

cancellations that are routed through the AOF.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex 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, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 proposed to establish a fee on the cancellation of orders. The Exchange represents that the fee is necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of immediately following an order routed through exchange systems with a cancel request for that order. The Exchange asserts that these order cancellations utilize system capacity and may require manual processing by specialist unit personnel, which may unnecessarily distract specialist staff from other responsibilities. The Exchange represents that cancellations often come in large numbers, which create backlogs in the AOF, increase Exchange costs, adversely impact public customers, their clearing firms, and specialists, and result in less-than-timely executions of customer orders. The Exchange asserts that the large volume of order cancellations requires an increase in Exchange spending on systems and related hardware used to process increased message traffic.

Pursuant to the proposed fee, the executing Clearing Member would be charged \$1.00 for every order that it cancels through the AOF in any month when the total number of orders cancelled through the AOF exceeds the total number of orders that same firm executed through AOF in that same

month.<sup>4</sup> This fee will not apply to executing Clearing Members that cancel fewer than 500 orders through AOF in a given month. The Exchange will begin billing the cancellation fee after November 1, 2001.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>5</sup> in general, and section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among its members and issuers 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, as amended, 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 nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes or changes a due, fee, or other charge.<sup>9</sup> At any time within 60 days of November 21, 2001, the Commission may summarily abrogate such proposed rule change, as amended, 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>10</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

<sup>4</sup> Telephone conversation between Claire P. McGrath, Vice President & Deputy General Counsel, Amex, and Frank N. Genco, Attorney Advisor, Division, Commission, on November 16, 2001.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> The Exchange's proposed rule change is similar to a fee instituted by the Chicago Board Options Exchange, Inc., which became immediately effective on July 27, 2001. See Securities Exchange Act Release No. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001).

<sup>10</sup> See 15 U.S.C. 78(b)(3)(C).

change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 submissions should refer to File No. SR-Amex-2001-90 and should be submitted by December 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45106; File No. SR-Amex-2001-97]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC, To Allow for \$0.50 Strike Price Intervals for Options Based on the iShares 100 Index Fund

November 27, 2001.

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 8, 2001, 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. On November 9, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is

<sup>11</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> See Letter from Jeffrey Burns, Assistant General Counsel, Legal & Regulatory Department, Amex, to

Continued

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 Amex proposes to allow for one-half point (\$0.50) strike price intervals for options based on the iShares 100 Index Fund ("OEF").

The text of the proposed rule change is available at the Office of the Secretary, Amex 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, the 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. The 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 is proposing to establish one-half point (\$0.50) strike price intervals for options on OEF,<sup>4</sup> an exchange-traded fund ("ETF") that represents ownership in an open-end management company established to hold a portfolio of stocks replicating the S&P 100 Index ("Index"). OEF holds substantially all of the securities of the Index in approximately the same proportions as reflected in the Index. Currently, OEF options and OEF are listed and traded on the Chicago Board Options Exchange, Inc. ("CBOE"); however, the Amex expects in the near

Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 9, 2001 ("Amendment No. 1"). Amendment No. 1 clarified that the proposed rule change applies only to the strike prices of the iShares S&P 100 Index Fund and that the Exchange would be able to support a change in strike prices even though such a change would result in a slight increase in message traffic.

<sup>4</sup> Telephone conversation between Jeffrey Burns, Assistant Counsel, Amex, and Steven Johnston, Special Counsel, Division, Commission, on November 26, 2001 (clarifying that Amex will file a separate proposed rule change and obtain approval before either: (1) Establishing any new strike price interval on an exchange-traded fund and other than OEF; or (2) establishing any new strike price interval on the OEF other than the \$0.50 interval that is the subject of SR-Amex-2001-97 ("Telephone Conversation").

future to also list and trade these products.

The Exchange will list options on OEF pursuant to the criteria set forth in *Interpretation .06* to Amex Rule 915.<sup>5</sup> However, the Amex believes that it is appropriate to amend its existing strike price intervals for ETFs<sup>6</sup> to permit the strike price interval for options on OEF to be set at \$0.50.<sup>7</sup> Currently, options on ETFs at the Amex have strike price intervals of one point (\$1.00). The CBOE, however, recently received approval from the Commission to introduce \$0.50 strike price intervals on OEF, and accordingly, introduced the \$0.50 strike price interval on or about January 31, 2001.<sup>8</sup>

The Amex believes that trading options contracts on OEF with one-half point fixed strike prices will benefit investors by providing greater strike price choices and fostering competition between the options exchanges.<sup>9</sup> The Exchange further asserts that it is appropriate to list options on the OEF with half-point strike prices to ensure that products traded on the Amex remain competitive.<sup>10</sup>

Although the Exchange recognizes that adding additional strike prices on OEF options for trading under the proposed rule change may result in a slight increase in message traffic, the Exchange represents that it has the necessary systems capacity to support any additional strike prices on OEF options that may be added under the proposed rule.

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

The Exchange represents that 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)(5) of the Act<sup>12</sup> in particular, in that it will permit trading in options based on OEF pursuant to strike intervals designed to promote just and equitable principles of

<sup>5</sup> Amex Rule 915 describes the criteria for underlying securities. Specifically, Commentary .04 under Amex Rule 915 indicates which securities are deemed appropriate for options trading.

<sup>6</sup> The Exchange received approval to trade options on ETFs on July 1, 1998. See Securities Exchange Act Release No. 40157 (July 1, 1998) 63 FR 37426 (July 10, 1998) (Order Approving File No. SR-Amex-96-44). As noted in the Exchange's filing and the Commission's approval order, strike price intervals for both 100- and 1000-share contracts are set to bracket the ETF share at one-point intervals up to a share price of \$200.

<sup>7</sup> Telephone Conversation.

<sup>8</sup> See Securities Exchange Act Release No. 43969 (February 15, 2001) 66 FR 11311 (February 23, 2001) (*Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-01-02*).

<sup>9</sup> Telephone Conversation.

<sup>10</sup> *Id.*

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

trade, and thereby will provide investors with the ability to invest in options based on an additional Amex product.

#### *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 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 either solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)<sup>13</sup> of the Act and Rule 19b-4(f)(6)<sup>14</sup> thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately as of November 7, 2001 so that the proposed \$0.50 strike price intervals may be implemented immediately.

The Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change, as amended, become operative immediately as of November 7, 2001.<sup>16</sup> At any time within

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 40.19b-4(f)(6).

<sup>15</sup> Under Rule 19b-4(f)(6)(iii), the Exchange must give written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the rule change, or such shorter time as designated by the Commission. As required, the Exchange has provided the Commission with written notice of its intent to file the proposed rule change.

<sup>16</sup> For purposes only of accelerating the operative date of this proposal, the Commission has

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>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 CBOE. All submissions should refer to File No. SR-Amex-2001-97 and should be submitted by December 26, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on November 9, 2001, the date the Amex filed Amendment No. 1.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45103; File No. SR-CBOE-00-42]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Eliminating the Obligation of Designated Primary Market-Makers To Accord Priority to Non-Public Customer Orders

November 26, 2001.

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 August 29, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. 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 CBOE proposes to amend CBOE Rule 8.85 (DPM Obligations) regarding obligations of Designated Primary Market-Makers ("DPMs") such that when a DPM represents an order as agent, the DPM is required to accord priority only to those orders of public customers over the DPM's principal transactions. The text of the proposed rule change is below. Additions are in italics.

RULE 8.85. (a) No change.

(b) Agency Transactions. Each DPM shall fulfill all of the obligations of a Floor Broker (to the extent that the DPM acts as a Floor Broker) and of an Order Book Official under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

\* \* \* \* \*

(iii) accord priority to any *public customer* order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority;

\* \* \* \* \*

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

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

#### 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 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. The 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

The CBOE proposes to amend CBOE Rule 8.85 regarding a DPM's obligation to represent orders. Currently, CBOE Rule 8.85(b)(iii) requires a DPM to accord priority to any order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority. The CBOE proposes to amend CBOE Rule 8.85(b)(iii) to require DPMs to accord priority only to public customer orders.<sup>3</sup>

In the last few years, a number of systemic changes have occurred in the Exchange marketplace that have caused an increasing number of orders to be left for representation by DPMs. Changing economics have caused a decline in the number of independent floor brokers on the Exchange who formerly represented many orders in trading crowds. At the same time, the Exchange converted its equity option trading crowds that had been traditional competing market-maker trading crowds. As a result of these occurrences, a large percentage of all order that are traded in a particular trading crowd are first routed to the crowd Public Automated Routing ("PAR") terminal. Because DPMs must be present at all times in their particular trading location and because there is generally not an independent crowd

<sup>3</sup> According to the CBOE, it proposes to use its Retail Automatic Execution System (RAES) Rule 6.8 to define those orders to which its DPMs must give priority. Currently, CBOE Rule 6.8(b)(ii) defines orders that are not eligible for execution in RAES as those in which a member, non-member participant in a joint venture with a member or any non-member broker-dealer has an interest. Accordingly, the CBOE proposes to exclude these orders from a DPM's obligation to accord priority. Telephone call among Steve Youhn, CBOE, Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on November 21, 2001.