

**FOR FURTHER INFORMATION CONTACT:**

Kevin M. O'Neill, Special Counsel, at (202) 551-3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:**

In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, section 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: September 28, 2005.

**Jonathan G. Katz,**

*Committee Management Officer.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52504; File No. SR-Amex-2005-086]

**Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Revising the Implementation Date for the ANTE System**

September 23, 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 September 1, 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 and II below, which items have been prepared by Amex. On September 20, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Amex filed the proposal, as amended, as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

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

<sup>3</sup> Amendment No. 1 clarified that the proposed rule change was being submitted under Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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

Amex proposes to amend (1) Amex Rule 900-ANTE to provide a revised date for the completion of the implementation of the ANTE System (as defined herein) to all option classes; and (2) Amex Rule 935-ANTE, Commentary .01 to establish a revised date for increased floor broker functionality in the ANTE System. The text of the proposed rule change is available on Amex's Web site (<http://www.amex.com>), at 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, Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on 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

**Revised Implementation Date—Amex Rule 900-ANTE**

On May 20, 2004, the Commission approved Amex's proposal to implement a new options trading platform known as the Amex New Trading Environment ("ANTE") System.<sup>6</sup> On May 25, 2004, Amex began rolling out the ANTE System on its trading floor on a specialist's post-by-specialist's post basis. At that time, it was anticipated the roll-out would be completed by the end of the second quarter of 2005. The implementation date for the full roll-out of the ANTE System was subsequently extended to August 31, 2005.<sup>7</sup> Amex has now rolled out the ANTE System to all its option classes except two—the Nasdaq 100 Index ("NDX") and the Mini Nasdaq Index ("MNX"). Amex represents that there are specific reasons why these

<sup>6</sup> See Securities Exchange Act Release No. 49747 (May 20, 2004) 69 FR 30344 (May 27, 2004) ("Initial Approval of ANTE System").

<sup>7</sup> See Securities Exchange Act Release No. 51965 (July 1, 2005) 70 FR 40082 (July 12, 2005).

products have not been rolled out on the ANTE System. The specialist in these products is concerned that the theoretical price calculator provided by the ANTE System may not accurately price the options on these indexes. The specialist is currently waiting for his own theoretical index price calculator, which has been installed, to successfully calculate prices for these indexes and the options. Amex expects that the MNX/NDX specialist will have its proprietary calculator in place by October 31, 2005.

Amex is now proposing to further revise its implementation schedule to provide that the remaining two option classes will be on the ANTE System by October 31, 2005. Maintaining two systems for the trading of options—the legacy system (XTOPS, AODB and Auto-Ex) and ANTE—is costly. As a result, the Exchange is working diligently to have all option classes on the ANTE System by October 31, 2005, so that it can retire its legacy systems.

**Increased Floor Broker Functionality—Rule 935-ANTE**

Amex Rule 935-ANTE(b) provides for the post trade allocation of contracts executed as the result of the submission of orders to trade with orders in the ANTE Central Book. Under this rule, if more than one ANTE Participant<sup>8</sup> and/or floor broker representing a customer order submits an order to trade with an order in the ANTE Central book within a period not to exceed five seconds after the initial ANTE Participant has submitted its order, all those ANTE Participants and/or floor brokers' customers will be entitled to participate in the allocation of any executed contracts. Amex represents that the ANTE System is currently unable to provide the functionality necessary for floor brokers representing customer orders in the trading crowd the ability to directly participate in the post trade allocation of orders taken off the Central Book. Commentary .01 to Amex Rule 935-ANTE provides a temporary methodology for the specialist to disengage the post trade allocation system in a specific series, which allows the floor broker to alert the specialist within the five second timeframe whenever his customer wants to participate in post trade allocation, and allows the specialist to provide for the customer's participation in post trade allocation when appropriate. The Commission approved the procedures

<sup>8</sup> Amex Rule 900-ANTE(b)(45) defines "ANTE Participant" as either the specialist and/or registered options trader(s) assigned to trade a specific options class on the ANTE System.

set forth in Commentary .01 as a “reasonable, temporary solution.”<sup>9</sup> Commentary .01 to Amex Rule 935–ANTE also originally provided that the ANTE System will give floor brokers greater functionality accessing the Central Book on March 31, 2005 or such other date as established by the Exchange and submitted to the Commission pursuant to Section 19(b) of the Act. The Exchange subsequently established August 31, 2005, as the date the increased functionality will be available in the ANTE System. Due to a delay in the roll out of the increased floor broker functionality, the Exchange now proposes to establish October 31, 2005 as the date set forth in Commentary .01 to Amex Rule 935–ANTE for such increased functionality.

## 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 and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is designed to prohibit unfair discrimination between customers, issuers, brokers and dealers.

### 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 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 Exchange has designated the proposed rule change, as amended, as a “non-controversial” rule change

pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>13</sup> Amex represents that the foregoing rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, does not become operative for 30-days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period for “non-controversial” proposals and make the proposed rule change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing requirement and the 30-day operative delay period.<sup>14</sup> The Commission notes that Amex has represented that the theoretical price calculators for the final two options classes are not installed and/or functioning properly and that it has not yet implemented the functionality for floor brokers representing customer orders. The Commission believes that extending the deadline for implementing Amex Rules 900– and 935–ANTE by two months should afford Amex the time needed to install and/or fix the theoretical price calculators and to implement the floor broker customer order functionality. Furthermore, the Commission believes that it is in the interest of investors and the public to delay implementation of the ANTE system until all of the components are in place and functioning properly. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b–4(f)(6) thereunder.<sup>16</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.<sup>17</sup>

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

<sup>13</sup> 7 CFR 240.19b–4(f)(6).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>16</sup> 17 CFR 240.19b–4(f)(6).

<sup>17</sup> For purposes of calculating the 60-day period within which the Commission may summarily

## 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–2005–086 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–2005–086. 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 Website (<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 Amex's Office of the Secretary. 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–2005–086 and should be submitted on or before October 24, 2005.

abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 20, 2005, the date on which Amex submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>9</sup> See Initial Approval of ANTE System.

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

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Jonathan G. Katz,

Secretary.

[FR Doc. E5-5345 Filed 9-30-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52510; File No. SR-Amex-2005-094]

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Options Licensing Fees for Certain PowerShares ETF Options

September 26, 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 September 19, 2005, the American Stock Exchange, Inc. (“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 Amex. Amex submitted the proposed rule change under 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

The Exchange proposes to modify its Options Fee Schedule by adopting a per-contract side licensing fee for the orders of specialists, registered options traders (“ROTs”), firms, non-member market makers, and broker-dealers in connection with transactions in certain PowerShares exchange-traded funds (“ETFs”).

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

The Exchange has entered into numerous license agreements with issuers and owners of indexes for the purpose of trading options on certain ETFs and securities indexes. The requirement to pay an index licensing fee to third parties is 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 issuers or index owners that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per-contract side licensing fee for the orders of specialists, ROTs, firms, non-member market makers, and broker-dealers collected on every transaction in certain designated products in which such market participant is a party.<sup>5</sup>

The purpose of the proposal is to charge per-contract side licensing fees in connection with options on the following three (3) ETFs (“PowerShares ETFs”):

- (1) PowerShares Dividend Achievers Portfolio (symbol: PFM);
- (2) PowerShares High Growth Rate Dividend Achievers Portfolio (symbol: PHJ); and
- (3) PowerShares International Dividend Achievers Portfolio (symbol: PID)

Specifically, Amex seeks to charge options licensing fees of \$0.05, \$0.10, and \$0.10 per contract side, in connection with options on PFM, PHJ, and PID, respectively, for specialist, ROT, firm, non-member market maker, and broker-dealer orders executed on the Exchange. In all cases, the fees set forth in the Options Fee Schedule are

charged only to Exchange members through whom the orders are placed.

The proposed options licensing fees will allow the Exchange to recoup its costs in connection with index licensing fees for the trading of PowerShares ETF options. The fees will be collected on every PowerShares ETF option order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that collection of per-contract side licensing fees in connection with PFM, PHJ, and PID options orders placed by those market participants that are the beneficiaries of the Exchange’s index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that Amex in recent years has revised a number of fees to better align Exchange fees with the actual cost of delivering services and to reduce Exchange subsidies of such services.<sup>6</sup> 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 offering PowerShares ETF options a fair share of the related costs of offering such options.

In connection with the adoption of an options licensing fee for PowerShares ETF options, the Exchange notes that the proposal will better align its licensing fees with its competitors. The Exchange also maintains that charging an options licensing fee, where applicable, for all market participant orders executed on the Exchange except for customer orders is reasonable given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its charges with the cost of providing these products and maintaining the trading floor and systems.

###### 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>8</sup> in particular, regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

<sup>6</sup> See 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>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>18</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).

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

<sup>5</sup> See File No. SR-Amex-2005-087 (became immediately effective on August 31, 2005).