

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57060; File No. SR-Amex-2007-116)

December 28, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Harmonize the Annual Listing Fees for All Exchange Traded Funds

On October 29, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to revise the annual listing fees for index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, and closed-end funds (“collectively, “Exchange Traded Funds” or “ETFs”) set forth in Section 141 of the Amex Company Guide. On November 9, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.³ On November 16, 2007, the Exchange filed Amendment No. 2 to the proposal.⁴ The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the Federal Register on November 27, 2007.⁵ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made clarifying changes to the purpose section of the original filing and revised the proposed annual listing fee schedule.

⁴ Amendment No. 2 made an additional clarifying change to the proposed annual listing fee schedule. Specifically, all references to a “maximum” or “minimum” identified as a parenthetical in the “Stock Issues” and “Issues Listed Under Section 106 and Section 107; Rule 1000A (Index Fund Shares); Rule 1200 (Trust Issued Receipts); Rule 1200A (Commodity Based Trust Shares); Rule 1200B (Currency Trust Shares); Rule 1400 (Paired Trust Shares); Rule 1500 (Partnership Units); and Closed-End Funds” Annual Fee Tables in the Company Guide were removed.

⁵ See Securities Exchange Act Release No. 56809 (November 16, 2007), 72 FR 66203 (November 27, 2007) and 72 FR 70374 (December 11, 2007).

Amex proposes to amend Section 141 of the Amex Company Guide to adopt a single annual listing fee for all ETFs. Amex's proposal would conform the annual listing fees for index fund shares with those of other ETFs and add an additional demarcation for outstanding shares or units of over 100 million, so that the maximum annual listing fee would increase to \$50,000. Each series of the securities listed as index fund shares, trust-issued receipts, commodity-based trust shares, currency trust shares, paired trust shares, partnership units, or closed-end funds would be separately aggregated. The annual listing fee would then be applied to all of the outstanding securities of a particular issuer for each appropriate product class. Securities listed under Sections 106 and 107 of the Company Guide would be charged listing fees based on the shares outstanding of each individual issue.

After careful review, the Commission finds that Amex's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities. The Commission notes that no comments were received on the proposed fee increase, which is based on existing annual fees for other comparable products listed on the Exchange.

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Amex-2007-116), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Nancy M. Morris
Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).