

Subsequently, in 2004, the Exchange adopted a monthly cap on fees charged for all equity and index options transactions by member firms including transactions resulting from customer facilitations.<sup>8</sup> Pursuant to the monthly cap, the transaction, comparison, and floor brokerage fees charged to member firms are capped at \$75,000 per month per member firm.<sup>9</sup> The purpose of this monthly cap was to provide an incentive for member firms to transact more volume on the floor of the Exchange, which provides more trading opportunities for floor members thus increasing revenue potential for specialists and registered options traders.

Based on the implementation of the monthly fee cap described above, management now proposes to eliminate the equity option transaction fee discount for member firms facilitating customer orders.<sup>10</sup> Given that member firm fees are currently capped at \$75,000 per month, an additional incentive in the form of a discount for these facilitation transactions is no longer necessary. The elimination of the fee discount also will allow the Exchange to charge the same fee for all types of transactions thereby simplifying the fee schedule and eliminating the need to identify transactions resulting from the member firm facilitation of customer orders.

## 2. Statutory Basis

The Amex believes the proposed rule change is consistent with section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>12</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In addition, the Amex believes that eliminating the discount for transactions resulting from the member firm facilitation of customer orders in equity options allows for a more consistent

application of options transaction fees to all types of orders.

### *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.

### *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 establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange,<sup>13</sup> and, therefore, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>15</sup> 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-2005-113 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 No. SR-Amex-2005-113. 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 will also 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 No. SR-Amex-2005-113 and should be submitted on or before December 9, 2005.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-6376 Filed 11-17-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52765; File No. SR-Amex-2005-102]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Interpretation of Exchange Rule 577 and Section 723 of the Amex Company Guide

November 10, 2005.

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 12, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

<sup>8</sup> See Securities Exchange Act Release No. 49217 (February 10, 2004), 69 FR 7828 (February 19, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-Amex-2004-10). The Exchange clarified that the monthly cap on fees applies to all equity and index options transactions. See November 7, 2005 Telephone Conversation, *supra* note 5.

<sup>9</sup> The Exchange clarified that the monthly cap applies to transaction, comparison, and floor brokerage fees. See November 7, 2005 Telephone Conversation, *supra* note 5.

<sup>10</sup> The Exchange clarified that the option transaction fee discount applies only to equity options. See November 7, 2005 Telephone Conversation, *supra* note 5.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> The Exchange clarified that the proposed rule change would change a fee applicable only to a member. See November 7, 2005 Telephone Conversation, *supra* note 5.

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

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

<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.

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 an Exchange interpretation of Exchange Rule 577 (Giving Proxies by Member Organization) and Section 723 (Giving Proxies by Member Organization) of the Amex Company Guide.<sup>3</sup>

### **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**

Amex Rule 577 provides that a member organization may give a proxy to vote shares registered in its name, notwithstanding the failure of the beneficial owner to instruct the firm how to vote, provided, among other things, that the proposal being voted on does not involve a matter which "may affect substantially the rights or privileges of such stock."<sup>4</sup> Commentary .11 to Amex Rule 577 lists, by way of example, 18 "non-routine" actions in respect of which member organizations may not vote uninstructed shares. In addition to those 18 specific actions, the Amex has interpreted Rule 577 to preclude member organizations from voting without instructions in certain other situations, including those involving any material amendment to an investment advisory contract with an

investment company. The New York Stock Exchange ("NYSE") Rule 452 is virtually identical to Amex Rule 577 and has been similarly interpreted.

In the past, where the only change being made to the substantive terms of the investment advisory contract was a change in the identity of the investment adviser, both the Amex and the NYSE interpreted their respective proxy voting provisions to permit member organizations to vote uninstructed shares on the authorization of the new investment company investment advisory contract.<sup>5</sup> A proposed rule change filed by the NYSE of its interpretation of its rule governing proxies by member organizations on votes relating to changes to investment advisory contracts recently became effective.<sup>6</sup> Under the new interpretation, any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser,<sup>7</sup> which approval is required by the Investment Company Act of 1940, as amended ("1940 Act"),<sup>8</sup> and the rules thereunder, will be deemed by NYSE to be a "matter which may affect substantially the rights or privileges of such stock" on which a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. This policy means that where the 1940 Act requires shareholder approval of an investment advisory contract due to an assignment of an investment company's investment advisory contract (including an assignment caused by a change in control of the investment adviser that is a party to the assigned contract), a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares.

Following discussions with the staff of the Commission's Division of

Investment Management, the Amex has determined to adopt a comparable interpretation of Rule 577 to conform to the NYSE interpretation. Under the proposed interpretation of Amex Rule 577, any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser,<sup>9</sup> which approval is required by the 1940 Act, and the rules thereunder, will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" (that is, a "non-routine" matter) on which a member organization may not give a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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*

The Exchange has 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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f)(1) of Rule 19b-4 thereunder<sup>13</sup> as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule. At any time within 60 days of the filing of the proposed rule change, the Commission

<sup>3</sup> The Commission notes that the proposed rule change does not amend the text of Exchange Rule 577 and its Commentary or Section 723 of the Amex Company Guide and its Commentary.

<sup>4</sup> Section 723 of the Amex Company Guide is the same as Amex Rule 577 and this proposed rule interpretation will apply to both Section 723 of the Amex Company Guide and Amex Rule 577.

<sup>5</sup> In 1992, the NYSE issued a formal interpretation of Rule 452 to, among other things, allow member organizations to give a proxy on the initial approval of an investment advisory contract if the beneficial holder does not exercise his right to vote; however, member organizations are precluded from voting without instructions if there is a material amendment to the investment advisory contract. See Securities Exchange Act Release No. 30697 (May 13, 1992), 57 FR 21434 (May 20, 1992) (SR-NYSE-92-05). Telephone conversation between Steve L. Kuan, Special Counsel, Division of Market Regulation ("Division"), Commission, and Marija Willen, Associate General Counsel, Amex, on October 27, 2005.

<sup>6</sup> See Securities Exchange Act Release No. 52569 (October 6, 2005), 70 FR 60118 (October 14, 2005) (SR-NYSE-2005-61).

<sup>7</sup> Telephone conversation between Steve L. Kuan, Special Counsel, Division, Commission, and Marija Willen, Associate General Counsel, Amex, on October 27, 2005.

<sup>8</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>9</sup> See note 7 *supra*.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(1).

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-2005-102 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-2005-102. 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 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 Number SR-Amex-2005-102 and should be submitted on or before December 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52767; File No. SR-Amex-2005-108]

##### **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 (PXLN) and the PowerShares Aerospace & Defense Portfolio (PPA)**

November 10, 2005.

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: PXLN) and the PowerShares 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 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 PXLN and PPA. Specifically, Amex seeks to charge options licensing fees of \$0.10 and \$0.09 per contract side in connection with PXLN and PPA options, respectively, for orders of Market Participants executed on the Exchange. In all cases, the fees would be charged only to Exchange

ticker symbol other than PXLN 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 PXLN 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).

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</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).

<sup>5</sup> In this proposed rule change filing, Amex inadvertently included references to an options