

16. *General obligations.* The Parties agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

17. *Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the persons identified in subsections (a) and (b), as applicable, below. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified Party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

(a) *If to NASD:*

NASD, 9509 Key West Avenue,  
Rockville, Maryland 20850, *Attn:*  
Jim Price.

With, if a notice of breach or default, a required copy to:

National Association of Securities  
Dealers, Inc., 1735 K Street, NW.,  
Washington, DC 20006, *Attn:* Office  
of General Counsel—Contracts  
Group.

(b) *If to ISE:*

International Securities Exchange,  
Inc., 60 Broad Street, 26th Floor,  
New York, NY 10004, *Attn:* Legal  
Department.

With, if a notice of breach or default, a required copy to:

Same address as above.

18. *Regulatory responsibility.*

Pursuant to section 17(d)(1)(A) of the Act, and Rule 17d-2 thereunder, NASD and ISE jointly request the SEC, upon its approval of this Agreement, to relieve ISE of any and all responsibilities with respect to the matters performed by NASD pursuant to this Agreement for purposes of sections 17(d) and 19(g) of the Act.

19. *Governing Law.* This Agreement shall be deemed to have been made in the State of New York and shall be construed and enforced in accordance with the law of the state of New York, without reference to principles of conflicts of laws thereof. Each of NASD and ISE hereby consents to submit to

the jurisdiction of the courts by or for the State of New York in connection with any action or proceeding relating to this Agreement.

20. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the Services by NASD, the payment of the price by ISE, and any expiration of this Agreement shall survive and continue, including but not limited to, the items referred to in Sections 6, 8, and 9.

### III. Solicitation of Comments

In order to assist the Commission in determining whether to approve this plan and to relieve the ISE of those responsibilities designated to the NASD, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 ISE. All submissions should refer to File No. S7-966 and should be submitted by June 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-12730 Filed 5-20-03; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47858; File No. SR-Amex-2003-40]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Extend the Suspension of Transaction Charges for Certain Exchange-Traded Funds

May 14, 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 1, 2003, the American Stock Exchange LLC ("Amex") 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.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until May 31, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader, and broker-dealer orders for the iShares Lehman 1-3 year Treasury Bond Fund; iShares Lehman 7-10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### AMEX Equity Fee Schedule

##### I. Transaction Charges

No change.

##### II. Regulatory Fee

No Change.

Notes:

1. and 2. No change.

3. Customer transaction charges for the following Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

DIA—DIAMONDS ®  
QQQ—Nasdaq-100 ® Index Tracking Stock  
SPY—SPDR ®  
IVV—iShares S&P 500  
MDY—MidCap SPDRs  
XLY—Select Sector SPDR-Consumer Discretionary

XLP—Select Sector SPDR-Consumer Staples  
XLE—Select Sector SPDR-Energy

BHH-B2B Internet HOLDRS™  
BBH-Biotech HOLDRS  
BDH-Broadband HOLDRS  
EKH-Europe 2001 HOLDRS  
IAH-Internet Architecture HOLDRS  
HHH-Internet HOLDRS  
IIH-Internet Infrastructure HOLDRS  
MKH-Market 2000+ HOLDRS  
OIH-Oil Service HOLDRS

<sup>13</sup> 17 CFR 200.30-3(a)(34).

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

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

XLV-Select Sector SPDR-Health Care  
 XLI-Select Sector SPDR-Industrial  
 XLB-Select Sector SPDR-Materials  
 XLK-Select Sector SPDR-Technology  
 XLU-Select Sector SPDR-Utilities

PPH-Pharmaceutical HOLDRs  
 RKH-Regional Bank HOLDRs  
 RTH-Retail HOLDRs  
 SMH-Semiconductor HOLDRs  
 SWH-Software HOLDRs  
 TTH-Telecom HOLDRs  
 UTH-Utilities HOLDRs  
 WMH-Wireless HOLDRs  
 SHY-iShares Lehman 1-3 Year Treasury Bond Fund  
 IEF-iShares Lehman 7-10 Year Treasury Bond Fund  
 TLT-iShares Lehman 20+ Year Treasury Bond Fund  
 LQD-iShares GS \$ InvesTop Corporate Bond Fund  
 TFT—Treasury 1 FITR ETF  
 TOU—Treasury 2 FITR ETF  
 TFI—Treasury 5 FITR ETF  
 TTE—Treasury 10 FITR ETF

Customer transaction charges for the iShares S&P 100 Index Fund are \$.0015 per share (\$.15 per 100 shares), capped at \$100 per trade.

Until [April 30] May 31, 2003, transaction charges also have been suspended in SHY, IEF, TFT, TOU, TFI and TTE for specialist, Registered Trader and broker dealer orders.

\* \* \* \* \*

## 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 Amex 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 is extending until May 31, 2003 the suspension of transaction charges in iShares Lehman 1-3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7-10 year Treasury Bond Fund (Symbol: IEF); Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension in such charges until November 30, 2002,<sup>3</sup>

<sup>3</sup> See Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR-Amex-2002-91).

December 13, 2002,<sup>4</sup> January 31, 2003,<sup>5</sup> February 28, 2003,<sup>6</sup> March 31, 2003,<sup>7</sup> and April 30, 2003.<sup>8</sup>

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the 1934 Act.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(4)<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

#### 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

The Exchange has neither solicited nor received comments on the proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR-Amex-2002-98).

<sup>5</sup> See Securities Exchange Act Release No. 47141 (January 8, 2003), 68 FR 2090 (January 15, 2003) (SR-Amex-2002-115).

<sup>6</sup> See Securities Exchange Act Release No. 47361 (February 13, 2003), 68 FR 8534 (February 21, 2003) (SR-Amex-2003-04).

<sup>7</sup> See Securities Exchange Act Release No. 47455 (March 6, 2003), 68 FR 12111 (March 13, 2003) (SR-Amex-2003-15).

<sup>8</sup> See Securities Exchange Act Release No. 47668 (April 11, 2003), 68 FR 19241 (April 18, 2003) (SR-Amex-2003-22).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. 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 furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-traded funds that are the subject of this filing have been previously filed with the Commission.<sup>13</sup> Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission

<sup>11</sup> 15 U.S.C. 78b(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> See *supra* notes 3-8.

designates the proposal to be effective and operative upon filing with the Commission.<sup>14</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 at 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 No. SR-Amex-2003-40 and should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-12690 Filed 5-20-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47862; File No. SR-Amex-2003-38]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Withdrawal of Approval for Securities Underlying Options Traded on the Exchange

May 14, 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 1,

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</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.

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. The proposed rule change has been filed by the Amex as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>3</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

The Amex proposes to amend Exchange Rule 916, which governs the withdrawal of approval for securities underlying options traded on the Exchange. Below is the text of the proposed rule change. Proposed new language is in italics.

\* \* \* \* \*

Rule 916. Withdrawal of Approval of Underlying Securities  
No Change  
Commentary.

01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, or 3 listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

1. There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under section 16(a) of the Securities Exchange Act of 1934.

2. There are fewer than 1,600 holders of the underlying security.

3. The trading volume (in all markets in which the underlying security is traded) was less than 1,800,000 shares in the preceding twelve months.

4. Subject to Commentary .02 below, the market price per share of the underlying security closed below \$3 on the previous trading day as measured by the highest closing price reported in the primary market (as that term is defined in Rule 900(26)) in which the underlying security traded.

5. The issuer has failed to make timely reports as required by applicable

requirements of the Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed.

6. The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.

7. If an underlying security is approved for options listing and trading under the provisions of Commentary .05 of Rule 915, the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructured Security (as therein defined), including "when issued" trading, may be taken into account in determining whether the trading volume and market price requirements of paragraphs 3. and 4. of the Commentary .01 are satisfied, provided however, that in the case of a Restructured Security approved for options listing and trading under paragraph (d) of Commentary .05 under Rule 915, such trading volume requirements must be satisfied based on the trading volume history of the Restructured Security.

.02-.09 No Change

.10 *In determining whether any of the events specified in Commentary .01(1) or (2) of this Rule have occurred, the Exchange will monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy-backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Commentary .01 (1) or (2) of this Rule, the Exchange will not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Commentary .01(1) or (2) have occurred, the Exchange shall consider the events specified in Commentary .01(1) and (2) to have been satisfied.*

\* \* \* \* \*

<sup>3</sup> 17 CFR 240.19b-4(f)(6).