

in the Cash Management Funds is in the best interests of the shareholders of the Fund.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-13769 Filed 6-2-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47928; File No. SR-Amex-2003-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to ETF and Index Options Subject to an Annual Minimum Guaranteed License Fee

May 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 April 14, 2003, 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 May 13, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On May 23, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which renders the

proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its Options Fee Schedule to require specialist units that are allocated exchange-traded fund ("ETF") and/or index options subject to an annual minimum guaranteed license fee amount to pay the Exchange for non-reimbursed index license fees associated with such options. 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 Exchange 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 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 has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on ETFs and securities indexes. This requirement to pay an index license fee to third parties is a condition to the listing and trading of these index-based options. In many cases, the Exchange is required to pay a significant licensing fee to issuers or index owners, which may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange previously established a licensing fee for specialists and registered options traders ("ROT's") that is collected on every transaction in designated products in which a specialist and ROT is a party.<sup>7</sup> 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) and the iShares Goldman Sachs Corporate Bond Fund (LQD); (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).

The Exchange represents that several index license providers have recently suggested that an annual guaranteed license fee be considered for the right to use an index regardless of the volume of trading of the particular ETF option or index option. Although the Exchange to date has not entered into a significant guaranteed license fee arrangement, it is expected that this practice will become more common in the future.

Accordingly, the Amex represents that the Exchange's current licensing fee (as detailed above) based on the trading volume of the particular ETF option and/or index option may not provide the Exchange with sufficient revenue for it to be able to recoup annual index licensing fees.

As a result, the Exchange proposes to amend its Options Fee Schedule to require specialists allocated ETF and index options to pay, on an annual basis, any non-reimbursed costs of the Exchange resulting from index license agreements that are subject to a recurring annual guaranteed licensing fee. The Exchange represents that any payment made by specialists to the Exchange pursuant to this filing would reflect only actual non-reimbursed costs of the Exchange in connection with the trading of the allocated ETF and/or index option, which are not offset by any other fees imposed by the Exchange (such as the per contract license fee noted above). The Exchange further submits that it will inform specialists that may wish to be allocated ETF options and index options that they may be subject to annual index license fees, and that such fees may be separate and additional from any per contract license fee that may also be charged to the specialist and ROT in connection with the trading of such product.

The Exchange believes that it is reasonable for it to recoup non-reimbursed expenses on an annual basis, that are directly associated with index license agreements that are subject to an annual guaranteed licensing fee. The Exchange submits that the existence of non-reimbursed actual costs associated with guaranteed index license fee arrangements would trigger the requirement that the specialist pay the non-reimbursed index

<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 P. Burns, Associate General Counsel, Amex, to John S. Polise, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated May 9, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced the proposed rule text in its entirety.

<sup>4</sup> See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to John S. Polise, Senior Special Counsel, Division of Market Regulation, dated May 22, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange replaced Amendment No. 1 in its entirety. 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 the period to commence on May 23, 2003, the date the Exchange filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 C.F.R. 240.19b-4(f)(2).

<sup>7</sup> See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001).

license fee of the Exchange less any fees imposed by the Exchange that may offset the non-reimbursed license fee.

The Exchange asserts that a guaranteed license fee payment in connection with ETF and index options can be counter-productive in connection with the ability of the Exchange to offer new index products, if such products, do not trade in sufficient volumes to satisfy the Exchange's contractual commitments. Accordingly, the Exchange believes that requiring specialists units that are allocated ETF options and/or index options to pay the non-reimbursed license fee of the Exchange related to such product(s) is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that the administration of this non-reimbursed license fee by passing it along to the specialist allocated to the particular index-based option is more efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that benefit.

The Exchange notes that the Amex in recent years 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>8</sup> The Exchange believes that implementation of this amendment to the Options Fee Schedule is further consistent with such reduced or eliminated subsidies.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>9</sup> in general, and Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

### *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.

<sup>8</sup> See Release Nos. 34-45360 (January 29, 2002), 67 FR 5626 (February 6, 2002); and 34-44286 (May 9, 2001), 66 FR 27187 (May 16, 2001). In addition, the Chicago Board of Options Exchange ("CBOE") recently made a change to its fee schedule relating to the pass-through of periodic license or royalty fees. See Release No. 34-47169 (January 13, 2003), 68 FR 2596 (January 17, 2003). Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Exchange, and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 29, 2003).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 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*

Written comments were neither solicited nor 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 immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>12</sup> in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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, 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 Exchange. All submissions should refer to File No. SR-Amex-2003-26 and should be submitted by June 24, 2003.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SMALL BUSINESS ADMINISTRATION**

### **Reporting and Recordkeeping Requirements Under OMB Review**

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before July 3, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205-7044.

### **SUPPLEMENTARY INFORMATION:**

*Title:* Business Information Center Customer Satisfaction Survey.  
*No:* 1916.

*Frequency:* On occasion.

*Description of Respondents:* Clients of BIC programs.

*Responses:* 1,806.

*Annual Burden:* 68.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).