

the substitution within five (5) days after the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a unit investment trust receive prior Commission approval.

3. Applicants assert that the purposes, terms, and conditions of the Substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. The Applicants state that the Contracts are designed with a number of features that provide adequate protection to Contract owners in the event of a substitution. These features include free partial withdrawal rights, transferability between investment options including 12 free transfers per year, and a significant number of investment options. In addition, Contract owners are free to transfer to any other option available under the relevant Contract for approximately 60 days prior to the date of the Substitution and 30 days after the Substitution ("Free Transfer Period") without any transfer fee and without that transfer counting as one of the twelve permitted each year free of charge. In addition, the Contracts provide reasonably diversified investment options. Contract owners will be assessed no charges whatsoever in connection with the Substitution, and their annual fund expense ratios are expected to decrease. Further, Contract owners will be substituted into the Dreyfus Fund, whose investment objectives and policies are substantially similar in all material respects to those of the Franklin Fund. In addition, expenses for the Dreyfus Fund are lower than those of the Franklin Fund.

4. Applicants submit that the Substitutions do not present the type of costly forced redemption or other harms that section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act. The Substitution will be in accordance with Contract owners' objectives and risk expectations because the investment objective of the Franklin Fund is nearly identical to that of the Dreyfus Fund. In addition, the Contracts provide adequate protection in the event of a substitution. Moreover, the Substitution will be subject to the following terms and conditions:

(a) After receipt of Notice informing a Contract owner of the Substitution, a Contract owner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period. The Free Transfer Period provides sufficient time for Contract owners to consider their reinvestment options;

(b) The Substitution will be at net asset value of the respective shares, without the imposition of any transfer, brokerage, or similar charge;

(c) Neither the Contract owners, the Franklin Fund, nor the Dreyfus Fund will bear any costs of the Substitution, and all legal costs and any brokerage or other costs incurred in the Substitution will be paid by the Insurance Company Applicants or Franklin Advisers, and accordingly, the Substitution will have no impact on the Contract owners' Contract values;

(d) The Substitution will in no way alter the contractual obligations of the respective Insurance Company Applicants or the rights and privileges of Contract owners under the Contracts, or alter insurance benefits to Contract owners; and

(e) The Substitution will in no way alter the tax benefits to Contract owners.

5. Applicants represent that the fees and expenses of the Dreyfus Fund have historically been less than those of the Franklin Fund. Accordingly, the proposed Substitution poses no concerns in connection with the fees and expenses that will arise therefrom.

#### **Applicants' Conclusions**

Applicants request an Order of the Commission pursuant to section 26(c) of the 1940 Act to permit them to effect the Substitution on the terms set forth in the Application. Applicants believe, for all of the reasons stated in the Application, that their request for approval meets the standards set forth in section 26(c).

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47489; File No. SR-Amex-2003-13]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Add iShares S&P 100 Index Fund to the List of Exchange Traded Funds for Which the Exchange Pays Non-Reimbursed Fees to Third Parties**

March 12, 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 February 27, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,<sup>3</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 Amex proposes to add the iShares S&P 100 Index Fund to the list of Exchange Traded Funds ("ETFs") for which the Exchange pays non-reimbursed fees to third parties, (included in Note 4 to the Amex Equity Fee Schedule). The text of the proposed rule change is available at the 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 Exchange included statements concerning the purpose of and basis for its 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.

<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).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange has included in Note 4 to the Amex Equity Fee Schedule a list of ETFs that are subject to transaction charges set forth in Item 9 to the Equity Fee Schedule, relating to ETFs for which the Exchange pays unreimbursed fees to a third party.<sup>4</sup> The Exchange is adding to this list the iShares S&P 100 Index Fund (Symbol: OEF). This fund is listed on the Chicago Board Options Exchange and will be traded on the Amex pursuant to unlisted trading privileges.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of 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 charges among Amex members and issuers and other persons using the Amex's facilities.

*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.

*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 proposed rule change 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 thereunder,<sup>8</sup> because it establishes or changes a due, fee, or other charge imposed by the Amex. At any time within 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Amex. All submissions should refer to file number SR-Amex-2003-13 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47479; File No. SR-Amex-2002-86]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC To Eliminate the Obligation of Specialists to Accord Priority to Non-Public Customer Options Orders**

March 11, 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 17, 2002, the American Stock Exchange LLC ("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 the 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**

The Amex proposes to amend paragraphs (a) and (d) of Amex Rule 950, and add new paragraph (q) to Amex Rule 950, to provide that when a specialist represents an options order as agent, the specialist is required to accord priority only to those orders of public customers over the specialist's principal transactions. The text of the proposed rule change is below. New language is italicized; deleted language is in brackets.

**Rule 950. Rules of General Applicability**

(a) The following Floor Rules shall apply to Exchange option transactions and other transactions on the Exchange in options contracts: 100, 101, 104, 105, 106, 110, 112, 117, 123, 129, 130, 135, 150, 151, 152, 153, [155,] 157, 172, 173, 174, 175, 176, 177, 180, 181, 183, 184, 185, 192 and 193. Unless the context otherwise requires, the term "stock" wherever used in the foregoing Rules shall be deemed to include option contracts. Except as otherwise provided in this Rule, all other Floor Rules (series 100 *et seq.*) shall not be applicable to Exchange option transactions.

(b)-(c) No change.

(d) No change.

Commentary—

.01 No change

.02 A member who holds both an order for a public customer of a member organization and a facilitation order may cross such orders if:

(a) No change

(b) No change

(c) No change

(d) No change

For purposes of this Rule, [and] Rule 950(e)(iv) and 950(q) the term "public customer of a member organization" means a customer that is neither a member nor a broker-dealer.

.03 No change

.04 No change

.05 No change

(f)-(p) No change

(q) *The provisions of Rule 155 shall apply to Exchange options transactions as modified below:*

*A specialist shall give precedence to the options orders of a public customer of a member organization entrusted to the specialist as an agent in any option in which he is registered before executing at the same price any purchase or sale in the same option for*

<sup>4</sup> See Securities Exchange Act Release No. 46764 (November 1, 2002), 67 FR 68704 (November 12, 2002) (SR-Amex-2002-81).

<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> 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.