

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.

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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"),¹ and Rule 19b-4 thereunder,² 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.³ On May 23, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ 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 Act⁵ and Rule 19b-4(f)(2) thereunder,⁶ 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.⁷ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

⁴ 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).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 C.F.R. 240.19b-4(f)(2).

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