

the transaction. Auto-Ex trades are automatically allocated on a rotating basis to the specialist and to each ROT that has signed on to Auto-Ex.<sup>9</sup> If an Auto-Ex trade is greater than 10 contracts, the Auto-Ex system divides the execution into lots of 10 or fewer contracts and allocates a lot to each Auto-Ex participant.<sup>10</sup> Accordingly, for actively-traded option classes in large trading crowds, the Auto-Ex allocation of executed contracts into lots of 10 contracts operates so that an Auto-Ex size of 250 contracts is spread out among several ROTs, thereby significantly reducing the potential financial risk that a single ROT may incur. The Exchange believes that an increase of the Auto-Ex eligible size to 500 will not significantly increase the financial risks of ROTs for such actively-traded option classes.

The Exchange believes that market participants desire, and will support, an increase in Auto-Ex eligible sizes of up to 500 contracts. The Exchange represents that, as of April 29, 2002, it has established an Auto-Ex size of 1,000 contracts for all QQQ options series. The Amex believes that the proposed increase in Auto-Ex eligible size for all other options is necessary in order for the Exchange to address market demands and for the purpose of competing effectively with other options exchanges that may not be so restricted.

The Amex notes that the Chicago Board Options Exchange, Inc. ("CBOE") has received regulatory approval, with respect to option classes that disseminate quotations with size, to automatically execute orders in such options through its RAES system up to the disseminated size, which may be larger than 250 contracts.<sup>11</sup> Furthermore, the Amex notes that the ISE automatically executes a customer order for the disseminated quote size once such order hits the available option quote.<sup>12</sup> As a result, the disseminated size for a particular option

quote is the actual size of an order that will be automatically executed. Accordingly, the Amex believes that, based on competitive considerations, an increase in the maximum Auto-Ex eligible size will provide customers with increased opportunities for better and more efficient executions.

The Exchange represents that Auto-Ex has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other, non-emergency situations for certain option classes. The Exchange believes that automatic executions of orders for up to 500 contracts will allow for the quick, efficient execution of public customer orders, as well as broker-dealer orders on a case-by-case basis consistent with the Exchange's recent ability to provide automatic executions of broker-dealer transactions.<sup>13</sup>

## 2. Statutory Basis

The proposed rule change is consistent with section 6(b)<sup>14</sup> of the Act, in general, and furthers the objectives of section 6(b)(5)<sup>15</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Amex 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

The Commission invites interested persons 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 the Amex. All submissions should refer to File No. SR-Amex-2003-08 and should be submitted by March 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-5568 Filed 3-7-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47432; File No. SR-Amex-2003-09]

### **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 Goldman Sachs Corporate Bond 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

<sup>9</sup> At the start of each trading day, the order in which trades are allocated to the specialist and traders signed on to Auto-Ex is randomly determined.

<sup>10</sup> For example, an option class that allows up to 50 contracts to be executed through Auto-Ex would have a trade of 25 contracts divided into lots of 10, 10 and 5. See Securities Exchange Act Release No. 47229 (January 22, 2003), 68 FR 5060 (January 31, 2003) (File No. SR-Amex-00-30).

<sup>11</sup> See Securities and Exchange Act Release No. 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (CBOE File No. 2001-70); see also CBOE rule 6.8 (c)(v) and Commentary .09 to CBOE rule 6.8.

<sup>12</sup> See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The ISE operates an electronic marketplace where orders and quotes are entered into a central order book. Trades are then executed automatically when orders and quotes match.

<sup>13</sup> See Securities Exchange Act Release No. 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002).

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</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.

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).

2003-09 and should be submitted by March 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-5569 Filed 3-7-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47436; File No. SR-NASD-2003-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Program Regarding the Regulatory Fee and the Trading Activity Fee

March 4, 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 28, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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 the NASD. The NASD filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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

NASD proposes to extend the pilot program for the Trading Activity Fee ("TAF") through April 1, 2003. The TAF pilot program is currently in effect, and is set to expire on March 1, 2003.<sup>6</sup> NASD has requested that the Commission approve SR-NASD-2002-

148,<sup>7</sup> so that the TAF will be made permanent before the expiration of the TAF pilot program on April 1, 2003. If the Commission does not approve SR-NASD-2002-148, the trading fee component of the member regulatory pricing structure will revert to Section 8 of Schedule A to the NASD By-Laws, as amended. The NASD is making no substantive changes to the pilot program, other than extending the expiration date through April 1, 2003.

#### 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 NASD 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 Association 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

On July 24, 2002, the NASD filed SR-NASD-2002-98, which proposed a new member regulatory pricing structuring, including a new TAF, to replace the existing trading fee contained in Section 8 of Schedule A to the NASD By-Laws.<sup>8</sup> The proposed rule change was effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. SR-NASD-2002-98 is currently in effect. Assessments under the new TAF were effective as of October 1, 2002, payable January 15, 2003.<sup>11</sup> On October 18, 2002, the NASD established a sunset provision whereby the TAF established in SR-NASD-2002-98 would cease to exist after December 31, 2002. At the

same time, the NASD filed SR-NASD-2002-148, which is substantially similar to SR-NASD-2002-98, but filed under Section 19(b)(1) of the Act, to allow for additional member comment. Upon expiration of SR-NASD-2002-98, the member regulatory pricing structure was to revert to Section 8 of Schedule A to the NASD By-Laws, as amended.

On December 24, 2002, the NASD extended the TAF pilot program through March 1, 2003. With the instant rule filing, the NASD is further extending the TAF pilot program through April 1, 2003, to allow additional time for the NASD to respond to comments to the original filing, and to allow the Commission more time to review issues presented by the permanent TAF proposed rule change (SR-NASD-2002-148). The NASD asks the Commission to approve SR-NASD-2002-148 before the expiration of the TAF pilot program on April 1, 2003, to make the TAF pilot permanent.

###### 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>12</sup> in general, and with Section 15A(b)(5) of the Act,<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

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

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. Written comments, however, have been solicited on SR-NASD-2002-98, SR-NASD-2002-147, SR-NASD-2002-148, and SR-NASD-2002-182. The comments are not addressed herein, but are, as appropriate, discussed in connection with the respective rule filings.

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

Because the foregoing proposed rule change does not:

<sup>12</sup> 15 U.S.C. 78o-3.

<sup>13</sup> 15 U.S.C. 78o-3(b)(5).

<sup>7</sup> See Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19, 2002)(SR-NASD-2002-148).

<sup>8</sup> See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR-NASD-2002-98). See also, Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893 (August 30, 2002) (SR-NASD-2002-99). The NASD also published three *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. See *Notices to Members* 02-41 (July 2002), 02-63 (September 2002), and 02-75 (November 2002).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> Member firms were required to pay the TAF in accordance with the pilot program (for the first quarter starting October 1, 2002) by no later than January 15, 2003, and thereafter on a monthly basis.

<sup>9</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.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The NASD asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR-NASD-2002-98). See also Securities Exchange Act Release No. 47112 (December 31, 2002), 68 FR 824 (January 7, 2003)(SR-NASD-2002-182).