

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53328; File No. SR-Amex-2006-11)

February 16, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of an Options Licensing Fee for Options on Certain SPDR ETFs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 3, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders it effective upon filing with the Commission. 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 modify its Options Fee Schedule by adopting a per contract license fee for the orders of specialists, registered options traders (“ROTs”), firms, non-member market makers, and broker-dealers in connection with options transactions in three new exchange-traded funds (“ETFs”): the SPDR Biotech ETF (symbol: XBI); the SPDR Homebuilders ETF (symbol: XHB); and the SPDR Semiconductor ETF (symbol: XSD).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, at the principal office of 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, Amex 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. Amex 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex proposes to to adopt a per contract licensing fee for options on XBI, XHB, and XSD. These fee changes will be assessed on members commencing February 6, 2006. Amex also proposes to correct the Options Fee Schedule to reflect the elimination of the equity option fee discount for member firms facilitation customer orders.⁵

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain ETFs. This requirement to pay an index license fee to a third party is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders of specialists, ROTs, firms, non-

⁵ See Securities Exchange Act Release No. 52754 (November 9, 2005), 70 FR 69998 (November 18, 2005) (File No. SR-Amex-2005-113).

member market makers and broker-dealers, which is collected on every option transaction in designated products in which such market participant is a party.⁶

The purpose of this proposal is to charge an options licensing fee in connection with options on XBI, XHB and XSD (collectively, the “SPDR ETFs”). Specifically, Amex seeks to charge an options licensing fee of \$0.09 per contract side for each SPDR ETF option for specialist, ROT, firm, non-member market maker and broker-dealer orders executed on the Exchange. In all cases, the fees will be charged only to the Exchange members through whom the orders are placed.

The proposed options licensing fee will allow the Exchange to recoup its costs in connection with the index license fee for the trading of the SPDR ETF options. The fees will be collected on every order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that the proposal to require payment of a per contract licensing fee in connection with the SPDR ETF options by those market participants that are the beneficiaries of Exchange index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that the Amex, in recent years, has revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.⁷ Amex believes that the implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex believes that these fees will help to allocate to those market participants engaging in SPDR ETF options, a fair share of the related costs of offering such options.

⁶ See, e.g., Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).

⁷ See, e.g., Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.⁸ In connection with the adoption of an options licensing fee for SPDR ETF options, the Exchange believes that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable, given the competitive pressures in the industry.⁹ Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing products.

In addition, the Exchange recently eliminated the equity options transaction fee discount for member firms facilitating customer orders.¹⁰ However, in a later filing, File No. SR-Amex-2005-126,¹¹ the Exchange inadvertently failed to incorporate in the Options Fee Schedule the elimination of the equity option transaction fee discount for members firms; therefore, the current fee schedule is inaccurate.¹² Accordingly, in this filing, the Exchange proposes to correct the Options Fee Schedule to once again reflect the elimination of the equity option transaction fee discount for member firms that was previously adopted by the Exchange.

⁸ Section 6(b)(4) states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

⁹ Telephone call between Jeffrey Burns, Vice President and Associate General Counsel, Amex, and Angela Muehr, Attorney, Division of Market Regulation (“Division”), Commission, on February 15, 2006.

¹⁰ See Securities Exchange Act Release No. 52754, supra note 5. This proposal was immediately effective and was noticed in the Federal Register on November 18, 2005.

¹¹ See Securities Exchange Act Release No. 52925 (December 8, 2005), 70 FR 74065 (December 14, 2005).

¹² Telephone call between Jeffrey Burns, Vice President and Associate General Counsel, Amex, and Angela Muehr, Attorney, Division of Market Regulation (“Division”), Commission, on February 15, 2006.

2. Statutory Basis

Amex believes that the proposed fee change is consistent with Section 6(b)(4) of the Act¹³ regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that 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 was filed pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2) thereunder,¹⁵ because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization.

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 or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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 rule-comments@sec.gov. Please include File Number SR-Amex-2006-11 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-2006-11. 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 Room. 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-2006-11 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.¹⁶

Nancy M. Morris
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).