

relevant Plan and will be composed of three or more directors of the relevant applicant who (i) are not "interested persons" of the relevant applicant, (ii) are "non-employee directors" within the meaning of rule 16b-3 under the Exchange Act and (iii) are "outside directors" as defined under section 162(m) of the Code.

2. A Plan will not be implemented unless it is approved by a majority of the votes cast by stockholders at a meeting called to consider the Plan. Any amendment to a Plan will be subject to the approval of the applicable applicant's stockholders to the extent such approval is required by applicable law or regulation or the applicable Board otherwise determines. Unless terminated or amended, during the fifth year of each Plan (and each fifth year thereafter), the Plan shall be submitted for reapproval to the relevant applicant's stockholders and all Awards made during that year shall be contingent upon stockholder reapproval.

3. Awards are not transferable or assignable, except as the Committees will specifically approve to facilitate estate planning or to a beneficiary upon a Participant's death or by will or the laws of descent and distribution. Awards may also be transferred pursuant to a qualified domestic relations order.

4. The existence and nature of the Awards granted will be disclosed in accordance with standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the Commission under Item 402 of Regulation S-K, Item 8 of Schedule 14A under the Exchange Act and Item 18 of Form N-2.

5. The maximum number of shares of stock available for delivery in connection with Awards under a Plan (other than any shares of Adams Stock or Petroleum Stock, as applicable, issued in payment of Dividend Equivalents) will be 4% of the relevant applicant's stock outstanding on the effective date of the relevant Plan, subject to adjustment for corporate transactions.

6. Each applicant's Board will review the relevant Plan at least annually. In addition, the applicable Committee periodically will review the potential impact that the grant, exercise, or vesting of Awards could have on an applicant's earnings and net asset value per share, such review to take place prior to any decisions to grant Awards, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit

such review, and the relevant Committee will be authorized to take appropriate steps to ensure that neither the grant nor the exercise or vesting of Awards would have an effect contrary to the interests of investors in the applicant. This will include the authority to prevent or limit the grant of additional Awards. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

7. The Old Stock Plans will be terminated pursuant to their terms following approval by stockholders of the Plans. No further grants would be made under the Old Stock Plans beyond those already made as of the date hereof. Existing awards made under the Old Stock Plans would remain outstanding and would remain subject to the terms and conditions of the Old Stock Plans.

8. Awards under the Plans are issuable only to directors, officers, employees of the relevant applicant and employees of certain of its subsidiaries. No person will be granted Awards relating to more than 35% of the shares reserved for issuance under the relevant Plan. Subject to the immediately preceding limitation, in any thirty-six month period during which a Plan is in effect, no person may be granted under that Plan more than 300,000 shares of stock in respect of Options, 300,000 shares of stock in respect of stock appreciation rights, 300,000 shares of stock in respect of restricted stock, 300,000 shares of stock in respect of restricted stock units or 300,000 shares of stock in respect of deferred stock units. In addition, in no event may the total number of shares of stock with respect to which all types of Awards may be granted to an eligible person under the applicable Plan exceed 300,000 shares of stock within any thirty-six month period during which the applicable Plan is in effect, which amount may be adjusted to reflect certain corporate transactions or events that affect the applicant's stock. Grants to disinterested directors are limited to those described in paragraph 2 below.

9. In each fiscal year, a disinterested director will be granted 750 restricted stock units of Adams and 400 restricted stock units of Petroleum, as applicable, which amounts may be adjusted to reflect certain corporate transactions. At the effective date of any disinterested director's initial election to the Board of an applicant, such disinterested director will be granted 750 restricted stock units of Adams and 400 restricted stock units of Petroleum, as applicable, which amounts may be adjusted to reflect certain corporate transactions. Disinterested directors will also receive

dividend equivalents in respect of such restricted stock units equal to the amount or value of any cash or other dividends or distributions payable on an equivalent number of shares of common stock. The restricted stock units and related dividend equivalents will vest (and become non-forfeitable) and be paid (in the form of shares of common stock) one year from the date of grant. In addition, disinterested directors may elect each year, not later than December 31 of the year preceding the year as to which the annual grant of restricted stock units is to be applicable, to defer to a fixed date or pursuant to a specified schedule payment of all or any portion of the annual grant of restricted stock units. Any modification of the deferral election may be made only upon satisfaction of any conditions that the relevant Committee may impose. Disinterested directors may also elect each year, not later than December 31 of the year preceding the year as to which deferral of fees is to be applicable, to defer to a fixed date or pursuant to a specified schedule all or any portion of the cash retainer to be paid for Board or other service related to Board activities in the following calendar year through the issuance of deferred stock units, valued at the Fair Market Value of the relevant applicant's stock on the date when each payment of such retainer amount would otherwise be made in cash.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51185; File No. SR-Amex-2005-14]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Suspension of Transaction Fees in Connection With the iShares® COMEX Gold Trust

February 10, 2005.

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 February 1, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with

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

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

the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Exchange filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 suspend through February 28, 2005, Exchange transaction charges for specialist, registered trader, broker-dealer and customer orders for the iShares COMEX Gold Trust (the "Gold Trust"). The text of the proposed rule change is available on Amex's Web site <http://www.amex.com>, at the Amex's Office of the Secretary, and 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 proposal and discussed any comments it received regarding the proposal. 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Specialist, registered traders, broker-dealers and customer orders in the Gold Trust are subject to the following transaction charges. Off-Floor orders (*i.e.*, customer and broker-dealer) currently are charged \$.0060 per share (\$.60 per 100 shares), capped at \$100

per trade (16,667 shares). Orders entered electronically into the Amex Order File ("System Orders") from off the Floor for up to 5,099 shares are currently not assessed a transaction charge. This provision, however, does not apply to System Orders of a member or member organization trading as an agent for the account of a non-member competing market maker. System Orders over 5,099 shares currently are subject to a \$.0060 per share transaction charge, capped at \$100 per trade. Specialists currently are charged \$0.0033 (\$0.33 per 100 shares), capped at \$300 per trade (90,909 shares). Registered traders currently are charged \$0.0036 (\$0.36 per 100 shares), capped at \$300 per trade (83,333 shares).

The Exchange is suspending all transaction charges in the Gold Trust for specialist, registered trader, broker-dealer and customer orders until February 28, 2005. The Exchange believes a suspension of fees for the Gold Trust is appropriate to enhance the competitiveness of executions for the Gold Trust on the Amex. The Exchange will reassess the fee suspension as appropriate and will file a proposed rule change for any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>6</sup>

The Exchange is amending the Equities Fee Schedule and Exchange Traded Funds and Trust Issued Receipts Fee Schedule to indicate that transaction charges have been suspended until February 28, 2005 for the Gold Trust. In addition, the Exchange Traded Funds and Trust Issued Receipts Fee Schedule is being amended to refer to the suspension of transaction charges for certain Exchange Traded Funds and the application of customer transaction charges in connection with the iShares S&P 100 Index Fund (Symbol: OEF) previously filed with the Commission.<sup>7</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>9</sup> in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and

issuers and other persons using its facilities.

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

The Exchange believes 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 by the Exchange 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 does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date of the 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>10</sup> of the Act and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

Although Rule 19b-4(f)(6) under the Act<sup>12</sup> requires that an Exchange submit notice of its intent to file at least five business days prior to the filing date, the Commission is waiving this requirement at the Exchange's request in view of the fact that the proposed rule change waives fees for all market participants and similar suspension of transaction fees have been approved for similar products.<sup>13</sup>

The Exchange has also requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative by finding that such action is consistent with the protection of investors and the public interest. The Commission notes that by waiving the operative period, the Exchange has stated that the suspension of transaction fees will enhance the competitiveness of the product and will permit the Exchange to implement the fee waiver immediately.<sup>14</sup>

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Rule 19b-4(f)(6) under the Act requires the Amex to provide the Commission with five business days notice of its intention to file a non-controversial proposed rule change. The Amex did not provide such notice but requested that the Commission waive the notice requirement. The Amex also requested that the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii) under the Act. 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> See Securities Exchange Act Release Nos. 46384 (August 20, 2002), 67 FR 55048 (August 27, 2002) (suspension of transaction charges for SHY, IEF, TLT and LQD); and 47668 (April 11, 2003), 68 FR 19241 (April 18, 2003) (OEF transaction charges).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> See *supra* note 7.

<sup>14</sup> The Exchange will reassess the fee waivers prior to February 28, 2005 and will make any required filing pursuant to Rule 19b-4 of the Act prior to that date.

Furthermore, the Commission notes that Amex's suspension of transaction fees have been approved for similar products and that trading in the Gold Trust on the Exchange commenced on January 28, 2005. The Exchange also has stated that the fee suspension is for all market participants and is intended to provide cost savings to investors, members, and other market participants. For these reasons, the Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change and has determined to designate the proposed rule change as operative on February 1, 2005, the date it was submitted to the Commission.

At any time within 60 days of the filing of this 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 SR-Amex-2005-14 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to SR-Amex-2005-14. 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 on the Exchange's Web site at <http://www.amex.com> and for inspection and copying at the principal office of the Exchange. 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 SR-Amex-2005-14 and should be submitted on or before March 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51172; File No. SR-CBOE-2004-63]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Short Term Option Series

February 9, 2005.

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 12, 2004, 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 substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposed rule change on January 21, 2005.<sup>3</sup> The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons.

<sup>15</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> Amendment No. 1 replaced the original filing in its entirety.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules to permit the listing of option series that expire one week after being opened for trading ("Short Term Option Series"). This rule change is being proposed as a one-year pilot program. The text of the proposed rule change, as amended, is available on CBOE's Web site (<http://www.cboe.org/legal/>), at CBOE's Office of the Secretary, 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, CBOE included statements concerning the purpose of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. 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 Exchange proposes to amend its rules to accommodate the listing of Short Term Option Series that would expire one week after the date on which the series is opened. Short Term Option Series could be opened on any approved option class<sup>4</sup> on any Friday that is a business day ("Short Term Option Opening Date") and would expire at the close of business on the next Friday that is a business day ("Short Term Option Expiration Date"). If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday. Short Term Option Series would be P.M.-settled.

The proposal would allow the Exchange to open up to five Short Term Option Series for each Short Term Option Expiration Date. The strike price for each series would be fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security, or the calculated index value

<sup>4</sup> Short Term Options Series could be opened in any option class that satisfied the applicable listing criteria under CBOE rules (*i.e.*, stock options, options on exchange-traded funds as defined under Interpretation and Policy .06 to CBOE Rule 5.3, or options on indexes).