

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51685; File No. SR-Amex-2005-050)

May 11, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Marketing Fee for Options on SPDRs

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 April 28, 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 Amex. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Amex under Section 19(b)(3)(A)(ii) of the Act,³ 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 from interested persons.

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

The Exchange proposes to amend its marketing fee imposed on certain transactions of specialists and registered options traders ("ROTs") in connection with options on Standard & Poor's Depositary Receipts ("SPDRs"). The fee would be imposed at the rate of \$1.00 per contract, instead of the rate of \$0.40 per contract. The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at the Amex's Office of the Secretary,

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).

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 its proposal and discussed any comments it had received regarding the proposal. 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

In June 2003, the Exchange reinstated its options marketing fee of \$0.40 per contract on the transactions of specialists and ROTs in equity options.⁵ Currently, the options marketing fee is eligible to be assessed on all equity options transactions (including options on exchange-traded funds and trust issued receipts). The Exchange proposes to amend the options marketing fee in connection with options on SPDRs to increase the fee from the current level of \$0.40 to \$1.00 per contract. All other equity options would continue to remain subject to the current options marketing fee level of \$0.40 per contract.

The options marketing fee is assessed on only those specialist and ROT transactions involving customer orders from firms that accept payment for directing their orders to the Exchange ("payment accepting firms") with whom a specialist has negotiated a payment for order flow arrangement. In addition, the options marketing fee is currently assessed only on transactions of specialists and ROTs with orders from customers of payment accepting firms that

⁵ See Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR-Amex-2003-50).

are for 200 contracts or less. The Exchange proposes to eliminate the restriction limiting the assessment of the marketing fee for options transactions of 200 contracts or less. Thus, the fee would be eligible to be assessed on all transactions in equity options regardless of the contract size.

The Exchange believes that the \$1.00 per contract options marketing fee for SPDR options is an equitable allocation of a reasonable fee among members and is designed to enable the Exchange to compete with other markets in attracting SPDR options order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is designed to provide 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

The Amex neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ Accordingly, the proposal will take effect upon filing with the Commission. 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. Please include File Number SR-Amex-2005-050 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-2005-050. 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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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 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-2005-050 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

J. Lynn Taylor
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).