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

1. Purpose

The Exchange has included in Note 4 to the Amex Equity Fee Schedule a list of ETFs that are subject to transaction charges set forth in Item 9 to the Equity Fee Schedule, relating to ETFs for which the Exchange pays unreimbursed fees to a third party.[4] The Exchange is adding to this list the iShares S&P 100 Index Fund (Symbol: OEF). This fund is listed on the Chicago Board Options Exchange and will be traded on the Amex pursuant to unlisted trading privileges.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(4) of the Act[6] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers and other persons using the Amex's 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

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 proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of rule 19b–4 thereunder,[8] because it establishes or changes a due, fee, or other charge imposed by the Amex. At any time within 60 days of the filing of the 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 proposal 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 number SR–Amex–2003–13 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6551 Filed 3–18–03; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 46764 (November 1, 2002), 67 FR 68704 (November 12, 2002) (SR–Amex–2002–81).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47479; File No. SR–Amex–2002–86]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC To Eliminate the Obligation of Specialists to Accord Priority to Non-Public Customer Options Orders

March 11, 2003.

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 October 17, 2002, the American Stock Exchange LLC (''Amex'') 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 Amex. 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 paragraphs (a) and (d) of Amex Rule 950, and add new paragraph (q) to Amex Rule 950, to provide that when a specialist represents an options order as agent, the specialist is required to accord priority only to those orders of public customers over the specialist's principal transactions. The text of the proposed rule change is below. New language is italicized; deleted language is in brackets.

Rule 950. Rules of General Applicability

(a) The following Floor Rules shall apply to Exchange option transactions and other transactions on the Exchange in options contracts: 100, 101, 104, 105, 106, 110, 112, 117, 123, 129, 130, 135, 150, 151, 152, 153, [155,] 157, 172, 173, 174, 175, 176, 177, 180, 181, 183, 184, 185, 192 and 193. Unless the context otherwise requires, the term ''stock'' wherever used in the foregoing Rules shall be deemed to include option contracts. Except as otherwise provided in this Rule, all other Floor Rules (series 100 *et seq.*) shall not be applicable to Exchange option transactions.

(b)–(c) No change.

(d) No change.

Commentary—

.01 No change

.02 A member who holds both an order for a public customer of a member organization and a facilitation order may cross such orders if:

(a) No change

(b) No change

(c) No change

(d) No change

For purposes of this Rule, [and] Rule 950(e)(iv) *and 950(q)* the term ''public customer of a member organization'' means a customer that is neither a member nor a broker-dealer.

.03 No change

.04 No change

.05 No change

(f)–(p) No change

(q) The provisions of Rule 155 shall apply to Exchange options transactions as modified below:

A specialist shall give precedence to the options orders of a public customer of a member organization entrusted to the specialist as an agent in any option in which he is registered before executing at the same price any purchase or sale in the same option for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

an account in which he has an interest. However, the requirements of this Rule shall not apply to those option orders which are not executable because of the restrictions of Securities Exchange Act Rule 11a1–1, the two tick requirement of Rule 111 and the procedures for the handling of percentage orders pursuant to Rule 154.

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 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 is proposing to amend Amex Rule 950 for the purpose of revising the obligation of specialists in representing options orders. Currently, Amex Rule 950(a) incorporates and applies Amex Rule 155 to options so that a specialist is required to give precedence to orders entrusted to him as an agent in any option in which he is registered before executing at the same price any purchase or sale in the same option for an account in which he has an interest.[3] This amendment to paragraphs (a) and (d) of Amex Rule 950, and the addition of new paragraph (q) to Amex Rule 950, would revise the obligation of options specialists so that such specialists are obligated to accord priority only to public customer orders. The term ''public customer of a member organization'' is defined as an order which, if executed, results in the purchase or sale for an account in which no member or broker-dealer has an interest.[4]

Amex represents that a number of developments in the options industry and at the Amex in recent years have resulted in an increasing number of options orders left with specialists for representation. In particular, the consolidation of firms and changing economics have resulted in a decline in the number of independent floor brokers who formerly represented orders in trading crowds at the Amex.[5] In addition, the enhanced use of electronic order routing systems by firms has further increased the number of options orders that specialists represent. Therefore, a larger percentage of all options orders traded in a particular trading crowd are now being electronically routed and either automatically executed via the Amex's automatic execution system or placed in the specialist's order display book, the Amex Options Order Display Book (''AODB''),[6] for execution.

The introduction of the Booth Automated Routing System (''BARS'')[7] at the Amex further permits member firms to manage their order flow more efficiently by providing members a choice of sending orders electronically to their floor broker booths for further action or using existing electronic order routing systems to send orders directly to the specialist. With the advent of a reduction in floor broker operations and the speed of electronic order routing, such orders increasingly are routed electronically to the specialist for handling. Accordingly, the Amex does not believe that it is appropriate for a specialist to be denied the opportunity to compete for orders merely because it is representing such orders that have in the past been represented by floor brokers.

The Amex believes it will become increasingly difficult for specialists to compete against Registered Options Traders (''ROTs'') and other members in the trading crowd given the preference for electronic order routing. As the percentage of electronically routed orders increases, the incentive to assume the affirmative obligations and exposure in managing a specialist unit decrease. Therefore, the Amex believes this proposal is justified in light of the particular responsibilities, burdens and costs borne by specialists as compared to other market participants. For example a specialist unit has greater market making responsibilities than ROTs and other non-specialists, higher capital requirements, and other costs such as staffing in connection with brokerage quote updating and quote processing.

The Amex offers the following example to help illustrate how the current order precedence rule works at the Amex. A specialist who had been bidding $2 as dealer receives an order for a broker-dealer that has been electronically routed by an unaffiliated floor broker via BARS. The broker-dealer is seeking to buy 50 contracts of XYZ at a limit of $2 at a time when the market is 2 (bid) − 2.25 (offer). A Registered Options Trader (''ROT'') now walks into the trading crowd to sell 100 contracts of XYZ at $2. The specialist must represent the order of the floor broker and, in addition, may bid as dealer to compete against other non-specialists to trade against the ROT order for 100 contracts. The specialist, however, must, when bidding as dealer, accord priority to the order of the floor broker and cannot compete to trade against that order. If competition in the trading crowd is such that the specialist is allocated 20 contracts (or less) in the trade of 100 contracts, the specialist will have no chance to participate, as principal, in the trade. If the specialist did not have to accord priority to the order of the broker-dealer, the specialist would be able to compete equally with the other trading crowd participants and assert its participation right if the trade occurred at the specialist's previously established principal bid or offer.

The Amex believes this proposal is substantially similar to a proposal by the Chicago Board Options Exchange, Inc. (''CBOE'') that was approved by the Commission.[8] Pursuant to the CBOE proposal, the designated primary market makers (''DPMs''), when representing an order as agent, would be required to accord priority only to public customer orders over their own principal transactions.[9] The Amex represents that it has based the instant proposal on the CBOE rule change, and therefore, submits it is identical to the CBOE's approved rule. Amex therefore believes that approval of the proposal would place Amex specialists on an equal footing with DPMs so that a specialist when representing an order accords priority only to public customer orders.

The Amex, notes, however, that although Commission approval of this

[3] According to the Amex, the specialist does not have to give precedence to those orders which are not executable because of the restrictions of Rule 11a1–1(T) under the Act or because of the two-tick requirement of Commentary .01(b) to Amex Rule 950(c).

[4] *See* Commentary .02 to Amex Rule 950(d).

[5] For example, Amex ''spread'' brokers no longer exist because of the inability to profitably remain in business. These specialized floor brokers at the Amex focused on executing options spread orders. *See* File No. SR–Amex–2001–48.

[6] The AODB is the electronic options specialist book that receives and stores both market and limit orders directed to the Amex through its electronic order routing system or given to the specialist by traders.

[7] BARS is an order routing system permitting brokers to manage and route orders for Amex traded securities. *See* Securities Exchange Act Release No. 45782 (April 18, 2002), 67 FR 20559 (April 25, 2002).

[8] *See* Securities Exchange Act Release No. 45103 (November 26, 2001), 66 FR 63083 (December 4, 2001) (notice of SR–CBOE–00–42) and 45341 (January 25, 2002) 67 FR 5016 (February 1, 2002) (approval order of SR–CBOE–00–42).

[9] *Id.*

proposal may be consistent with the Act, such approval will not relieve a specialist of its fiduciary obligations under the federal securities laws or agency law principles when acting as an agent.[10] The Commission, in approving the CBOE proposed rule change, specifically stated that its approval was based solely on its determination that the CBOE proposal was consistent with the 1934 Act and the rules and regulations thereunder applicable to a national securities exchange. Therefore, like the CBOE rule filing, approval of this proposal will not affect existing fiduciary duties.[11]

Accordingly, the Amex believes that the instant proposal limiting the priority of options orders to those orders of public customers entrusted to specialists for execution is consistent with the Act and Amex rules. The addition of new paragraph (q) to Amex Rule 950 will, therefore, allow specialists acting as agent to compete equally with other members and broker-dealers in the trading crowd by not being required to afford priority to such member or broker-dealer orders.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The Amex believes that the proposed rule change will impose no burden on competition.

[10] *See In re E.F. Hutton & Co.* Securities Exchange Act Release No. 25887 (July 6, 1988) (''Manning Decision''). The Amex represents that the Commission found that broker-dealers owe a fiduciary duty to their limit order customers not to trade ahead of such orders unless the customer knows of the firm's limit order policy. Furthermore, under agency law principles, a specialist acting as agent has an obligation to act solely for its customer and not compete with the customer's order unless the customer understands such specialist intends to compete.

[11] The Amex offers the following as an example: A specialist that acts as agent for any customer has an obligation to act solely for the benefit of the customer in all matters connected with the customer's order, and not compete with the customer concerning the order unless the customer understands its agent is to compete, and such understanding is fully disclosed.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

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 self-regulatory organization 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. 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–2002–86 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47492; File No. SR–CBOE–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Expand the Order Types That Can Trade on the Exchange's Large Order Utility (''LOU'')

March 13, 2003.

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 March 10, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), 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 Exchange. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)[3] of the Act and rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. 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 CBOE proposes to expand the order types that can trade on the Exchange's LOU system. Below is the text of the proposed rule change. Proposed new language is in italics:

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.10 LOU System Operations

This Rule governs the operation of the Large Order Utility (''LOU'') system.

(a) Definitions. For purposes of this Rule, the following definitions shall apply.

(i) The term ''LOU'' means a facility of the Exchange that provides order routing, handling, and execution for eligible options orders routed electronically to the Exchange.

(ii) The term ''In-Person Wheel'' means an order allocation mechanism

[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).