

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51070; File No. SR-Amex-2005-008)

January 21, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Options Transaction Fees in Connection with the Standard & Poor's Depository Receipts

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 January 13, 2005, 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 the Exchange. 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 in connection with specialist and registered options traders ("ROTs") transactions in options on Standard & Poor's Depository Receipts ("SPDRs") and by updating the symbol for the NASDAQ-100 Index Tracking Stock. The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at the Amex's Office of the Secretary, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on

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

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

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 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 exchange-traded funds ("ETFs"). The 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 and ROT is a party. The licensing fees currently imposed on specialists and ROTs are set forth in the Exchange's Options Fee Schedule.

The purpose of the proposed fee is for the Exchange to recoup its costs in connection with the index license fee for the trading SPDR (SPY) options. The proposed licensing fee will be collected on every option transaction of the SPDR in which the specialist or ROT is a party. The Exchange proposes to charge \$0.10 per contract side for options on the SPDR. Accordingly, 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 is consistent with the rules of the Exchange. In addition, the Exchange believes that passing the license fee (on a per contract basis) along to the specialist(s) allocated to options on the SPDR and the ROTs trading such product is efficient and is consistent with the intent of

the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries of such license agreements.

The Exchange notes that it has increased recently a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.<sup>3</sup> 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 the Exchange with additional revenue and will allow the Exchange to recoup its costs associated with the trading of options on the SPDR. In addition, the Amex believes that this fee will help to allocate to those specialists and ROTs transacting in options on the SPDR a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

In addition, the Exchange proposes to update its Options Fee Schedule, including the list of products in Section V (Options Licensing Fee) and the text in footnote 1, to reflect the symbol change, from QQQ to QQQQ, that accompanied the transfer of the listing of the NASDAQ-100 Index Tracking Stock to The Nasdaq Stock Market, Inc., which took place on December 1, 2004.<sup>4</sup>

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<sup>3</sup> See Securities Exchange Act Release Nos. 45360 (Jan. 29, 2002), 67 FR 5626 (Feb. 6, 2002) (order approving a proposed rule change relating to a retroactive increase in floor, membership and options trading fees, including licensing fees); and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (relating to fees imposed on members and member organizations, including member fees, floor fees, booth rental fees, and membership registration fees).

<sup>4</sup> Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Richard Holley III, Attorney, Division of Market Regulation, Commission, on January 21, 2005.

## 2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for 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

The Exchange does not believe that the proposed rule change will 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 by the Exchange 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 has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder, in that 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 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 the furtherance of the purposes of the Act.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-008 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-2005-008. 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 offices 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-2005-008 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>9</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).