

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52994; File No. SR-Amex-2005-122)

December 21, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Exchange Traded Fund Transaction Charges

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 29, 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. On December 14, 2005, the Amex submitted Amendment No. 1 to the proposed rule change. On December 21, 2005, the Amex submitted Amendment No. 2 to the proposed rule change. The Amex has designated this proposal, as amended, as one changing a fee imposed by the Amex under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

The Amex proposes to revise a variety of transaction fees that Exchange members are charged for executions on the Exchange in connection with transactions in exchange traded fund shares ("ETFs") and trust issued receipts ("TIRs") (collectively, "Exchange Traded Funds").

The text of the proposed rule change, as amended, is available on the Amex's Web site (<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 Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 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 Amex proposes to revise its Equity Fee Schedule and its Exchange Traded Funds and Trust Issued Receipts Fee Schedule (the "ETF/TIR Fee Schedule") to revise the transaction fees applicable to Exchange members in connection with Exchange Traded Funds. The Amex states that these fee changes will be assessed on Exchange members commencing December 1, 2005.

For the purpose of clarity, the Exchange proposes to eliminate in the Equity Fee Schedule references to Exchange Traded Funds, as applicable. Those sections of the Equity Fee Schedule that relate solely to Exchange Traded Funds will be deleted and, if necessary, added to the

ETF/TIR Fee Schedule. In this manner, equities and Exchange Traded Funds will now have separate and distinct fee schedules.

The Exchange proposes the following changes to the ETF/TIR Fee Schedule: (i) adoption of transaction charges for all market participants of \$0.34 per 100 shares per trade for all Exchange Traded Funds (except the SPDR O-Strip); (ii) adoption of transaction charges for all market participants of \$0.50 per 100 shares per trade in connection with the SPDR O-Strip; (iii) elimination of customer transaction charge fee waivers for the ETFs listed in Note 2 to the Equity Fee Schedule and Note 3 of the ETF/TIR Fee Schedule; (iv) elimination of the fee suspensions for specialists, registered traders and broker-dealers in connection with 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”) and iShares Goldman Sachs InvestTop Corporate Bond Fund (“LQD”); (v) elimination of the transaction fee waivers in connection with ETFs that are executed as part of an exchange-for-physical transaction (“EFP”); (vi) addition of the “Order Cancellation Fee” previously set forth only in the Equity Fee Schedule; (vii) reduction of the current exemption for transaction charges for electronic orders from up to 5,099 shares to up to 2,400 shares; and (viii) renaming of the “Regulatory Fee” as the “Value Based Fee.”

The Amex currently charges members transaction fees on a per trade basis for Exchange Traded Funds transactions executed on the Exchange. The current transaction charges are shown in the table below.

I. Transaction Charges for ETFs Without Unreimbursed Fees to a Third Party

	Specialists	Registered Traders	Customer/ Broker-Dealer (Off-Floor)
Per Share Side	\$0.0033 (\$0.33 per 100 shares)	\$0.0036 (\$0.36 per 100 shares)	\$0.0060 (\$0.60 per 100 shares)
Subject to the following per trade maximums:	\$300 (90,909 shares)	\$300 (83,333 shares)	\$100 (16,667 shares)

II. Transaction Charges for ETFs for which the Exchange Pays Unreimbursed Fees to a Third Party

	Specialists	Registered Traders	Customer/ Broker-Dealer (Off-Floor)
Per Share Side	\$0.0037 (\$0.37 per 100 shares)	\$0.0038 (\$0.50 per 100 shares)	\$0.0060 (\$0.60 per 100 shares)
Subject to the following per trade maximums	\$300 (81,081 shares)	\$300 (78,947 shares)	\$100 (16,667 shares)

III. Transaction Charges for SPDR O-Strip

	Specialists	Registered Traders	Customer/ Broker-Dealer (Off-Floor)
Per Share Side	\$0.0050 (\$0.50 per 100 shares)	\$0.0050 (\$0.50 per 100 shares)	\$0.0060
Subject to the following per trade maximums	\$300 (60,000 shares)	\$300 (60,000 shares)	\$100 (16,667 shares)

IV. Transaction Charges for iShares FTSE/Xinhua China 25 Index Fund

	Specialists	Registered Traders	Customer/ Broker-Dealer (Off-Floor)
Per Share Side	\$0.0039 (\$0.39 per 100 shares)	\$0.0042 (\$0.42 per 100 shares)	\$0.0060
Subject to the following per trade maximums	\$300 (76,923 shares)	\$300 (71,428 shares)	\$100 (16,667 shares)

The proposed revision to the per trade transaction charge in connection with Exchange Traded Funds executed on the Exchange are set forth below.

I. Transaction Charges for ETFs/TIRs (except the SPDR O-Strip)

	Specialists	Registered Traders	Customer/ Broker-Dealer (Off-Floor)
Per Share Side	\$0.0034 (\$0.34 per 100 shares)	\$0.0034 (\$0.34 per 100 shares)	\$0.0034 (\$0.34 per 100 shares)
Subject to the following per trade maximums:	\$300 (88,235 shares)	\$300 (88,235 shares)	\$100 (29,411 shares)

II. Transaction Charges for SPDR O-Strip

	Specialists	Registered Traders	Customer/ Broker-Dealer (Off-Floor)
Per Share Side	\$0.0050 (\$0.50 per 100 shares)	\$0.0050 (\$0.50 per 100 shares)	\$0.0050 (\$0.50 per 100 shares)
Subject to the following per trade maximums:	\$300 (60,000 shares)	\$300 (60,000 shares)	\$100 (20,000 shares)

The Exchange is proposing to clarify and simplify transaction charges applicable to Exchange Traded Funds that affect members and market participants. In particular, the Exchange believes that the proposal will attract additional order flow as a result of the reduction in the per share rate charge, especially in connection with customer and broker-dealer orders. Currently, the per share rate charge for customers and broker-dealer orders is \$0.0060, or \$0.60 per 100 shares. The proposal will significantly reduce this charge by \$0.0026 per share to \$0.0034 per share, or \$0.34 per 100 shares. The Exchange believes that order flow providers will find this transaction fee reduction attractive.

The Exchange is proposing to adopt a uniform Exchange Traded Fund transaction fee that is attractive to market participants and easier to calculate and administer. As stated above, the proposed transaction fee applicable to Exchange Traded Funds (except the SPDR O-Strip) will be \$0.0034 per share, or \$0.34 per 100 shares, subject to the existing fee cap per trade. The current transaction charge per trade is capped at \$300 for specialists and registered traders and \$100 for broker-dealers and customers. In connection with the SPDR O-Strip, the Exchange states that it proposes to levy a higher transaction charge due to a more expensive license agreement than is typically found in other ETFs. Specifically, the proposed transaction fee applicable to the SPDR O-Strip will be \$0.0050 per share, or \$0.50 per 100 shares, subject to the existing fee cap per trade. The current transaction charge per trade is capped at \$300 for specialists and registered traders and \$100 for broker-dealers and customers. In addition, specialist transaction charges will continue to be capped at \$400,000 per month per specialist unit.

For clarity and ease of administration, the Exchange believes that the elimination of various transaction fee waivers is warranted. As a result, customer transaction charge fee

waivers for the ETFs listed in Note 2 of the Equity Fee Schedule and Note 3 of the ETF/TIR Fee Schedule; fee suspensions for specialists, registered traders, and broker-dealers in connection with SHY, IEF, TLT, and LQD; and transaction fee waivers in connection with ETFs that are executed as part of an EFP will be terminated in connection with this proposal. The existing specialist fee waiver in connection with QQQQ trades will continue to apply and will expire as expected on December 31, 2005.⁵

The “Order Cancellation Fee” applicable to Exchange Traded Funds is currently set forth in the Equity Fee Schedule.⁶ In order to provide a “stand alone” fee schedule for Exchange Traded Funds, the “Order Cancellation Fee” section in the Equity Fee Schedule will also be set forth in the ETF/TIR Fee Schedule.

The Exchange further proposes that orders entered electronically into the Amex Order File from off the Floor (“System Orders”) for up to 2,400 shares in Exchange Traded Funds will not be assessed a transaction charge. The current ETF/TIR Fee Schedule provides that up to 5,099 shares in Exchange Traded Funds are not assessed a transaction charge. As is the case in the existing Fee Schedule, this provision does not apply to System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker.⁷ Therefore, this limited fee exemption is not available to non-member competing market

⁵ See Securities Exchange Act Release No. 52736 (November 4, 2005), 70 FR 69171 (November 14, 2005).

⁶ See Securities Exchange Act Release No. 52533 (September 29, 2005), 70 FR 58496 (October 6, 2005) (SR-Amex-2005-085).

⁷ The Amex states that a “competing market maker” is defined as a specialist or market maker registered as such on a registered stock exchange (other than the Amex), or a market maker bidding and offering over-the-counter, in an Amex-traded security.

makers.⁸ The Amex states that this limited fee exemption was originally intended to attract “smaller orders” to the Exchange. However, as the size of orders that are deemed “small” continues to decrease, the Exchange believes that the proposed modification to the transaction fee exemption will reflect this reality. In addition, the Exchange submits that reducing the fee exemption for System Orders from 5,099 shares to 2,400 shares should help generate additional revenue to fund Exchange operations.

The Exchange has also proposed to change the name of the “Regulatory Fee” to “Value Based Fee.”⁹ As with the current “Regulatory Fee,” the Amex states that the “Value Based Fee” will only be applied to System Orders entered by a member or member organization trading as agent for the account of a non-member competing market maker.¹⁰ The rate of the fee (.000075) also will not change. The Exchange submits that changing the name of the “Regulatory Fee” to “Value Based Fee” better reflects the intent and type of this fee. The System Orders of all other market participants will continue to not be subject to this Value Based Fee. The Exchange states that the proposed language set forth under the “Value Based Fee” Section is identical in operation and meaning to the existing text of the “Regulatory Fee.” Accordingly, the Exchange states that the operation of the “Value Based Fee” will be applied identically to the current “Regulatory Fee” in the ETF/TIR Fee Schedule.

The Exchange believes that the proposed revision to Exchange Traded Funds transaction fees will benefit the Exchange by providing greater incentive for market participants to send order flow to the Amex. In addition, the revision also clarifies the transaction fees that market

⁸ The Exchange states that it intends to revise its rules to conform to Rule 610 of Regulation NMS prior to the compliance date of such rule.

⁹ The Exchange submits that its regulatory obligations are funded by numerous sources.

¹⁰ The Exchange states that it intends to revise its rules to conform to Rule 610 of Regulation NMS prior to the compliance date of such rule.

participants will be charged for transactions in Exchange Traded Funds due to the elimination of various fee waivers that are currently part of the ETF/TIR Fee Schedule.

The Exchange submits that this proposal to revise Exchange Traded Funds transaction fees applicable to Exchange members is consistent with Section 6(b)(4) of the Act.¹¹ The Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members largely through the adoption of a uniform transaction fee for Exchange Traded Funds and the elimination of various fee waivers. In addition, the Exchange expects the proposal to attract additional order flow largely due to the simplification and reduction of per share fee rates, especially in connection with customer and broker-dealer orders. Therefore, the Exchange maintains that the proposed Exchange Traded Funds transaction fee changes, in the aggregate, are an equitable allocation of reasonable fees among Exchange members.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(4) of the Act,¹³ in particular, in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers 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, as amended, will impose any inappropriate burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal, as amended, will take effect upon filing with the Commission. 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 furtherance of the purposes of the Act.¹⁶

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ The effective date of the original proposed rule change is November 29, 2005, the effective date of Amendment No. 1 is December 14, 2005, and the effective date of Amendment No. 2 is December 21, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 21, 2005, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-122 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Amex-2005-122. 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, as amended, 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 office of the 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-2005-122 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.¹⁷

Jonathan G. Katz
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).