

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51185; File No. SR-Amex-2005-14)

February 10, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Suspension of Transaction Fees in Connection with the iShares® COMEX Gold Trust

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 February 1, 2005, 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 and II below, which Items have been prepared by the Amex. The Exchange filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Rule 19b-4(f)(6) under the Act requires the Amex to provide the Commission with five business days notice of its intention to file a non-controversial proposed rule change. The Amex did not provide such notice but requested that the Commission waive the notice requirement. The Amex also requested that the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii) under the Act. 17 CFR 240.19b-4(f)(6)(iii).

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

The Exchange proposes to suspend through February 28, 2005, Exchange transaction charges for specialist, registered trader, broker-dealer and customer orders for the iShares COMEX Gold Trust (the "Gold Trust"). The text of the proposed rule change is available on Amex's website <http://www.amex.com>, at the Amex's Office of the Secretary, and the Commission's Public Reference Room.

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

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposal and discussed any comments it received regarding the proposal. 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

Specialist, registered traders, broker-dealers and customer orders in the Gold Trust are subject to the following transaction charges. Off-Floor orders (i.e., customer and broker-dealer) currently are charged \$.0060 per share (\$0.60 per 100 shares), capped at \$100 per trade (16,667 shares). Orders entered electronically into the Amex Order File ("System Orders") from off the Floor for up to 5,099 shares are currently not assessed a transaction charge. This provision, however, does not apply to System Orders of a member or member organization trading as an agent for the account of a non-member

competing market maker. System Orders over 5,099 shares currently are subject to a \$.0060 per share transaction charge, capped at \$100 per trade. Specialists currently are charged \$0.0033 (\$0.33 per 100 shares), capped at \$300 per trade (90,909 shares). Registered traders currently are charged \$0.0036 (\$0.36 per 100 shares), capped at \$300 per trade (83,333 shares).

The Exchange is suspending all transaction charges in the Gold Trust for specialist, registered trader, broker-dealer and customer orders until February 28, 2005. The Exchange believes a suspension of fees for the Gold Trust is appropriate to enhance the competitiveness of executions for the Gold Trust on the Amex. The Exchange will reassess the fee suspension as appropriate and will file a proposed rule change for any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁶

The Exchange is amending the Equities Fee Schedule and Exchange Traded Funds and Trust Issued Receipts Fee Schedule to indicate that transaction charges have been suspended until February 28, 2005 for the Gold Trust. In addition, the Exchange Traded Funds and Trust Issued Receipts Fee Schedule is being amended to refer to the suspension of transaction charges for certain Exchange Traded Funds and the application of customer transaction charges in connection with the iShares S&P 100 Index Fund

⁶ 15 U.S.C. 78s(b)(3)(A).

(Symbol: OEF) previously filed with the Commission.⁷

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4)⁹ in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

The Exchange believes the proposed rule change does not impose any burden on competition that is 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 by the Exchange with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; the proposed rule change has

⁷ See Securities Exchange Act Release Nos. 46384 (August 20, 2002), 67 FR 55048 (August 27, 2002) (suspension of transaction charges for SHY, IEF, TLT and LQD); and 47668 (April 11, 2003), 68 FR 19241 (April 18, 2003) (OEF transaction charges).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

become effective pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)¹¹ thereunder.

Although Rule 19b-4(f)(6) under the Act¹² requires that an Exchange submit notice of its intent to file at least five business days prior to the filing date, the Commission is waiving this requirement at the Exchange's request in view of the fact that the proposed rule change waives fees for all market participants and similar suspension of transaction fees have been approved for similar products.¹³

The Exchange has also requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative by finding that such action is consistent with the protection of investors and the public interest. The Commission notes that by waiving the operative period, the Exchange has stated that the suspension of transaction fees will enhance the competitiveness of the product and will permit the Exchange to implement the fee waiver immediately.¹⁴

Furthermore, the Commission notes that Amex's suspension of transaction fees have been approved for similar products and that trading in the Gold Trust on the Exchange commenced on January 28, 2005. The Exchange also has stated that the fee suspension is for all market participants and is intended to provide cost savings to investors, members, and other market participants. For these reasons,

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR.240-19b-4(f)(6).

¹³ See supra note 7.

¹⁴ The Exchange will reassess the fee waivers prior to February 28, 2005 and will

the Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change and has determined to designate the proposed rule change as operative on February 1, 2005, the date it was submitted to the Commission.

At any time within 60 days of the filing of this 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 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. Please include SR-Amex-2005-14 on the subject line.

make any required filing pursuant to Rule 19b-4 of the Act prior to that date.

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 SR-Amex-2005-14. 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 Room. Copies of such filing also will be available on the Exchange's Web site at <http://www.amex.com> and for inspection and copying at the principal office of the Exchange. 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 SR-Amex-2005-14 and should be submitted on or before
[insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated
authority.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30–3(a)(12).