

provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Insurance Investment Company and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e-2 and Rule 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

11. Each Insurance Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Investment Company), and in particular each Insurance Investment Company will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although SBL is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Investment Company will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Managers will vote their shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Investment Company; provided, however, that the Manager or any General Account shall vote their shares in such other manner as may be required by the Commission or its staff.

13. The Participants shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual

obligation of the Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in each Insurance Investment Company.

14. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Investment Company, the Insurance Investment Company shall require such Plan to execute a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Investment Company.

#### Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53510; File No. SR-Amex-2006-24]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of a Licensing Fee for Options on the First Trust Morningstar Dividend Leaders Index Fund Shares

March 17, 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 March 14, 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 the Exchange. Amex filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) 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 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 the First Trust Morningstar Dividend Leaders Index Fund (symbol: FDL). The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at the principal office of 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 FDL. This fee change will be assessed on members commencing March 15, 2006.

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain exchange-traded funds ("ETFs"), such as FDL. 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

<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).

of specialists, ROTs, firms, non-member market makers, and broker-dealers, which is collected on every option transaction in designated products in which such market participant is a party.<sup>5</sup>

The purpose of this proposal is to charge an options licensing fee in connection with options on FDL. Specifically, Amex seeks to charge an options licensing fee of \$0.10 per contract side for FDL options 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 FDL 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 FDL 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 it has, in recent years, revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services. Amex believes that the implementation of this proposal is consistent with the reduction and/or elimination of these subsidies. Amex also believes that these fees will help to allocate to those market participants engaging in transactions in FDL 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>6</sup> In connection with the adoption of an options licensing fee for FDL 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. Accordingly, the Exchange seeks, through this proposal, to better

align its transaction charges with the cost of providing products.

## 2. Statutory Basis

Amex believes that the proposed fee change is consistent with Section 6(b)(4) of the Act<sup>7</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 establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>9</sup> 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-2006-24 on the subject line.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

### *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-2006-24. 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 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-2006-24 and should be submitted on or before April 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Nancy M. Morris,**  
*Secretary.*

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<sup>5</sup> See, e.g., Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005) (SR-Amex-2005-087).

<sup>6</sup> Section 6(b)(4) of the Act requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. See 15 U.S.C. 78f(b)(4).

<sup>10</sup> 17 CFR 200.30-3(a)(12).