

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

The MSRB has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing MSRB rule under section 19(b)(3)(A)(i) of the Act,<sup>5</sup> and subparagraph (f) of Rule 19b-4, thereunder.<sup>6</sup> At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this 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.

### **V. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No.

SR-MSRB-2001-02 and should be submitted by July 19, 2001.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-44465; File No. SR-NYSE-2001-15]**

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rules 104 and 1100 Relating to Trading of ETFs**

June 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 15, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 proposed rule change consists of an amendment to NYSE Rule 104 to facilitate trading in Exchange Traded Funds ("ETFs"), and amendments to Rule 1100 to clarify that rules relating to Investment Company Units apply to such securities traded on the basis of unlisted trading privileges ("UTP"), and to authorize the Exchange to close trading in an ETF at 4:05 p.m. when trading in a related futures contract has closed at that time on the last trading day of the month. Text of the proposed rule change follows. Additions are italicized; deletions are bracketed.

#### **Dealings by Specialists**

##### **Rule 104**

No specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he, his member organization or any other member, allied member, or approved

person, (unless an exemption with respect to such approved person is in effect pursuant to Rule 98) in such organization or officer or employee thereof is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as odd-lot dealer in such security.

.10 Regular Specialists

\* \* \* \* \*

(7) The requirement to obtain Floor Official approval for transactions for a specialist's own account contained in subparagraphs (5)(i)(A), (B) and (6)(i)(A) above shall not apply to transactions effected for the purpose of bringing the price of an investment company unit (the "unit"), as that term is defined in Section 703.16 of the Listed Company Manual, into parity with the value of the index on which the unit is based, [or] with the net asset value of the securities comprising the unit[.], *or with a futures contract on the value of the index on which the unit is based.* Nevertheless such transactions must be effected in a manner that is consistent with the maintenance of a fair and orderly market and with the other requirements of this rule and the supplementary material herein.

#### **Rule 1100**

##### **Scope**

(a) The provisions of this Rule 1100 apply only to "Investment Company Units", as defined and used in Para. 703.16 of the Listed Company Manual. *This term shall also mean and apply to securities which fit within said definition but are admitted to dealings by the Exchange on an unlisted trading privileges basis.* Except to the extent that specific provisions in this Rule govern, or unless the context otherwise requires, the provisions of the Constitution, all other Exchange Rules and policies shall be applicable to the trading of Investment Company Units on the Exchange. Pursuant to Exchange Rule 3 ("Security"), Investment Company Units are included within the definition of "security" or "securities" as those terms are used in the Constitution and Rules of the Exchange.

\* \* \* \* \*

#### **Hours of Trading**

(e) Any series of Investment Company Units so designated by the Exchange may be traded on the Exchange until 4:15 p.m. each business day. *The Exchange may close trading at an early time to coincide with the close of trading in a related futures contract on the last business day of the month, or any other day when trading in a related futures contract closes earlier than 4:15 p.m.*

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#### **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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 C.F.R. 240.19b-4(f).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 plans to begin trading certain ETFs on the Exchange pursuant to UTP on July 19, 2001. These ETFs are the NASDAQ 100 Trust (symbol QQQ), Standard and Poor's Depository Receipts (symbol SPY) and the Dow Industrials DIAMONDS (symbol DIA). ETFs are securities, which are Investment Company Units as defined in Section 703.16 of the Exchange's Listed Company Manual. The Exchange proposes to amend NYSE Rule 1100(a) to clarify that NYSE rules applying to Investment Company Units also apply to securities fitting that definition that are traded on the Exchange on the basis of UTP.

NYSE Rule 104 governs specialists' dealings in their specialty stocks. NYSE Rule 104.10 requires specialists to obtain Floor Official approval when purchasing on a direct plus tick or selling on a direct minus tick, or when purchasing on a zero plus tick more than 50% of the stock offered. These transactions are seen as destabilizing, and may be effected by the specialist only with Floor Official approval. NYSE Rule 104.10(7) was amended several years ago to permit a specialist registered in an Investment Company Unit to effect proprietary destabilizing trades without Floor Official approval to bring the security into parity with the value of the index on which the unit is based or with the net asset value of the securities comprising the unit. The purpose of that amendment was to permit a specialist registered in a "country basket" to act expeditiously to bring the basket into parity with the value of the securities comprising the basket.<sup>3</sup>

As noted above, ETFs are within the meaning of the term Investment Company Units, and thus an ETF specialist is permitted under Rule 104.10(7) to effect proprietary destabilizing trades without Floor Official approval to bring the ETF into parity with the underlying index or the

value of the securities comprising the ETF. In certain situations, however, market participants may seek to "trade through" these parity values to bring the ETF into parity with a futures contract on the index on which the ETF is based. The Exchange believes it would be appropriate to permit an ETF specialist to effect proprietary destabilizing transactions without Floor Official approval as appropriate in this situation. Such transactions remain subject to the requirement that they be effected in a manner that is consistent with the maintenance of a fair and orderly market.

The Exchange understands that futures trading in stock index products on the Chicago Mercantile Exchange closes at 4:05 p.m. (Eastern time) on the last business day of each month. The Exchange understands that trading in related ETFs on other market centers closes at such time on such days as well. Accordingly, the Exchange proposes to close trading in an ETF at the same time that trading in a related futures contract closes on the last business day of the month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5)<sup>4</sup> of the Act, which requires among other things, that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these objectives because it fosters efficient market making in ETF securities.

*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 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*

The Exchange has neither solicited nor received written comments on 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 the 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, including whether the proposed rule change 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 NYSE. All submissions should refer to File No. SR-NYSE-2001-15 and should be submitted by July 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>3</sup> See Securities Exchange Act Release No. 37016 (March 22, 1996), 61 FR 14185 (March 29, 1996) approving filing SR-NYSE-96-04.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 17 CFR 200.30-3(a)(12).