

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50716, File No. SR-Amex-2004-88)

November 22, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Adopt a Per-Contract Licensing Fee for Options Transactions in SPDR O-Strips

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 November 1, 2004, 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 prepared by Amex. On November 18, 2004, Amex filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to modify its options fee schedule by adopting a per-contract license fee in connection with specialist and registered options trader (“ROT”) transactions in options on the SPDR O-Strip (“O-Strip”).⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1 from Jeffrey P. Burns, Associate General Counsel, Amex, dated November 18, 2004 (“Amendment No. 1”). Amendment No. 1 replaced the original proposed rule change in its entirety.

⁴ The O-Strip is an exchange-traded fund (“ETF”) share that seeks to provide investment results corresponding to the newly launched Standard & Poor’s (“S&P”) 500 O-Strip Index. The S&P 500 O-Strip Index consists of all the individual S&P 500 component securities that are primarily traded in the over-the-counter market. The Index currently consists of approximately 75 securities, representing approximately 15% of the market capitalization of the S&P 500 Index.

The text of the revised fee schedule is available at Amex's Office of the Secretary 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, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on certain ETFs. This requirement to pay an index license fee to third parties 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 issuers or index owners that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per-contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. The licensing fee currently imposed on specialists and ROTs is as follows: (1) \$0.15 per contract side for options on the Fidelity Nasdaq Composite Index Trading Stock (ONEQ); (2) \$0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX), the iShares Goldman Sachs Corporate Bond Fund (LQD), the iShares Lehman 1-3 Year Treasury Bond Fund (SHY), iShares Lehman 7-10 Year Treasury Bond Fund

(IEF), iShares Lehman 20+ Year Treasury Bond Fund (TLT), iShares Lehman U.S. Aggregate Bond Fund (AGG), and iShares Lehman U.S. Treasury Inflation Protected Securities Fund (TIP); (3) \$0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (4) \$0.05 per contract side for options on the S&P 100 iShares (OEF).

The Exchange represents that the purpose of the proposed fee is for Amex to recoup its costs in connection with the index license fee for the trading of options on O-Strips. The proposed licensing fee will be collected on every option transaction of O-Strips in which a specialist or a ROT is a party. The Exchange proposes to charge \$0.20 per contract side. The Exchange believes that requiring the payment of a per-contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per-contract basis) along to the specialist allocated to O-Strip options and the ROTs trading such products, is efficient and consistent with the intent of Amex to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

The Exchange notes that Amex in recent years has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.⁵ Therefore, the Exchange believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange submits that the proposed license fee will provide additional revenue and recoup its costs associated with the trading of O-Strip options. Further, the Exchange represents that it will monitor the revenue generated in connection with the O-Strip option license fee. In

⁵ See Securities Exchange Act Release Nos. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) and 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002).

the event the revenue generated is greater than the Exchange's cost to the index provider, Amex represents that it will seek to rebate the difference back to the affected specialists and ROTs. Amex believes that this fee will help to allocate to those specialists and ROTs transacting in options on the O-Strip, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The foregoing rule change, as amended, has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change

⁶ See 15 U.S.C. 78f(b).

⁷ See 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2004-88 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-88. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection

and copying at the principal offices of 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-2004-88 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.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).