

should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 31, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### **Allegheny Energy, Inc. (70-8553)**

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, 10435 Downsview Pike, Hagerstown, Maryland 21740-1766, has filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 under the Act.

By prior orders dated September 14, 1990 (HCAR No. 25150), March 17, 1987 (HCAR No. 24344), June 19, 1984 (HCAR No. 23333), June 23, 1983 (HCAR No. 22985), April 29, 1980 (HCAR No. 21542), and August 5, 1977 (HCAR No. 20131), the Commission authorized Allegheny to issue and sell up to 12 million shares of its common stock through its Employee Stock Ownership and Savings Plan ("ESOSP")<sup>1</sup> and Dividend Reinvestment and Stock Purchase Plan ("DRISP").<sup>2</sup> By order dated March 22, 1995 (HCAR No. 26255), the Commission also authorized Allegheny to issue up to an additional 6.025 million shares of its common stock: (1) Through the ESOSP; (2) through the DRISP; and (3) to members of Allegheny's board of directors that are not (during their terms of service as a director) an employee of Allegheny or any of its subsidiaries ("Outside Director").

Allegheny now requests authority to issue up to an additional 20,500,000 authorized shares of its common stock through December 31, 2008, as follows: up to 20 million shares through the ESOSP, and up to 500,000 shares as compensation for its Outside Directors.<sup>3</sup>

<sup>1</sup> The ESOSP is designed to enable employees of Allegheny and its participating subsidiaries to provide for their futures through tax deferred pre-tax contributions (which are matched by employer contributions) and post-tax contributions. The savings plan is comprised of two portions: An employee stock ownership plan as described in section 4975(e)(7) of the Internal Revenue Code, which is designed to invest primarily in shares of Allegheny's common stock, and a profit sharing plan.

<sup>2</sup> Allegheny's authority increased to 24 million shares as a result of a two-for-one stock split, effective November 4, 1993. See HCAR No. 25911.

<sup>3</sup> Allegheny states that part of the annual compensation it offers its Outside Directors consists of \$12,000 worth of the company's common stock.

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. 34-47431; File No. SR-Amex-2003-11]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC, Relating to the Adoption of a Per Contract Licensing Fee for the iShares Cohen & Steers Realty Majors Index Fund**

March 3, 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 24, 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 Cohen & Steers Realty Majors Index 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 ("ROTs") 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 Cohen & Steers Realty Majors Index Fund (the "Cohen & Steers Fund" or "Fund"). The proposed licensing fee will be collected on every option transaction of the Cohen & Steers Fund in which the specialist or ROT is a party. The Exchange proposes to charge \$0.09 per contract side for options on the Cohen & Steers Fund (ICF). 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 Cohen & Steers 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 such

<sup>3</sup> See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001), and File No. SR-Amex-2003-09, filed with the Commission on February 19, 2003.

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

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