

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51201; File No. SR-Amex-2005-18)

February 14, 2005

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Retroactive 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 7, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to apply retroactively a suspension of Amex transaction charges for specialist, registered trader, broker-dealer and customer orders for the iShares COMEX Gold Trust (the “Gold Trust”) from January 28, 2005 through January 31, 2005. The text of the proposed rule change is available on Amex’s Web site <http://www.amex.com>, at the Amex’s Office the Secretary, and the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 III 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 Amex proposed, in a companion filing (SR-Amex-2005-14), to suspend transaction charges in the Gold Trust through February 28, 2005 for specialist, registered trader, broker-dealer and customer orders.³ The Gold Trust commenced trading on the Exchange on January 28, 2005; however, the filing to suspend transaction charges for specialists, registered traders, broker-dealers and customers was not filed with the Commission until February 1, 2005. As such, market participants were charged according to the existing fee schedule for trust issued receipts (“TIRs”) from January 28, 2005 through January 31, 2005.

Under the current fee schedule, off-floor orders (i.e., customer and broker-dealer) 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 not assessed a transaction charge. This provision,

³ See Securities Exchange Act Release No. 51185 (February 10, 2005) (File No. SR-Amex-2005-14). This proposal was filed pursuant to Section 19(b)(3)(A) of the Act and was effective upon filing.

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 are charged \$0.0033 (\$0.33 per 100 shares), capped at \$300 per trade (90,909 shares). Registered traders are charged \$0.0036 (\$0.36 per 100 shares), capped at \$300 per trade (83,333 shares).

Under the proposed rule change, the Exchange is suspending all transaction charges in the Gold Trust for specialist, registered trader, broker-dealer and customer orders from January 28, 2005 through January 31, 2005, which is consistent with the companion filing to suspend transaction charges generally through February 28, 2005 and benefits all market participants.⁴ The Exchange believes a retroactive suspension of fees for the Gold Trust is appropriate to enhance the competitiveness of executions 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.⁵

The Exchange is amending the Equities Fee Schedule and Exchange Traded Funds and Trust Issued Receipts Fee Schedules to indicate that transaction charges have been suspended from January 28, 2005 through February 28, 2005 for the Gold Trust. In addition, the Exchange Equity Fee Schedule and Exchange Traded Funds Schedule and Trust Issued Receipts Fee Schedule is being amended to refer to the retroactive suspension of transaction charges for certain Exchange Traded Funds and the application of customer transaction charges in connection with the Gold Trust (Symbol: OEF)

⁴ See supra note 3.

⁵ 15 U.S.C. 78s(b)(3)(A).

previously filed with the Commission.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ 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. 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:

⁶ 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).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4)

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-2005-18 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 SR-Amex-2005-18. 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-2005-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Amex requests that the proposed rule change be given expedited review and accelerated effectiveness pursuant to Section 19(b)(2) of the Act. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.⁹ The Commission has previously approved the suspension of transaction charges for specialist, registered trader, broker-dealer and customer orders.¹⁰ Accordingly, the Commission finds that the retroactive suspension of transaction fees is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.¹¹

The Exchange has requested and the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register as the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange states that the retroactive suspension for the Gold Trust

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See supra note 6.

¹¹ In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

transaction fees will benefit all market participants and enhance the competitiveness of executions on the Amex. In Amex's companion filing, Amex originally sought to implement a suspension of transaction charges for all market participants as of the commencement of trading of the Gold Trust on the Exchange on January 28, 2005 through February 28, 2005. Furthermore the Commission notes that the suspension of transaction fees in Amex's companion filing have been approved for similar products.¹² Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,¹³ to approve the proposal, on an accelerated basis.

V. Conclusion

THEREFORE IT IS ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-Amex-2005-18) is hereby approved on an accelerated basis.

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

Margaret H. McFarland
Deputy Secretary

¹² See Securities Exchange Act Release Nos. 49025 (January 6, 2004), 69 FR 2018 (January 13, 2004) (retroactive application of a monthly options transaction fee cap for specialists and registered options traders); and 49019 (January 5, 2004) 69 FR 2023 (January 13, 2004) (cap monthly options transactions fees incurred by specialists and registered options traders in any single options class).

¹³ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).