

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53701; File No. SR-Amex-2006-30]

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

April 21, 2006.

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 April 6, 2006, 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 Amex. The Exchange filed Amendment No. 1 on April 13, 2006, and withdrew Amendment No. 1 on April 18, 2006. On April 18, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>3</sup> Amex has designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> 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.

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

The Exchange proposes to amend the Amex Exchange Traded Funds and Trust Issued Receipts Fee Schedule (the “ETF Fee Schedule”) to suspend transaction charges for specialist orders in connection with the trading of the Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from April 6, 2006 through June 30, 2006.

The text of the proposed rule change, as amended, 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 proposal. 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 QQQQ from April 6, 2006 through June 30, 2006. The previous suspension of specialist transaction charges in the QQQQ terminated on December 31, 2005.

Specialist orders currently are charged \$0.0034 (\$0.34 per 100 shares), capped at \$300 per trade (88,235 shares). Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® (formerly “QQQ”) transferred its listing from Amex to The Nasdaq Stock Market, Inc. (“Nasdaq”). 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 orders in connection with the QQQQ through December 31, 2005.<sup>6</sup> The Exchange did not extend these fee waivers after December 31, 2005.

The Exchange asserts that the proposed suspension of transaction fees for specialist orders in connection with the QQQQ is consistent with Section 6(b)(4) of the Act.<sup>7</sup> Specifically, the Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members largely based on the fact that specialists have greater obligations than other members and are also subject to other Exchange fees in addition to transaction fees.

In connection with the proposal to suspend or waive transaction fees for specialist orders in the 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 registration fee.<sup>8</sup> In addition, for those members on the floor of the Exchange, a technology fee and membership fees are also charged by the Exchange.<sup>9</sup> Certain market participants, such as customers, non-member broker-dealers and 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<sup>10</sup> and have adequate technology resources to handle the volume of orders (especially in the QQQQ) that are sent to the Exchange. The Exchange believes that these operational costs borne by a specialist further supports the proposal to temporarily suspend QQQQ transaction fees on specialist orders.

Specialists have certain obligations required by Exchange rules as well as the Act that do not exist for other market participants. For example, a specialist pursuant to Amex Rule 170 is required to maintain a fair and orderly market in his or her assigned securities. Other members of the Exchange as well as non-member market participants do not have this obligation. As a result, the Exchange believes that the proposed suspension of transaction charges for specialist orders in the QQQQ is reasonable and equitable given the obligations that specialists must adhere to in making markets. The Exchange further submits that the fee suspension will provide a greater incentive to specialists 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, as amended, is consistent with

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

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

<sup>3</sup> In Amendment No. 2, the Exchange revised its statutory basis section, made a minor revision to its purpose section, and added a citation to its purpose section.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> See Securities Exchange Act Release No. 52736 (November 4, 2005), 70 FR 69171 (November 14, 2005).

<sup>7</sup> 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.” 15 U.S.C. 78f(b)(4).

<sup>8</sup> The floor clerk, floor facility, post, and registration fees on an annual basis are \$900, \$2,400, \$1,000, and \$800, respectively.

<sup>9</sup> 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.

<sup>10</sup> See Securities Exchange Act Release No. 53386 (February 28, 2006), 71 FR 11250 (March 6, 2006) (requiring specialists to employ an adequate number of clerks).

Section 6(b) of the Act<sup>11</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, and is an 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 believes that 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 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 Act<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>14</sup> 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.<sup>15</sup>

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-30 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-30. 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 available publicly. All submissions should refer to File Number SR-Amex-2006-30 and should be submitted on or before May 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Nancy M. Morris,**

*Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53708; File No. SR-Amex-2005-116]

### **Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Written Compliance and Supervisory Controls**

April 24, 2006.

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 November 7, 2005, 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. Amex filed Amendment No. 1 with the Commission on April 6, 2006.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Amex Rule 320 to (1) require members and member organizations with employees to establish, maintain, enforce and keep current a system of compliance and supervisory controls reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules, and (2) make certain other technical changes to the rule text.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, at the Amex's Office of the Secretary, and at 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, Amex included statements concerning the purpose of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> The effective date of the original proposed rule change is April 6, 2006 and the effective date of Amendment No. 2 is April 18, 2006. 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 commence on April 18, 2006, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

<sup>16</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.

<sup>3</sup> See Amendment No. 1.