

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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 at <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-2005-127 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-Amex-2005-127. 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 at <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 office 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 No. SR-Amex-2005-127 and should be submitted on or before March 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>60</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-2642 Filed 2-23-06; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53328; File No. SR-Amex-2006-11]

#### **Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of an Options Licensing Fee for Options on Certain SPDR ETFs**

February 16, 2006.

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 February 3, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to 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 has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders it 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 license fee for the orders of specialists, registered options traders ("ROTs"), firms, non-member market makers, and broker-dealers in

connection with options transactions in three new exchange-traded funds ("ETFs"): the SPDR Biotech ETF (symbol: XBI); the SPDR Homebuilders ETF (symbol: XHB); and the SPDR Semiconductor ETF (symbol: XSD).

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, at the principal office of the Amex, 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, 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**

Amex proposes to adopt a per contract licensing fee for options on XBI, XHB, and XSD. These fee changes will be assessed on members commencing February 6, 2006. Amex also proposes to correct the Options Fee Schedule to reflect the elimination of the equity option fee discount for member firms facilitation customer orders.<sup>5</sup>

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain ETFs. This requirement to pay an index license fee to a third party 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 the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders of specialists, ROTs, firms, non-member market makers and broker-dealers, which is collected on every option transaction in designated products in

<sup>60</sup> 17 CFR 200.30-3(a)(12).

<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)(ii).

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

<sup>5</sup> See Securities Exchange Act Release No. 52754 (November 9, 2005), 70 FR 69998 (November 18, 2005) (File No. SR-Amex-2005-113).

which such market participant is a party.<sup>6</sup>

The purpose of this proposal is to charge an options licensing fee in connection with options on XBI, XHB and XSD (collectively, the "SPDR ETFs"). Specifically, Amex seeks to charge an options licensing fee of \$0.09 per contract side for each SPDR ETF option for specialist, ROT, firm, non-member market maker and broker-dealer orders executed on the Exchange. In all cases, the fees will be charged only to the Exchange members through whom the orders are placed.

The proposed options licensing fee will allow the Exchange to recoup its costs in connection with the index license fee for the trading of the SPDR ETF options. The fees will be collected on every order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that the proposal to require payment of a per contract licensing fee in connection with the SPDR ETF options by those market participants that are the beneficiaries of Exchange index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that the Amex, in recent years, has revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.<sup>7</sup> Amex believes 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 SPDR ETF options, a fair share of the related costs of offering such options.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.<sup>8</sup> In connection with the adoption of an options licensing fee for SPDR ETF options, the Exchange believes that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable, given the competitive pressures in the industry.<sup>9</sup> Accordingly,

the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing products.

In addition, the Exchange recently eliminated the equity options transaction fee discount for member firms facilitating customer orders.<sup>10</sup> However, in a later filing, File No. SR-Amex-2005-126,<sup>11</sup> the Exchange inadvertently failed to incorporate in the Options Fee Schedule the elimination of the equity option transaction fee discount for members firms; therefore, the current fee schedule is inaccurate.<sup>12</sup> Accordingly, in this filing, the Exchange proposes to correct the Options Fee Schedule to once again reflect the elimination of the equity option transaction fee discount for member firms that was previously adopted by the Exchange.

## 2. Statutory Basis

Amex believes that the proposed fee change is consistent with Section 6(b)(4) of the Act<sup>13</sup> 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

Amex believes that the proposed rule change does not 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.

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

The foregoing rule change was filed pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2)

and Angela Muehr, Attorney, Division of Market Regulation ("Division"), Commission, on February 15, 2006.

<sup>10</sup> See Securities Exchange Act Release No. 52754, *supra* note 5. This proposal was immediately effective and was noticed in the **Federal Register** on November 18, 2005.

<sup>11</sup> See Securities Exchange Act Release No. 52925 (December 8, 2005), 70 FR 74065 (December 14, 2005).

<sup>12</sup> Telephone call between Jeffrey Burns, Vice President and Associate General Counsel, Amex, and Angela Muehr, Attorney, Division of Market Regulation ("Division"), Commission, on February 15, 2006.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

thereunder,<sup>15</sup> because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization.

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.

## 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-2006-11 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549-1090.

All submissions should refer to File Number SR-Amex-2006-11. 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 office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> See, e.g., 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 Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

<sup>8</sup> Section 6(b)(4) states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

<sup>9</sup> Telephone call between Jeffrey Burns, Vice President and Associate General Counsel, Amex,

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-11 and should be submitted on or before March 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53327; File No. SR-NYSE-2005-86]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Conform NYSE Rules 123C and 476A with NYSE Rule 80A

February 16, 2006.

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 December 7, 2005, the New York Stock Exchange, Inc. ("NYSE" 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 February 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend: (a) NYSE Rule 123C (Market on the Close Policy and Expiration Procedures); and (b) the Supplementary Material to NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules), to conform such rules with the current provisions of NYSE Rule 80A (Index Arbitrage Trading Restrictions). The text of the proposed rule change is available on the

Exchange's Internet Web site (<http://www.nyse.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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE Rules 123C(7) and 476A to conform these rules with the provisions of NYSE Rule 80A. The Exchange amended NYSE Rule 80A on two earlier occasions to: (i) revise the trigger levels for the "collar" provisions, among others;<sup>4</sup> and (ii) replace the usage of the Dow Jones Industrial Average<sup>5</sup> ("DJIA") as the basis for the calculation of the limitations on index arbitrage trading with the average closing value of the NYSE Composite Index® (also referred to as NYA).<sup>6</sup> NYSE Rules 123C(7) and 476A refer to the former provisions of NYSE Rule 80A and therefore must be conformed with NYSE Rule 80A, as amended.

NYSE Rule 80A currently requires that, for any component stock of the S&P 500® Stock Price Index,<sup>7</sup> whenever the NYSE Composite Index® declines from the previous day's close by an amount greater than or equal to two percent calculated pursuant to NYSE Rule 80A, all index arbitrage orders to sell must be marked "sell plus," and, whenever the NYSE Composite Index® advances from the previous day's close by such amount, all index arbitrage

orders to buy must be marked "buy minus." The value at which tick restrictions are imposed is calculated quarterly. The two-percent value is based upon the average closing value of the NYSE Composite Index® for the last month of the previous calendar quarter, rounded down to the nearest ten points.

##### (a) NYSE Rule 123C(7) Expiration Days: Exception to Rule 80A

NYSE Rule 123C(7) currently refers to the former provisions of NYSE Rule 80A, which utilized the DJIA to calculate the limitations on index arbitrage trading. The Exchange proposes to amend NYSE Rule 123C(7) to reflect the current provisions of NYSE Rule 80A, which applies the NYSE Composite Index® for such calculation. NYSE Rule 123C(7) should have been amended along with the amendments to NYSE Rule 80A in August 2005,<sup>8</sup> but the Exchange inadvertently overlooked the amendment at that time.

NYSE Rule 123C(7) currently provides that when a market-on-close ("MOC") index arbitrage order to establish or increase a position is entered in any component stock of the S&P 500® Stock Price Index and NYSE Rule 80A subsequently goes into effect, the MOC order must be handled differently depending upon when NYSE Rule 80A goes into effect. The tick restrictions are determined at the time NYSE Rule 80A goes into effect under the various conditions that exist in the market at that time. However, NYSE Rule 123C(7) also indicates that NYSE Rule 80A's provisions, which relate to the entry of index arbitrage orders when the DJIA is up or down 2.0% from its previous day's closing value, do not apply to index arbitrage MOC orders "that are liquidating previously established stock positions against expiring derivative index products." The rule further provides that the two percent value is calculated at the beginning of each calendar quarter and is 2.0%, rounded down to the nearest 10 points, of the average closing value of the DJIA for the last month of the previous quarter. Further, the rule states that the NYSE Rule 80A exemption applies only on expiration days. Therefore, the orders that are entered before NYSE Rule 80A goes into effect cannot be cancelled between 3:40 p.m. and 3:50 p.m., except to correct a legitimate error or when a regulatory trading halt is in effect; after 3:50 p.m., cancellation or reduction in the size of MOC orders is not permitted for any reason.

##### (b) NYSE Rule 476A Imposition of Fines for Minor Violation(s) of Rules

<sup>4</sup> See *infra* note 9.

<sup>5</sup> "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

<sup>6</sup> See Securities Exchange Act Release No. 52328 (August 24, 2005), 70 FR 51398 (August 30, 2005) (SR-NYSE-2005-45) ("NYSE Rule 80A Order"). NYSE Rule 80A currently calculates limitations on index arbitrage trading based on the NYSE Composite Index®, replacing the previous usage of the DJIA with respect to such calculation.

<sup>7</sup> "Standard and Poor's 500 Stock Price Index® is a service mark of Standard and Poor's Corporation.

<sup>8</sup> See NYSE Rule 80A Order, *supra* note 6.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> In Amendment No. 1, the Exchange made minor technical changes to the proposed rule text and revised the description of the proposal to clarify the general background of NYSE Rules 123C and 476A. Amendment No. 1 replaced NYSE's original filing in its entirety.