

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52767; File No. SR-Amex-2005-108)

November 10, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt an Options Licensing Fee for the PowerShares Lux Nanotech Portfolio (PXN) and the PowerShares Aerospace & Defense Portfolio (PPA)

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 27, 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. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to 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

Amex proposes to modify its Options Fee Schedule by adopting a per-contract license fee in connection with the orders of specialists, registered options traders, firms, non-member market makers, and broker-dealers (collectively, “Market Participants”) in connection with options transactions in the PowerShares Lux Nanotech Portfolio (symbol: PXN) and the PowerShares

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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).

Aerospace & Defense Portfolio (symbol: PPA).<sup>5</sup> The text of the proposed rule change is available on the Exchange's Internet Web site (<http://www.amex.com>), at the Exchange's principal office, 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 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

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") and securities indexes. As a result, the Exchange is required to pay index license fees to third parties as 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 an index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has recently established per-contract licensing fees for orders of Market Participants that are collected on

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<sup>5</sup> In this proposed rule change filing, Amex inadvertently included references to an options ticker symbol other than PXN and PPA in certain places. Amex has represented that these references were made in error and that the only options which are subject to the license fees contemplated by this proposal are PXN and PPA. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Leah Mesfin, Special Counsel, and Edward Cho, Staff Attorney, Division of Market Regulation, Commission (November 3, 2005).

each option transaction in certain designated products in which such Market Participant is a party.<sup>6</sup>

The purpose of the proposal is to charge options licensing fees in connection with options on PXN and PPA. Specifically, Amex seeks to charge options licensing fees of \$0.10 and \$0.09 per contract side in connection with PXN and PPA options, respectively, for orders of Market Participants executed on the Exchange. In all cases, the fees would be charged only to Exchange members through whom such orders are placed.

Amex represents that the proposed options licensing fees would allow the Exchange to recoup its costs in connection with the index license fees for the trading of PXN and PPA options. The fees would be collected on every Market Participant order executed on the Exchange. The Exchange believes that requiring the payment of a per-contract licensing fee in connection with PXN and PPA options by those Market Participants that benefit from the index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that, in recent years, it has revised a number of its fees to better align Amex fees with the actual cost of delivering services and reduce Amex's subsidization of such services.<sup>7</sup> The Exchange represents 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 transactions in PXN and PPA options a fair share of the related costs of offering such options for trading.

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<sup>6</sup> See Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); Securities Exchange Act Release No. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

The Exchange asserts that the proposal provides for an equitable allocation of fees as required by Section 6(b)(4) of the Act.<sup>8</sup> In connection with the adoption of options licensing fees for PXN and PPA options, the Exchange notes that charging the options licensing fees, where applicable, to all Market Participant orders, except for customer orders, is reasonable given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing trading products.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its 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 with respect to the proposed rule change.

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<sup>8</sup> Section 6(b)(4) of the Act states that the rules of a national securities exchange must “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.” 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder 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 the 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.

### 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 No. SR-Amex-2005-108 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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 19b-4(f)(2).

All submissions should refer to File Number SR-Amex-2005-108. 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 Commissions 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 office 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-2005-108 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Jonathan G. Katz  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).