

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52268; File No. SR-Amex-2005-077)

August 15, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to a Temporary Suspension of Specialist Transaction Charges for the Nasdaq-100 Tracking Stock® (QQQQ)

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 July 15, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “Commission”) the proposed rule change as described in Items I, II, and III below, which items have been prepared by Amex. On July 20, 2005, the Exchange filed Amendment No. 1 to the proposal.³ On August 11, 2005, the Exchange filed Amendment No. 2 to the proposal.⁴ Amex has designated the proposed rule change, as amended, as establishing or changing a due, fee, or other charge imposed by the Exchange pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and Rule 19b-4(f)(2) thereunder,⁶ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Amex added language to the purpose section to explain that the proposal is deleting certain provisions from its fee schedules because such provisions, by their terms, have already expired.

⁴ In Amendment No. 2, Amex made minor technical changes to the proposed rule text and provided further discussion on how the proposal is consistent with the requirement under Section 6(b)(4) of the Act to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. See 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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

The Exchange proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules to suspend specialist transaction charges for the trading of Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from July 18, 2005 through July 31, 2005. The text of the proposed rule change is available on Amex's Web site (<http://www.amex.com>), at Amex's principal office, and from 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, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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 proposing to suspend transaction charges for specialist orders in the Nasdaq-100 Index Tracking Stock® (QQQQ) from July 18, 2005 through July 31, 2005. This proposed rule change also deletes the references in the Amex Fee Schedules regarding the suspension of transaction charges for customer/broker-dealer, specialist and registered trader orders in QQQQ through February 28, 2005 because those provisions are no longer effective due to their expiration. Similarly, the references in the Amex Fee Schedules regarding the

⁶ 17 CFR 240.19b-4(f)(2).

suspension of transaction charges for specialist, registered trader, and broker-dealer orders in IAU from January 28, 2005 through February 28, 2005 will also be deleted because these provisions are also no longer effective due to their expiration.

Specialists orders for transactions in the Nasdaq-100 Index Tracking Stock® currently are charged \$0.0037 (\$0.37 per 100 shares), capped at \$300 per trade. Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® (formerly “QQQ”) transferred its listing from Amex to the Nasdaq Stock Market, Inc. It now trades on Nasdaq under the symbol QQQQ. After the transfer, Amex began trading QQQQ on an unlisted trading privileges basis. Amex previously suspended the transaction charges of specialist and registered trader orders in connection with QQQQ from December 1, 2004 through February 28, 2005.⁷ The Exchange did not extend these fee waivers after February 28, 2005. In connection with the transfer of QQQQ to Nasdaq, the Amex Fee Schedules were amended to provide for transaction charges of \$0.0015 per share (\$0.15 per 100 shares) for customer orders, capped at \$100 per trade in connection with QQQQ transactions.⁸ Amex previously suspended those transaction charges for customer orders in connection with QQQQ from December 1, 2004 through February 28, 2005.⁹ The Exchange did not extend this fee waiver after February 28, 2005.

⁷ See Securities Exchange Act Release Nos. 50811 (December 7, 2004), 69 FR 74547 (December 14, 2005); 50970 (January 6, 2005), 70 FR 2193 (January 12, 2005); and 51150 (February 8, 2005), 70 FR 7780 (February 15, 2005).

⁸ See Securities Exchange Act Release No. 50894 (December 20, 2004), 69 FR 77788 (December 28, 2004).

⁹ See Securities Exchange Act Release Nos. 50894 (December 20, 2004), 69 FR 77788 (December 28, 2004); 50969 (January 6, 2005), 70 FR 2191 (January 12, 2005); and 51152 (February 8, 2005), 70 FR 7781 (February 15, 2005).

The Exchange asserts that the proposed suspension of transaction fees for specialist orders in connection with QQQQ is consistent with Section 6(b)(4) of the Act.¹⁰ Specifically, the Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members largely based on the fact that a specialist has greater obligations than other members and they are also subject to Exchange fees in addition to transaction fees.

In connection with the proposal to suspend or waive transaction fees for specialist orders in QQQQ, the Exchange notes that specialists are subject to a variety of Exchange fees other than transaction charges. For example, the Exchange imposes floor fees solely on specialists such as a floor clerk fee, a floor facility fee, a post fee, and a registration fee.¹¹ In addition, for those members on the floor of the Exchange, a technology fee and membership fees are also charged by the Exchange.¹² Certain market participants – such as customers, non-member broker-dealers, market-makers, and member broker-dealers – are not subject to the majority of these fees. In addition, a specialist unit, in order to adequately “make a market” in assigned securities, must be sufficiently staffed and have adequate technology resources to handle the volume of orders (especially in QQQQ) that are sent to the Exchange. These operational costs borne by a specialist further support the Exchange proposal to temporarily suspend QQQQ transaction fees on specialist orders.

¹⁰ Section 6(b)(4) of the Act states that the rules of a national securities exchange must provide for “the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.”

¹¹ The floor clerk, floor facility, post, and registration fees on an annual basis are \$900, \$2,400, \$1,000, and \$800, respectively.

¹² A technology fee of \$3,000 per year is assessed on all specialists and other floor participants at the Exchange. Annual membership dues of \$1,500 must be paid by all members, while annual membership fees are payable depending on the type of membership and circumstances. Non-members are not subject to these fees.

Specialists also have certain obligations under Exchange rules, as well as the Act, that do not exist for other market participants. For example, a specialist is required to maintain a fair and orderly market in his or her assigned securities pursuant to Amex Rule 170. This affirmative obligation requires the specialist to maintain the price continuity of the security with reasonable depth, while also minimizing the effect of any temporary disparities between supply and demand. As a result, the Exchange believes that the proposed suspension of transaction charges for specialist orders in QQQQ is reasonable and equitable given the numerous obligations that specialists must adhere to in making markets.

As detailed above, the Exchange believes a suspension of transaction fees for specialist orders in connection with QQQQ is equitable and appropriate for the purpose of enhancing our competitiveness in trading this security. The Exchange further submits that the fee suspension will provide greater incentive to the specialist to continue to provide market liquidity, rendering the Exchange an attractive venue for market participants to execute orders.

2. Statutory Basis

Amex believes that the proposed rule change consistent with Section 6(b) of the Act¹³ in general and furthers the objectives of Section 6(b)(4) of the Act¹⁴ 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

Amex does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

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 foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁶ 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 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.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 File Number SR-Amex-2005-077 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ The effective date of the original proposed rule change is July 20, 2005 and the effective date of the amendment is August 11, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-077. 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 for inspection and copying at the principal office 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

commence on August 11, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

available publicly. All submissions should refer to File Number SR-Amex-2005-077 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).