

(TLT), iShares Lehman U.S. Aggregate Bond Fund (AGG), and iShares Lehman U.S. Treasury Inflation Protected Securities Fund (TIP); (3) \$0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (4) \$0.05 per contract side for options on the S&P 100 iShares (OEF).

The Exchange represents that the purpose of the proposed fee is for Amex to recoup its costs in connection with the index license fee for the trading of options on O-Strips. The proposed licensing fee will be collected on every option transaction of O-Strips in which a specialist or a ROT is a party. The Exchange proposes to charge \$0.20 per contract side. The Exchange 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 allocated to O-Strip options and the ROTs trading such products, is efficient and consistent with the intent of Amex to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

The Exchange notes that Amex in recent years 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 services.<sup>5</sup> Therefore, the Exchange believes that 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 O-Strip options. Further, the Exchange represents that it will monitor the revenue generated in connection with the O-Strip option license fee. In the event the revenue generated is greater than the Exchange's cost to the index provider, Amex represents that it will seek to rebate the difference back to the affected specialists and ROTs. Amex believes that this fee will help to allocate to those specialists and ROTs transacting in options on the O-Strip, 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, as amended, is consistent with section 6(b) 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 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

The foregoing rule change, as amended, has become effective immediately pursuant to section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> because it establishes or changes a due, fee or other charge imposed by the Exchange. 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 of 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-88 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-88 and should be submitted on or before December 21, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 50715; File No. SR-BSE-2004-24]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Boston Stock Exchange, Inc. To Permit Remote Brokers

November 22, 2004.

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 June 28, 2004, the Boston Stock Exchange, Inc.

<sup>5</sup> See Securities Exchange Act Release Nos. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) and 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002).

<sup>6</sup> See 15 U.S.C. 78f(b).

<sup>7</sup> See 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).

<sup>10</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.

("BSE" 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 Exchange seeks to include brokers in its remote trading rules. The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

#### Chapter XXXIII

#### BEACON Remote

Sec. 9. BEACON terminals and related equipment will be provided to remote member firm locations for [specialist] trading *and floor broker access*. The remote terminals will be linked to the BEACON Trading System and will provide the same functionality as is available to on-floor specialists *and floor brokers*. All orders directed to remote specialists *and orders input by brokers*, including ITS commitments and administrative messages, will be from the Woburn data center through BEACON as occurs with on-floor specialists *and floor brokers*. Floor broker orders (*including remote floor broker orders*) will be routed to remote specialists under the same criteria by which they are routed to on-floor specialists. [There will be no remote floor brokerage services]. The following shall apply to specialists *and, where applicable, brokers* participating in the BEACON Remote program:

(a)–(b) No changes.

(c) Any eligible firm may apply to the Market Performance Committee to participate in the program. All applicants must meet the current minimum requirements for specialists *or brokers* set forth in the Rules of the Exchange, including, but not limited to their background, experience, staffing, training procedures, adequacy of applicant's proposed confidentiality policy, adequacy of applicant's contingency plans for communication or technology failures, adequacy of applicant's offsite facilities, performance standards, and the minimum margin, capital and equity requirements as set forth in Chapters VIII and XXII of the Rules of the Exchange, and conform to all other performance requirements and

standards set forth in the Rules of the Exchange.

(d) Unless the Market Performance Committee specifically authorizes otherwise, participating member firms shall be prohibited from trading remotely any securities which are currently being traded on-floor by that individual member firm. In evaluating a member firm's petition for changing the location of where a particular security is traded, the Market Performance Committee shall consider the application in light of the requirements set forth in paragraph (c) above. Individual securities, however, may not be traded by one [specialist] firm in more than one location under any circumstances.

(e)–(f) No changes.

(f) All layoff orders must be included in BEACON drop copy.

(g) All rule references pertaining to the trading floor of the Exchange, including:

Chapter I–B, Section 2 ("Dealings on Floor—Hours");

Chapter I–B, Section 3 ("Dealings on Floor—Persons");

Chapter II, Section 2 ("Recording of Sales");

Chapter II, Section 6 ("Bids and Offers for Stocks");

Chapter II, Section 9 ("Trading for Joint Account");

Chapter II, Section 10 ("Discretionary Transactions");

Chapter II, Section 13 ("Trading Against Privileges");

Chapter II, Section 15 ("Record of Orders from Offices to Floor");

Chapter II, Section 23 ("Dealing on Other Exchanges, or Publicly Outside the Exchange");

Chapter II, Section 31 ("Offering Publicly on the Floor");

Chapter VIII, Section 2 ("Member Organization Account");

Chapter XIV, "Floor Brokers";

Chapter XV, Section 1 ("Registration");

Chapter XV, Section 2 ("Responsibilities");

Chapter XV, Section 3 ("Code of Acceptable Business Practices for Specialists");

Chapter XV, Section 5 ("Preference on Competitive Basis");

Chapter XV, Section 6 ("The Specialist's Book");

Chapter XV, Section 9 ("Opening Listed Stock");

Chapter XV, Section 10 ("Hours");

Chapter XV, Section 16 ("Status of Orders When Primary Market Closed");

Chapter XV, Section 18 ("Procedures for Competing Specialists");

Chapter XV ("Special Offerings");

Chapter XVIII, Section 1 ("Penalties");

Chapter XVIII, Section 4 ("Imposition of Fines for Minor Violation(s) of Rules and Floor Decorum Policies");

Chapter XX, Section 6 ("Gratuities");

Chapter XXII, Section 2 ("Capital and Equity Requirements");

Chapter XXXI, Section 2

("Intermarket Trading System");

Chapter XXXI, Section 3 ("Pre-Opening Application");

Chapter XXXI, Section 4 ("Trade-Throughs and Locked Markets");

Clearing Corporation Rule 3, Section 2 ("Dual Member Broker/Dealer Accounts");

Clearing Corporation Rule 3, Section 3 ("Boston Representative Broker/Dealer Accounts");

Clearing Corporation Rule 3, Section 4 ("Specialist Member"); and Clearing Corporation Rule 4, Section 4 ("Bills Rendered")

shall be deemed to include any trading done remotely through BEACON, and all such trades shall be deemed to be Boston executions on the Exchange.

(h) A written confidentiality policy regarding the location of equipment and access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading. Moreover, this policy must conform to all of the requirements set forth in the Rules of the Exchange, including, but not limited to Chapter XV, Section 6 (The Specialist Book), Chapter II, Section 36 (Specialist Member Organizations Affiliated with an Approved Person), and Section 37 (ITSFEA Procedures). In accordance therewith, reasonable principles must be applied to limit access by non-specialists to Remote Specialist facilities and information, and to limit Remote Specialists *and Brokers* access to and from other proprietary trading venues, including access from outcry or visible communication, intentional or otherwise.

(i) Floor policies regarding dress code, and smoking, identification and visitors shall not apply. Access to the area designated as that of the Remote Specialist's *or Remote Broker's* shall be restricted to the specialist *or broker*, backup specialist, clerks, designated management of the specialist *or broker*, and Exchange authorized personnel, consistent with the Rules of the Exchange, including, but not limited to, "Chinese Wall" procedures set forth in Chapter II, Section 36, (Specialist Member Organizations Affiliated with an Approved Person), and procedures set forth in Chapter XV, Section 6 (The Specialist's Book).

(j) All Exchange correspondence, memoranda, bulletins and other

publications shall be sent to BEACON Remote Specialists *and Brokers* via electronic mail through BEACON and via U.S. mail or overnight delivery.

(k) All BEACON Remote specialists *and brokers* will have stentofon, (or a similarly operational speakerphone), as well as dedicated telephone access, to the physical trading floor. Any regulatory requirements including trading halts, trading practices, policies, procedures or rules requiring floor official involvement will be coordinated by Exchange personnel with the remote specialists *and brokers* through the dedicated telephone line.

(l) No changes.

(m) The Exchange's examination program of non-DEA floor members would include the remote specialist *and broker* operations. Every firm must submit specific supervisory procedures relating to the Remote Specialist *and/or Broker* operations and appropriate identification of all individuals who will have access to the Remote Specialist *and/or Broker* operation, including all supervisory personnel.

(n) No changes.

(o) Each remote BEACON terminal assigned and registered by the Exchange will require an ETP, and will be subject to the following:

(1) Each approved Specialist unit may be authorized to trade up to 200 issues.

(2) Each Specialist *and/or Broker* unit must have at least one registered Exchange seat assigned to the approved specialist *or broker*.

(a) A specialist may be authorized to obtain additional ETP's for qualified registered clerks to access BEACON in support of the Specialist unit.

(b) All specialists, *brokers*, and registered clerk ETP holders must be approved by the Market Performance Committee and must meet the following:

(i) file an ETP application form with the BSE Surveillance Department;

(ii) completion of the required floor training program;

(iii) successful completion of the BSE floor examination within 90 days of application;

(iv) successful completion of the Series 63 (NASAA Uniform State Law Exam), and registration with the Commonwealth of Massachusetts, and;

(v) submission of fingerprint records to the BSE.

(3) Each Specialist unit identified by the member firm will be assigned an account ("give up") and will be evaluated under the Exchange's Specialist Performance Evaluation Program ("SPEP") which currently measures performance in several

separate categories comprising a relative overall performance ranking.

#### Commentary

During the initial stages of this program (rollout), the Exchange will permit only current floor member firms to participate. The rationale for this is that current floor member firms have already been evaluated as to, among other things, their familiarity with the Rules of the Exchange, capital, equity and margin requirements, experience, staffing and training procedures, and performance standards. As soon as is practicable following the rollout of the program, the Market Performance Committee of the Exchange will consider other firm applicants based on a variety of criteria, as identified in Section 9(c), above, including, but not limited to, adequate off-site facilities to ensure compliance with the referenced portions of the Exchange's rules, and adequate capital to manage the risks associated with this program. For every applicant specialist *or broker* who is not an existing on-floor specialist *or broker*, a two week on-floor training period will be required, among the purposes of which will be to benefit the relationship between the Boston floor and the remote specialist *or broker*.

\* \* \* \* \*

## 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 BSE 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 BSE 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 proposes to amend its rules regarding remote trading to permit remote brokers. The BSE has been operating its remote specialist system since December 2000. At the time it was originally proposed, remote specialists were a novel concept, and the Exchange decided not to extend remote trading capabilities to its floor brokers until the remote specialist idea had been launched and tested. The Exchange is

now seeking to open remote trading capabilities to its floor brokers.

The remote brokers would be governed by the same general rules that govern the remote specialists, including the various rules set forth throughout the BSE rules regarding informational barriers and other such safeguards. Additionally, the remote brokers would be governed by all of the rules that currently apply to floor brokers, including those set forth in Chapter XIV, "Floor Brokers," of the BSE rules. The Exchange would also conduct periodic examinations of all remote brokerage operations, as it does under a compliance program developed for its remote specialists. The duties and obligations a BSE floor broker would not be altered in any way, with the only change being the ability of the floor brokers to conduct their business from locations other than the Exchange floor.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of section 6(b)(5),<sup>4</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and the national market system, and, in general, to protect investors and the public interest.

#### 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 not necessary or appropriate in furtherance of the purposes of the Act.

#### 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

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

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

(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

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. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BSE-2004-24 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File No. SR-BSE-2004-24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BSE-2004-24 and should be submitted on or before December 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50718; File No. SR-FICC-2004-09]

### Self-Regulatory Organizations; Notice of a Proposed Rule Change by the Fixed Income Clearing Corporation Relating to Changes to Membership Requirements

November 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 14, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on November 16, 2004, amended the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by FICC. 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 proposed rule change would amend FICC's Government Securities Division ("GSD") and Mortgage Backed Securities Division ("MBSD") rules to require applicants and members to submit two years of audited annual financial statements or less for newly formed entities, to permit applicants and members to submit audited consolidated statements in situations where audited financial statements are not prepared at the applicant or member level, to eliminate the rule that requires comparison-only members to be in compliance with the capital requirements of their examining authority, and to require non-US banks that wish to become an approved letter of credit issuer to have language in their opinion of counsel indicating that the head office is "ultimately responsible" for the credit obligation of the branch.

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

The proposed rule change would affect GSD's and MBSD's rules in the following areas:

##### 1. Annual Audited Financial Statements

Currently, GSD's rules require U.S. applicants for membership to submit annual audited financial statements for the preceding year and non-U.S. applicants to submit annual audited financial statements for the preceding three years. MBSD's rules currently require U.S. and non-U.S. membership applicants to submit annual audited financial statements for the preceding year.

FICC proposes to amend both divisions' rules to require GSD netting applicants and MBSD clearing applicants to submit two years of annual audited financial statements. However, if an applicant or member has not been in business for two years (*i.e.*, a newly-formed applicant or member<sup>3</sup>), FICC would permit it to submit annual audited financial statements for a lesser period and/or annual audited financial statements of a predecessor firm in the case of an applicant or member formed by a corporate transaction. If audited financial statements cannot be obtained, newly-formed applicants will be permitted to submit unaudited *pro forma* financial statements.

Firms that submit less than two years of financial statements would also have to submit: (1) Annual audited financial statements of a predecessor firm, if applicable; (2) *pro forma* financial statements signed by a senior officer of the firm; (3) regulatory reports for the

<sup>2</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>3</sup> A newly formed applicant may include a company with no business history or a company formed as a result of a corporate transaction such as a merger.