

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48528; File No. SR-Amex-2003-10]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC, Relating to Its After-Hours Trading Facility

September 24, 2003.

On February 24, 2003, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the operation of its After Hours Trading Facility ("AHTF"). Notice of the proposed rule change was published for comment in the **Federal Register** on August 20, 2003.³ No comments were received on the proposed rule change.

Current Amex rules provide that only specialists registered in Portfolio Depositary Receipts, Index Fund Shares or unit investment trusts may participate in the AHTF for their dealer account in these securities. In brief, Amex now proposes to permit specialists in stocks or other equity-traded securities to do so in order to offset an imbalance of orders in the AHTF. In such a case, if any open agency orders to buy or sell on the specialist's book limited to the closing price remain unexecuted after the specialist buys or sells the security at its price in the AHTF, the specialist will be required to offer that execution to each such order in time priority until it is accepted or all such orders have rejected it.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change appears to be reasonably designed to reduce volatility on the close by allowing Amex specialists to offset order imbalances in the AHTF with orders for their dealer accounts.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-Amex-2003-10) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48534; File No. SR-Amex-2003-75]

Self-Regulatory Organizations; Order of Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Eight Series of the iShares Trust Based on a Specified Fixed Income Index

September 24, 2003.

On August 20, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² a proposal to list under Rule 1000A the following eight additional series of the iShares Trust (each a "New Fund") based on indexes of fixed income securities selected to correspond generally to the performance of a specified U.S. bond index (each, an "Underlying Index"): (1) iShares Lehman Short U.S. Treasury Bond Fund; (2) iShares Lehman 3-7 Year U.S. Treasury Bond Fund; (3) iShares Lehman 10-20 Year U.S. Treasury Bond Fund; (4) iShares Lehman U.S. Treasury Inflation Protected Securities Fund; (5) iShares Lehman U.S. Credit Bond Fund; (6) iShares Lehman Intermediate U.S.

Credit Bond Fund; (7) iShares Lehman Intermediate U.S. Government/Credit Bond Fund; and (8) iShares Lehman U.S. Aggregate Bond Fund.

On September 2, 2003, the proposal was published for public comment in the **Federal Register**.³ The Commission received no comments on the proposal. This order grants accelerated approval to the proposed rule change.

Amex Rule 1000A provides standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act") as well as the Exchange Act. The Commission previously approved amendments to Rule 1000A to accommodate the listing of Index Fund Shares based on an index of fixed income securities, and in particular, series of the iShares Trust based on indexes of fixed income securities.⁴

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Exchange Act⁵ and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of section 6 of the Act.⁷ Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Exchange Act.⁸ The Commission believes that the availability of the New Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Bond Index. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities.

Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit

³ See Securities Exchange Act Release No. 48398 (August 22, 2003), 68 FR 52245 ("Notice").

⁴ See Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) ("Previous Approval Order").

⁵ 15 U.S.C. 78f.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

⁸ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Release No. 34-48334 (August 13, 2003), 68 FR 50200.

⁴ In approving this proposal, 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(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

unfair discrimination between customers, issuers, brokers, or dealers.⁹

The Commission has granted the New Funds appropriate relief under various sections of the 1940 Act, including sections 6(c) and 17(b), so that each New Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of New Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a New Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.¹⁰

The Commission notes that the New Funds will operate in substantially the same manner as the funds that were the subject of the Previous Approval Order. The Commission notes one difference is that with respect to the Lehman Aggregate Fund, approximately 35% of its assets will be invested in TBA transactions, which is a purchase or sale of a pass-through security for future settlement at an agreed upon date. The Exchange represented that the use of TBA transactions is not intended to help the Lehman Aggregate Fund outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Lehman Aggregate Fund's exposure to its Underlying Index. Since the intra-day prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid than TBA agreements, the Commission agrees that the use of TBA agreements should help maintain the efficiency of the Lehman Aggregate Fund's arbitrage mechanism.

For the reasons stated in the Notice, the Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including the New Funds. For the reasons stated in the Notice, the Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the New Funds (*i.e.*, U.S. Government securities, investment grade corporate bonds, and TBA prices),

the pricing information should be available. However, the Commission notes that differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the New Funds than have been experienced by Equity ETFs because arbitrators may wait for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions.

The Commission has also granted the issuer, Barclays, exemptive relief from section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in Barclays ETF shares without delivery a prospectus to the purchaser.¹¹ Instead, under the exemption and under Amex's listing standards, sales in the secondary market must be accompanied by a "product description," describing the ETF and its shares.¹² The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the New Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under Amex Rule 1000A the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the New Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each New Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 411 ("know your customer rule") regarding transactions in such Fixed Income ETFs. Exchange Rule 411 generally requires that members use due

diligence to learn the essential facts relative to every customer, every order or account accepted.¹³ The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in New Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the New Funds is consistent with section 6(b)(5) of the Exchange Act.¹⁴

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman, is involved in the development, maintenance, and calculation of an index upon which an ETF is based. Lehman has represented that it has procedures in place to prevent the misuse of material, non-public information relating to the index.¹⁵ The Commission believes that these provisions should help to address concerns raised by Lehman's involvement in the management of the indices. The Commission believes that this should act to further minimize the possibility of manipulation.

The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the New Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

Amex has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The New Funds will trade on the Exchange in the same manner as the funds that were the subject of the Previous Approval Order, and the proposed rule change. The proposed rule change raises no novel issues. The Commission noticed the proposed rule change for the 21-day comment period and received no comments. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change.

⁹ Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

¹⁰ Investment Company Act Release No. 25622 (June 25, 2002).

¹¹ See Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order).

¹² Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks ("ECNs") would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. See Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of New Funds.

¹³ Amex Rule 411.

¹⁴ 15 U.S.C. 78f(b)(f).

¹⁵ Telephone call on September 24, 2003 between Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission. The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,¹⁶ that the proposed rule change (SR-AMEX-2003-75) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48525; File No. SR-CBOE-2003-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Firm Quote Rule

September 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 12, 2003 the Chicago Board Options Exchange, Inc. ("CBOE" 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 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 Exchange proposes to make a clarifying amendment to its firm quote rule (CBOE Rule 8.51). The text of the rule change is available at the Office of the Secretary of the Exchange 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 CBOE 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 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

CBOE Rule 8.51(d)(6)(i)(B) generally provides that a responsible broker or dealer ("BD") shall not be obligated to execute a transaction for any listed option if at the time an order is presented, the responsible BD was in the process of effecting a transaction in "such class and/or series" of option and immediately thereafter communicates a revised quotation size. Similarly, CBOE Rule 8.51(d)(6)(ii)(B) generally provides that a responsible BD shall not be obligated to execute a transaction for any listed option if at the time an order is presented, the responsible BD was in the process of effecting a transaction in "such class or series" of option and immediately thereafter communicates a revised bid or offer.

The literal language of these two rules indicates that it would be permissible for a responsible BD after a transaction in an option class to revise its quotations in all series of that class prior to effecting subsequent transactions pursuant to paragraph (6) of CBOE Rule 8.51(d). The Exchange proposes to amend these two provisions to clarify that transactions in one series will enable a responsible BD to avail itself of the exception provided in paragraph (6) of CBOE Rule 8.51(d) in that same series only. Accordingly, the Exchange removes the language "such class or" from these two sections.

Despite this seemingly permissive language, the Exchange feels compelled to note that it has always interpreted CBOE Rule 8.51(d)(6) such that each series of option was deemed a separate security. As such, the responsible BD on CBOE was not allowed to rely on transactions in one series of a class to revise its quotations in a separate series within the same class and still avail itself of the paragraph (6) exception. This SEC-requested amendment brings the rule language into conformity with the practice on the floor.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.³

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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

The CBOE believes that 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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) does not become operative for 30 days from the date of filing; and (iv) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6)⁶ thereunder.

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

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).