SROT be assigned to an options class where the SROT has a direct or indirect affiliate who is a specialist, ROT or SROT in such option class. Commentary to proposed Amex Rule 993—ANTE also provides that quoting rights and the designation as an SROT are non-transferable and that SROTs may trade in a market-making capacity only in the classes of options to which he/she is assigned.

Amex proposes to modify Amex Rule 935—ANTE, which governs the allocation of unexecuted contracts to include SROTs. As proposed, when more than one market participant is quoting at the Amex Best Bid or Offer ("ABBO"), and an SROT is not interacting with its own firm's orders, the allocations in Amex Rule 935—ANTE (a)(1)–(4) would apply. However, when more than one market participant is quoting at the ABBO, and an SROT is interacting with its own firm's orders, the ANTE System will allocate the remaining contracts after non-broker dealer customer orders as follows: (i) 20% to an SROT interacting with its own firm's orders; (ii) 20% to the specialist; and (iii) the balance to registered options traders.

Amex also proposes to modify Amex Rule 958—ANTE, which governs ANTE options transactions of registered options traders and imposes certain obligations, including engaging in transactions that are reasonably calculated to contribute to the maintenance of a fair and orderly market, making competitive bids and offers necessary, in a market making capacity, to contribute to the maintenance of a fair and orderly market, to include SROTs. Furthermore, Amex proposes to modify Amex Rule 958A—ANTE, which is the Exchange's Firm Quote Rule, to apply to SROTs.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ Amendment No. 2 replaced and superseded Amendment No. 1.

⁵ Amendment No. 3 made clarifying changes to the Purpose section, as well as changes to the proposed rule text relating to allocation of executed contracts and affiliation limitations.

⁶ See Securities Exchange Act Release No. 53161 (January 20, 2005), 71 FR 4388.

⁷ See proposed Amex Rule 900—ANTE (50).

⁸ Pursuant to paragraph (a)(vi) to proposed Amex Rule 993—ANTE, the Committee may not defer a determination of the approval of the application of an SROT applicant unless the basis for such deferral has been objectively determined by the Committee, subject to Securities and Exchange Commission approval or effectiveness pursuant to a proposed rule change filed under Section 19(b) of the Act. The Committee would be required to provide written notification to any SROT applicant whose application is the subject of such deferral, describing the objective basis for such deferral.