

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**I. 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"). Many agreements require the Exchange to pay a significant licensing fee to issuers or index owners as a condition to the listing and trading of these ETF options 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 ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. 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).<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 Lehman Treasury Funds. The proposed licensing fee will be collected on every option transaction of the iShares Lehman Treasury Funds in which the specialist or ROT is a party. The Exchange proposes to charge \$0.10 per contract side for options on the iShares Lehman Treasury Funds. Accordingly, Amex believes that requiring the payment of a per contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per contract basis) along to the specialist(s) allocated the iShares Lehman Treasury Fund options and the ROTs trading such products is efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

<sup>3</sup> See Securities Exchange Act Release Nos. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001), 47432 (March 3, 2003), 68 FR 11420 (March 10, 2003) and 47431 (March 3, 2003), 68 FR 11882 (March 12, 2003).

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 to reduce Exchange subsidies of such services.<sup>4</sup> Amex believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange asserts that the proposed license fee will provide additional revenue for the purpose of recouping Amex's costs associated with the trading of options on the iShares Lehman Treasury Funds. In addition, Amex believes that this fee will help allocate, to those specialists and ROTs transacting in options on the iShares Lehman Treasury Funds, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.<sup>5</sup>

**2. Basis**

The Exchange believes the proposed rule change is consistent with section 6 of the Act,<sup>6</sup> in general, and with section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

Amex believes that the proposed rule change will impose no 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 proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup>

<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> The Exchange represents that it will not impose the proposed license fee on any transaction if the non-reimbursed licensing or other third-party fee is recouped by the Exchange via another Exchange fee or assessment. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on May 22, 2003.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of April 22, 2003, 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 furtherance of the purposes of the Act.<sup>10</sup>

**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. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR-Amex-2003-29 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-47971; File No. SR-CHX-2003-14]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Decrease Certain Technology and Connectivity Fees**

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>10</sup> See 15 U.S.C. 78s(b)(3)(C).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 29, 2003, the Chicago Stock Exchange, Incorporated ("CHX" 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. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 amend its membership dues and fees schedule ("Schedule") to decrease certain technology and connectivity fees charged to the Exchange's on-floor member firms, and to waive those fees for the month of June 2003. The text of the proposed rule change is available at the Commission and at the CHX.

### **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 CHX proposes to amend the Schedule by decreasing the charges assessed to on-floor member firms for the computer equipment and connectivity that the Exchange provides, and by waiving the fees for this technology for the month of June 2003.

The Exchange made changes to this section of the Schedule in February

2003, decreasing many of the fees and instituting new connectivity fees.<sup>4</sup> The new charges set forth in the instant proposed rule change reflect a further decrease in the amounts charged for this equipment and connectivity to better reflect the costs to the Exchange of providing both this technology and the services associated with it, and to ensure that these fees do not have an unintended financial impact on the Exchange's member firms. The Exchange also seeks to waive these otherwise-applicable fees for the month of June 2003, to counteract, to some extent, the impact of the initially higher fees instituted in February 2003.

##### **2. Statutory Basis**

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

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>7</sup> because it involves a due, fee, or other charge. At any time within 60 days of the filing of the 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 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 proposal 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 number SR-CHX-2003-14, and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47970; File No. SR-NASD-2003-88]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment**

June 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 May 29, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the

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

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

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

<sup>4</sup> See Securities Exchange Act Release No. 47369 (February 14, 2003), 68 FR 8788 (February 25, 2003)(SR-CHX-2003-01).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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