

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50894; File No. SR-Amex-2004-93)

December 20, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to Customer Transaction Charges for the Trading of Nasdaq-100 Index Tracking Stock®

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 November 22, 2004, 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. On December 7, 2004, Amex filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules to provide for customer transactions charges for the trading of Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) pursuant to the Nasdaq Unlisted Trading Privileges Plan. The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Amex restated the proposed rule change in its entirety.

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 and discussed any comments it had received on the proposed rule change. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® listed on the Nasdaq Stock Market, Inc. It trades on Nasdaq under the symbol QQQQ. The Amex trades the QQQQ on an unlisted trading privileges basis. The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (“Amex Fee Schedules”) to provide that the customer transaction charges in QQQQ would be \$.0015 per share (\$.15 per 100 shares), capped at \$100 per trade. This would be one-fourth of the regular customer transaction charge for the Nasdaq-100 Index Tracking Stock® when it was listed on the Amex (although the Amex has suspended these charges since August 2001) and for other Exchange Traded Fund Shares. The Exchange believes that this fee level would encourage competition among markets trading QQQQ and enhance the Amex’s competitiveness in trading this security. In order to reflect the lower transaction charges in QQQQ for customers on the Exchange Traded Funds and Trust Issued Receipts Fee Schedule (“ETF Fee Schedule”), a new Section IV would be added specifically to set forth transaction charges in QQQQ for customers as well as the specialist and registered traders. The transaction charges for all three market participants

previously were included in Section II of the ETF Fee Schedule since they were the same in each case as the transaction charges for other Exchange Traded Funds for which the Exchange pays unreimbursed fees to a third party. Although the text of Section IV is entirely new, it would reflect the current transaction charges in place for specialists and registered traders, this proposal is not seeking to establish new transaction charges for the specialist and registered traders.

In addition, the Amex has determined that during the first month of trading QQQQ pursuant to unlisted trading privileges, it would suspend these customer charges. The Amex Fee Schedules also would be amended to reflect this temporary suspension.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁵ in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.⁶

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

The Exchange does not believe that the proposed rule change, as amended, would impose any burden on competition.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ The Commission changed this sentence to reflect statutory basis for the proposed rule change pursuant to Section 6(b)(4) of the Act, rather than Section 6(b)(5). Telephone conversation among Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, Ann E. Leddy, Special Counsel, and Ted Venuti, Attorney, Division of Market Regulation, Commission (December 9, 2004).

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. 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 File Number SR-Amex-2004-93 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 File Number SR-Amex-2004-93. 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 Section, 450 Fifth

Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR-Amex-2004-93 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

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the proposed change in customer transaction charges is not unreasonable and should not discriminate unfairly among market participants.

The Amex has requested that the Commission find good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission notes that granting accelerated approval of the proposal would allow the Amex to implement the proposed changes to its fee schedule for QQQQ in a manner which coincides with the start of trading QQQQ pursuant to unlisted trading

⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(4).

privileges. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁹ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-Amex-2004-93), and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).