

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56809; File No. SR-Amex-2007-116)

November 16, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 thereto, to Harmonize the Annual Listing Fees for all Exchange Traded Funds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 29, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. On November 9, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 16, 2007, the Exchange filed Amendment No. 2 to the proposal.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the annual listing fees for index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares,

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 made clarifying changes to the purpose section of the original filing and revised the proposed annual listing fee schedule.

<sup>4</sup> Amendment No. 2 made an additional clarifying change to the proposed annual listing fee schedule. Specifically, all references to a “maximum” or “minimum” identified as a parenthetical in the “Stock Issues” and “Issues Listed Under Section 106 and Section 107; Rule 1000A (Index Fund Shares); Rule 1200 (Trust Issued Receipts); Rule 1200A (Commodity Based Trust Shares); Rule 1200B (Currency Trust Shares); Rule 1400 (Paired Trust Shares); Rule 1500 (Partnership Units); and Closed-End Funds” Annual Fee Tables in the Company Guide are to be removed.

partnership units, and closed-end funds (collectively, “Exchange Traded Funds” or “ETFs”) set forth in Section 141 of the Amex Company Guide. The text of the proposed rule change is available at <http://www.amex.com>, the Exchange’s principal, and 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 Exchange 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 Exchange 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 amend Section 141 of the Company Guide to adopt a single annual fee schedule for all ETFs. The proposed annual listing fee schedule is largely based on the existing annual listing fee schedule for index and currency warrants, equity- and index-linked securities, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, and closed-end funds. The current annual listing fees are shown in the table below.

**Issues Listed Under Section 106 and Section 107; Rules 1200 (Trust Issued Receipts) and 1200A (Commodity-Based Trust Shares); Rule 1200B (Currency Trust Shares); Rule 1400 (Paired Trust Shares); Rule 1500 (Partnership Units); and Closed-End Funds**

<b>Shares or Units Outstanding</b>	<b>Fee</b>
5,000,000 shares (units) or less	\$15,000 (minimum)
5,000,001 to 10,000,000 shares (units)	17,500
10,000,001 to 25,000,000 shares (units)	20,000
25,000,001 to 50,000,000 shares (units)	22,500
In excess of 50,000,000 shares (units)	30,000 (maximum)

**Issues Listed Under Rule 1000A (Index Fund Shares)**

<b>Shares Outstanding</b>	<b>Fee</b>
1,000,000 shares or less	\$6,500 (minimum)
1,000,001 to 2,000,000 shares	7,000
2,000,001 to 3,000,000 shares	7,500
3,000,001 to 4,000,000 shares	8,000
4,000,001 to 5,000,000 shares	8,500
5,000,001 to 6,000,000 shares	9,000
6,000,001 to 7,000,000 shares	9,500
7,000,001 to 8,000,000 shares	10,000
8,000,001 to 9,000,000 shares	10,500
9,000,001 to 10,000,000 shares	11,000
10,000,001 to 11,000,000 shares	11,500
11,000,001 to 12,000,000 shares	12,000
12,000,001 to 13,000,000 shares	12,500
13,000,001 to 14,000,000 shares	13,000

14,000,001 to 15,000,000 shares	13,500
15,000,001 to 16,000,000 shares	14,000
In excess of 16,000,000 shares	14,500 (maximum)

The annual listing fees for index fund shares are based on a sliding schedule based on the number of outstanding shares, with a minimum fee of \$6,500 and a maximum of \$14,500. In comparison, the other ETFs have an annual listing fee schedule based on the number of outstanding shares or units with a minimum fee of \$15,000 and a maximum fee of \$30,000. This proposal would conform the annual listing fees for index fund shares with those of other ETFs and add an additional demarcation for outstanding shares or units of over 100 million, so that the maximum annual listing fee would increase to \$50,000.

Set forth below is the proposed annual listing fee schedule for all ETFs.

**Securities Listed Under Section 106 and Section 107 of the Company Guide;  
Rule 1000A-AEMI (Index Fund Shares); 1200-AEMI (Trust Issued Receipts);  
Rule 1200A-AEMI (Commodity-Based Trust Shares); Rule 1200B-AEMI (Currency  
Trust Shares); Rule 1400 (Paired Trust Shares); Rule 1500-AEMI (Partnership  
Units); and Closed-End Funds**

<b>Shares or Units Outstanding</b>	<b>Fee</b>
5,000,000 shares (units) or less	\$15,000
5,000,001 to 10,000,000 shares (units)	17,500
10,000,001 to 25,000,000 shares (units)	20,000
25,000,001 to 50,000,000 shares (units)	22,500
50,000,001 to 100,000,000 shares (units)	30,000
100,000,001 shares (units) or greater	50,000

Each series of the securities listed as index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, or closed-end

funds would be separately aggregated. The annual listing fee would then be applied to all of the outstanding securities of a particular issuer for each appropriate product class. Securities listed under Sections 106 and 107 of the Company Guide would be charged listing fees based on the shares outstanding of each individual issue.

The Exchange believes that the proposed revision to the annual listing fee schedule for ETFs would benefit the marketplace by providing uniformity to its annual fee structure for similarly situated products. In addition, the Exchange believes that slightly increasing the annual listing fees for index fund shares should provide additional incremental revenue to fund Exchange operations.

The Exchange submits that the proposal to revise the annual listing fees for ETFs in Section 141 of the Company Guide is consistent with Section 6(b)(4) of the Act.<sup>5</sup> The Exchange believes that the proposal provides an equitable allocation of annual listing fees among issuers of ETFs. The Exchange further submits that the proposal to simplify and slightly increase annual listing fees for similarly situated derivative products is appropriate for the purpose of uniformity and to generate revenue to fund Exchange operations.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) of the Act<sup>7</sup> in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities.

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

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</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 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 nor 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 Exchange 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2007-116 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-2007-116. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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 Number SR-Amex-2007-116 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>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).