

exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(6)⁶ of the Act because it should enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. In addition, the Commission believes that the proposal is consistent with Rule 19d-1(c)(2) under the Act,⁷ which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Amex will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Amex-2003-97) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(6).

⁷ 17 CFR 240.19d-1(c)(2).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49274; File No. SR-Amex-2003-112]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Adoption of a Per Contract Licensing Fee for Transactions in Options on Fidelity Nasdaq Composite Index Tracking Stock (ONEQ)

February 18, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on December 29, 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. On February 9, 2004, Amex filed Amendment No. 1 to the proposed rule change.³ 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 for specialist and registered options trader ("ROTs") transactions in options on Fidelity Nasdaq Composite Index Tracking Stock (ONEQ).⁴

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated February 6, 2004 ("Amendment No. 1"). In Amendment No. 1, Amex revised footnote 1 to the Options Fee Schedule to clarify the reduced fee charges for cabinet trades and certain options spread strategies. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on February 9, 2004, the date Amex filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

⁴ Amex is also rewording the text of footnote 1 to the Amex Options Fee Schedule.

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 (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), iShares Lehman 20+ Year Treasury Bond Fund (TLT), and iShares Lehman U.S. Aggregate Bond Fund (AGG); (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).⁵

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 Fidelity Nasdaq Composite Index Tracking Stock. The proposed licensing fee will be collected on every option transaction of the Fidelity Nasdaq Composite Index Tracking Stock in which the specialist or ROT is a party. The Exchange proposes to charge \$0.15 per contract

⁵ 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); 47956 (May 30, 2003), 68 FR 34687 (June 10, 2003); and 48665 (October 20, 2003) 68 FR 62121 (October 31, 2003).

side for options on the Fidelity Nasdaq Composite Index Tracking Stock.

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 Fidelity Nasdaq Composite Index Tracking Stock 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.⁶ 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 Fidelity Nasdaq Composite Index Tracking Stock. In addition, Amex believes that this fee will help to allocate to those specialists and ROTs transacting in options on the Fidelity Nasdaq Composite Index Tracking Stock, 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,⁷ in general, and with section 6(b)(4) of the Act,⁸ 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.

⁶ 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).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

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 Act⁹ and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of the filing of the proposed rule change,¹¹ 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.¹²

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. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Amex-2003-112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ See note 3 *supra*.

¹² See 15 U.S.C. 78s(b)(3)(C).

the principal office of Amex. All submissions should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49273; File No. SR-Amex-2003-113]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Adoption of a Per Contract Licensing Fee for Transactions in Options on iShares Lehman U.S. Treasury Inflation Protected Securities Fund (TIP)

February 18, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on December 29, 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. On February 9, 2004, Amex filed Amendment No. 1 to the proposed rule change.³ 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 for specialist and registered

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated February 6, 2004 ("Amendment No. 1"). In Amendment No. 1, Amex amended the proposed rule text to reflect the addition of TIP options and to conform footnote 1 to the Options Fee Schedule to changes made in File No. SR-Amex-2003-112. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on February 9, 2004, the date Amex filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).