

19, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. 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 modify its options fee schedule by adopting a per contract license fee in connection with specialist and registered options traders transactions in options on the iShares Goldman Sachs Corporate Bond Fund. 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 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**

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"). This requirement to pay an index license fee to third parties is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to issuers or index owners 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 registered options traders ("ROT's") that is collected on every transaction in options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100

Index (NDX), the Mini-NDX (MNX) and on the S&P 100 iShares (OEF).<sup>3</sup>

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 iShares Goldman Sachs Corporate Bond Fund (the "Corporate Bond Fund"). The proposed licensing fee will be collected on every option transaction of the Corporate Bond Fund in which the specialist or ROT is a party. The Exchange proposes to charge \$0.10 per contract side for options on the Corporate Bond Fund (LQD). Accordingly, the Exchange believes that requiring the payment of a per contract licensing fee by those specialists units and ROTs that are the primary beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, passing the license fee (on a per contract basis) along to the specialist allocated to the Corporate Bond Fund option and the ROT 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 primary beneficiaries.

The 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 the services.<sup>4</sup> Implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange submits that the proposed license fee will provide additional revenue and recoup its costs associated with the trading of Corporate Bond Fund options. In addition, the Amex believes that this fee will help to allocate to those specialists and ROTs transacting in Corporate Bond Fund options, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

##### **(2) Statutory Basis**

The Exchange believes the proposed rule change is consistent with section 6(b)<sup>5</sup> of the Act in general and furthers the objectives of section 6(b)(4)<sup>6</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.

#### **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 rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective immediately pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of rule 19b-4 thereunder.<sup>8</sup> At any time within 60 days of the filing of such 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 the 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. 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 in Washington, DC. 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 No. SR-Amex-

<sup>3</sup> See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001).

<sup>4</sup> 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).

<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).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).