

interested in commenters' views on whether it is appropriate to permit small business filers to maintain a Board comprised of at least 50 percent independent directors, rather than a majority of independent directors, and to have an audit committee comprised of only two independent directors. 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 Amex.

All submissions should refer to the File No. SR-Amex-2003-65 and should be submitted by November 21, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-27460 Filed 10-30-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48665; File No. SR-Amex-2003-85]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Adoption of a per Contract Licensing Fee for Transactions in Options on iShares Lehman U.S. Aggregate Bond Fund (AGG)

October 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 1, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") 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. 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 amend its options fee schedule by adopting a per contract license fee in connection with specialist and registered options traders ("ROT's") transactions in options on iShares Lehman U.S. Aggregate Bond Fund (AGG).<sup>3</sup>

The text of the proposed rule change is available at 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, 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 agreements with issuers and owners of indexes for the purpose of trading options on certain exchange-traded funds ("ETFs"). Many agreements require the Exchange to pay a significant licensing fee to issuers or index owners as a condition to the listing and trading of these ETF options that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. The licensing fee currently imposed on specialists and ROTs is as follows: (1) \$0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock

<sup>3</sup> The Commission notes that Amex is also deleting reference in its Options Fee Schedule to an expired three-month pilot program that reduced specialist and ROT transaction fees for equity and QQQ options. See Securities Exchange Act Release No. 48111 (June 30, 2003), 68 FR 40726 (July 8, 2003).

(QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX), the iShares Goldman Sachs Corporate Bond Fund (LQD), the iShares Lehman 1-3 Year Treasury Bond Fund (SHY), iShares Lehman 7-10 Year Treasury Bond Fund (IEF), and iShares Lehman 20+ Year Treasury Bond Fund (TLT); (2) \$0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (3) \$0.05 per contract side for options on the S&P 100 iShares (OEF).<sup>4</sup>

The purpose of the proposed fee is for the Exchange to recoup its costs in connection with the index license fee for the trading of options on the iShares Lehman U.S. Aggregate Bond Fund. The proposed licensing fee will be collected on every option transaction of the iShares Lehman U.S. Aggregate Bond Fund in which the specialist or ROT is a party. The Exchange proposes to charge \$0.10 per contract side for options on the iShares Lehman U.S. Aggregate Bond Fund. Accordingly, the Exchange believes that requiring the payment of a per contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per contract basis) along to the specialist(s) allocated to options on the iShares Lehman U.S. Aggregate Bond Fund and the ROTs trading such product, is efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

Amex notes that in recent years it has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.<sup>5</sup> Amex believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange asserts that the proposed license fee will provide additional revenue for the purpose of recouping Amex's costs associated with the trading of options on the iShares Lehman U.S. Aggregate Bond Fund. In addition, Amex believes that this fee

<sup>4</sup> See Securities Exchange Act Release Nos. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001), 47432 (March 3, 2003), 68 FR 11420 (March 10, 2003), 47431 (March 3, 2003), 68 FR 11882 (March 12, 2003), and 47956 (May 30, 2003), 68 FR 34687 (June 10, 2003).

<sup>5</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>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.

will help to allocate to those specialists and ROTs transacting in options on the iShares Lehman U.S. Aggregate Bond Fund, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

## 2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex does not believe that the proposed rule change 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 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>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of October 1, 2003, 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>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 change 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 Amex. All submissions should refer to File No. SR-Amex-2003-85 and should be submitted by November 21, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-27462 Filed 10-30-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48702; File No. SR-CBOE-2003-36]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Adopt a New Rule Relating to Trading Crowd Space Dispute Resolution Procedures

October 27, 2003.

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 October 20, 2003, 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 adopt new CBOE Rule 24.21, "Index Crowd Space Dispute Resolution Procedures," which establishes guidelines and procedures for resolving disputes between members over the right to occupy a particular space in an index option trading crowd. In addition, the CBOE proposes to revise

its fee schedule to include a proposed trading crowd dispute resolution fee.

The text of new CBOE Rule 24.21, and the revised fee schedule, appear below. Proposed new language is *italicized*.

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### Chicago Board Options Exchange, Incorporated

#### Rules

#### CHAPTER XXIV

#### Index Options

\* \* \* \* \*

#### *Index Crowd Space Dispute Resolution Procedures*

#### *Rule 24.21*

*This Rule applies only to members who trade OEX, SPX, DJX and DIA options on the floor of the Exchange, or who trade any other index option not located at a station shared with equity options as determined by the appropriate Floor Procedure Committee.*

*(a) Crowd Space Disputes Subject to Resolution.* A member may request the assistance of the Exchange to resolve a dispute over the ability to use a trading space in an index option trading crowd where the space is currently being occupied by another member, or where the space has been abandoned or unoccupied, and more than one member now wish to trade there.

*(b) Requesting the Assistance of the Exchange.* A member shall request the assistance of the Exchange in resolving a crowd space dispute by calling the Office of the Secretary of the Exchange, which shall promptly refer the request in writing to the Chairman of the appropriate Floor Procedure Committee that governs trading in the trading station where the dispute has arisen (hereafter "the Chairman").

*(c) Mediation by the Chairman.* When the Chairman receives the request from the Office of the Secretary, the Chairman or an individual designated by the Chairman (hereafter "the Chairman's designee") shall attempt to mediate an amicable resolution of the dispute among the members involved. All members involved in the dispute shall cooperate with the Chairman or the Chairman's designee in his efforts to mediate.

*(d) Temporary Resolution.* If the Chairman, the Chairman's designee, or two Floor Officials determine that the maintenance of a fair and orderly market requires an immediate temporary resolution of a crowd space dispute, the Chairman, the Chairman's designee, or two Floor Officials in consultation with the Chairman or the Chairman's designee may instruct the

<sup>6</sup> 15 U.S.C. 78f.

<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).

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

<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.