

12f-5 under the Act,<sup>17</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. Amex rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.<sup>18</sup>

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>19</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, the NYSE disseminates through the facilities of CTA an updated IOPV for the Shares at least every 15 seconds from 9:30 a.m. to 4:15 p.m. E.T.

The Exchange will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or a halt because dissemination of the IOPV and/or underlying index value has ceased or (b) the primary market delists the Shares.

In support of this proposed rule change, the Exchange has made the following representations:

1. Amex has appropriate rules to facilitate transactions in this type of security.
2. Amex surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.
3. Amex will distribute an Information Circular to its members prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.
4. Amex will require a member with a customer that purchases the Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Circular.

5. Amex will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or a halt because dissemination of the IOPV and/or underlying index value has ceased or (b) the primary market delists the Shares.

This approval order is conditioned on Amex's adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Shares on the NYSE is consistent with the Act.<sup>20</sup> The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2005-092), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52925; File No. SR-Amex-2005-126]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt an Options Licensing Fee for Options on Certain PowerShares Exchange-Traded Funds

December 8, 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 December 5, 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 for the orders of specialists, registered options traders, firms, non-member market makers, and broker-dealers (collectively, "Market Participants") in connection with options transactions in two (2) new PowerShares exchange-traded funds ("ETFs").

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 various index providers for the purpose of trading options on certain ETFs. As a result, the Exchange is required to pay index license fees to third parties as a condition to the listing and trading of

<sup>17</sup> 17 CFR 240.12f-5.

<sup>18</sup> The Commission notes that Commentary .04 to existing Amex Rule 190 will permit a specialist in the Shares to create or redeem creation units of these funds to facilitate the maintenance of a fair and orderly market. The Commission previously has found Commentary .04 to Amex Rule 190 to be consistent with the Act. See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606, 10612 (March 14, 1996) (SR-Amex-95-43).

<sup>19</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>20</sup> See NYSE Order, *supra* note 4.

<sup>21</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).

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 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>5</sup>

The purpose of the proposal is to charge an options licensing fee in connection with options on the PowerShares Value Line Timeliness Select Portfolio (symbol: PIV) and the PowerShares Water Resources Portfolio (symbol: PHO) (collectively, "PowerShares ETF options"). Specifically, Amex seeks to charge an options licensing fee of \$0.10 per contract side for each PowerShares ETF option for the orders of Market Participants executed on the Exchange. In all cases, the fee would be charged only to the Exchange member through whom such order is placed.

Amex represents that the proposed options licensing fee would allow the Exchange to recoup its costs in connection with the index license fees for the trading of the PowerShares ETF options. The fee would be collected on every Market Participant order executed on the Exchange. The Exchange believes that requiring the payment of a per-contract licensing fee in connection with the PowerShares ETF options by those Market Participants that benefit from the index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that, in recent years, it has revised a number of its fees to better align Amex fees with the actual cost of delivering services and reduce Amex's subsidization of such services.<sup>6</sup> The Exchange represents that the implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex believes that this fee will help to allocate to those Market Participants engaging in transactions in PowerShares ETF options a fair share of the related costs of offering such options for trading.

The Exchange asserts that the proposal provides for an equitable allocation of fees as required by section

6(b)(4) of the Act.<sup>7</sup> In connection with the adoption of an options licensing fee for the PowerShares ETF options, the Exchange notes that charging the options licensing fee, where applicable, to all Market Participant orders, except for customer orders, is reasonable given the competitive pressures in the industry. Accordingly, the Exchange seeks, through this proposal, to better align its transaction charges with the cost of providing trading products.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members 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 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 foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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>7</sup> Section 6(b)(4) of the Act states that the rules of a national securities exchange must "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities." 15 U.S.C. 78f(b)(4).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 19b-4(f)(2).

## 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-2005-126 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 Number SR-Amex-2005-126. 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 the filing also will be available for inspection and copying at the principal office of 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-2005-126 and should be submitted on or before January 4, 2006.

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); Securities Exchange Act Release No. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-7307 Filed 12-13-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52914; File No. SR-CBOE-2005-98]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 9/10 Examination Program

December 7, 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 November 16, 2005, the Pacific Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. CBOE has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) 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

CBOE is filing revisions to the study outline and selection specifications for the Limited Principal—General Securities Sales Supervisor (Series 9/10) examination program. The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination, as well as modify the content of the examination program to track more closely the functional workflow of a Series 9/10 limited principal. CBOE is

not proposing any textual changes to the Constitution or Rules of CBOE.

The revised study outline is attached as Exhibit 3a. However, CBOE has omitted the Series 9/10 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to the Commission's confidential treatment procedures under the Freedom of Information Act.<sup>5</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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

CBOE Rule 9.2 states that no member organization shall be approved to transact options business with the public until those persons associated with it who are designated as Options Principals have been approved by and registered with the Exchange. CBOE Rule 9.2 further requires successful completion of an examination prescribed by the Exchange in order to qualify for registration as an Options Principal. The Series 9/10 examination, an industry-wide examination, has been designed for this purpose. The Series 9/10 examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions pertinent to the supervision of sales activities.

The Series 9/10 examination program is shared by CBOE and the following SROs: The American Stock Exchange LLC, the National Association of Securities Dealers, Inc. ("NASD"), the Municipal Securities Rule Making Board ("MSRB"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific

Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

A committee of industry representatives, together with the staff of CBOE and the other SROs, recently undertook a periodic review of the Series 9/10 examination program. As a result of this review, CBOE is proposing to update the content of the examination to cover Regulation S-P,<sup>6</sup> MSRB Rules G-37/G-38, SRO research analyst and anti-money laundering rules, municipal fund securities (e.g., 529 college savings plans), and exchange traded funds. CBOE is further proposing revisions to the study outline to reflect the SEC short sale requirements. In addition, as part of an ongoing effort to align the examination more closely to the supervisory duties of a Series 9/10 limited principal, CBOE is proposing to modify the content of the examination to track the functional workflow of a Series 9/10 limited principal. Also, CBOE is proposing to include questions related to parallel rules of NASD, the options exchanges, the MSRB and the NYSE in the same section of the exam.

As a result of the revisions, CBOE is proposing to modify the main section headings and the number of questions on each section of the Series 9/10 study outline as follows: Section 1—Hiring, Qualifications, and Continuing Education, 9 questions; Section 2—Supervision of Accounts and Sales Activities, 94 questions; Section 3—Conduct of Associated Persons, 14 questions; Section 4—Recordkeeping Requirements, 8 questions; Section 5—Municipal Securities Regulation, 20 questions; Section 6—Options Regulation, 55 questions. Sections 1 through 5 constitute the Series 10 portion of the examination. Section 6 constitutes the Series 9 portion of the examination. Series 10 covers general securities and municipal securities, and Series 9 covers options. The revised examination continues to cover the areas of knowledge required for the supervision of sales activities.

CBOE is proposing these changes to the entire content of the Series 9/10 examination, including the selection specifications and question bank. The number of questions on the Series 9/10 examination will remain at 200, and candidates will continue to have 4 hours to complete the Series 10 portion and 1½ hours to complete the Series 9 portion. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions on each series, 9 and 10, to receive a passing grade.

<sup>6</sup> 17 CFR 248.1-18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

<sup>12</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)(i).

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

<sup>5</sup> 17 C.F.R. 200.83.