

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52510; File No. SR-Amex-2005-094)

September 26, 2005

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Options Licensing Fees for Certain PowerShares ETF Options

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 September 19, 2005, the American Stock Exchange, Inc. (“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. Amex submitted the proposed rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal 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 side licensing fee for the orders of specialists, registered options traders (“ROTs”), firms, non-member market makers, and broker-dealers in connection with transactions in certain PowerShares exchange-traded funds (“ETFs”).

The text of the proposed rule change is available on Amex’s Web site <http://www.amex.com>, at Amex’s principal office, and at the Commission’s Public Reference

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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> 15 U.S.C. 78s(b)(3)(A).

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

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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

The Exchange has entered into numerous license agreements with issuers and owners of indexes for the purpose of trading options on certain ETFs and securities indexes. The requirement to pay an index licensing fee to third parties is a condition to the listing and trading of these ETF and index 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 certain index licenses, the Exchange has established a per-contract side licensing fee for the orders of specialists, ROTs, firms, non-member market makers, and broker-dealers collected on every transaction in certain designated products in which such market participant is a party.<sup>5</sup>

The purpose of the proposal is to charge per-contract side licensing fees in connection with options on the following three (3) ETFs (“PowerShares ETFs”):

- (1) PowerShares Dividend Achievers Portfolio (symbol: PFM);

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<sup>5</sup> See File No. SR-Amex-2005-087 (became immediately effective on August 31, 2005).

- (2) PowerShares High Growth Rate Dividend Achievers Portfolio (symbol: PHJ); and
- (3) PowerShares International Dividend Achievers Portfolio (symbol: PID)

Specifically, Amex seeks to charge options licensing fees of \$0.05, \$0.10, and \$0.10 per contract side, in connection with options on PFM, PHJ, and PID, respectively, for specialist, ROT, firm, non-member market maker, and broker-dealer orders executed on the Exchange. In all cases, the fees set forth in the Options Fee Schedule are charged only to Exchange members through whom the orders are placed.

The proposed options licensing fees will allow the Exchange to recoup its costs in connection with index licensing fees for the trading of PowerShares ETF options. The fees will be collected on every PowerShares ETF option order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that collection of per-contract side licensing fees in connection with PFM, PHJ, and PID options orders placed by those market participants that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that Amex in recent years has revised a number of fees to better align Exchange fees with the actual cost of delivering services and to reduce Exchange subsidies of such services.<sup>6</sup> 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 offering PowerShares ETF options a fair share of the related costs of offering such options.

In connection with the adoption of an options licensing fee for PowerShares ETF options, the Exchange notes that the proposal will better align its licensing fees with its competitors. The

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<sup>6</sup> See 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).

Exchange also maintains that charging an options licensing fee, where applicable, for all market participant orders executed on the Exchange except for customer orders is reasonable given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its charges with the cost of providing these products and maintaining the trading floor and systems.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>8</sup> in particular, 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

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

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>10</sup> because it establishes or changes a due, fee, or other charge imposed by Amex. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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.

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-2005-094 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-094. 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 the 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-2005-094 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>11</sup>

Jonathan G. Katz  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).