

implementation of a new order display and collection facility ("SuperMontage"). The conditions, which were imposed by the Commission in a prior order granting conditional approval of the SuperMontage, include an alternative display facility established by the NASD for the display of market maker and ECN quotes.

7. The Commission will consider whether to grant a de minimis exemption from the trade-through restrictions of the Intermarket Trading System Plan for transactions in exchange-traded funds tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDS"), and the Standard and Poors 500 Index ("SPDRs"). The exemption would cover transactions that are executed at no more than three cents (\$.03) away from the national best bid and offer displayed in the Consolidated Quote.

8. The Commission will consider whether to issue a release adopting rule amendments and a new rule under the Securities Exchange Act of 1934 ("Exchange Act") that were proposed for comment in the **Federal Register** on June 10, 2002. New paragraph (e) of Rule 10b-10 and new Rule 11d2-1 are designed to clarify the disclosures broker-dealers effecting transactions in security futures products in futures accounts must make in the confirmations sent to customers regarding those transactions.

9. The Commission is proposing for comment amendments to the formula for determination of customer reserve requirements ("Reserve Formula") of broker-dealers under Rule 15c3-3 to the Securities Exchange Act of 1934. The proposed amendments relate to treatment under the Reserve Formula of customer security futures product margin required and on deposit with a registered clearing agency or a derivatives clearing organization.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: August 20, 2002.

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46364; File No. SR-Amex-2002-62]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Amending Amex Rule 174 To Provide for Dissemination of a Depth Indication

August 15, 2002.

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 July 19, 2002, the American Stock Exchange LLC ("Amex" 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 Amex. On August 2, 2002, the Amex filed an amendment to the proposal.<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 add Commentary .03 to Amex Rule 174, Disclosures by Specialists,<sup>4</sup> to provide for dissemination of a depth indication by Exchange specialists. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

#### Rule 174 Disclosures by Specialists [Prohibited]

\* \* \* \* \*

#### Commentary .03

*(a) On a best efforts basis, the specialist may disseminate a depth indication in any security. Such depth indication may be disseminated for the*

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

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

<sup>3</sup> See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 1, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected typographical errors in the text of the proposed rule language and requested that the Commission waive the 30-day pre-operative period required under Rule 19b-4(f)(6), 17 CFR 240.19b-4(f)(6). For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 2, 2002.

<sup>4</sup> Prior to this filing, the title of Amex Rule 174 was "Disclosures by Specialists Prohibited," but the rule title will be referred to hereafter in this filing as "Disclosures by Specialists."

*purpose of indicating that there is additional market interest to buy below the current published bid, or additional market interest to sell above the current published offer, as described in paragraph (b) below. The depth indication shall be disseminated by means of an appropriate symbolic designation, appended to the current published bid and/or offer, as appropriate, but the depth indication shall not itself be deemed to constitute a "firm quotation" for purposes of this Rule or Rule 11Ac1-1 under the Securities Exchange Act of 1934.*

*(b) The depth indication may be disseminated only when there is market interest, consisting of the specialist's proprietary interest as well as interest reflected by orders represented by the specialist as agent (including percentage orders), aggregating such minimum number of shares and range of prices below the published bid or above the published offer as the Exchange deems appropriate and communicates to its membership.*

\* \* \* \* \*

#### 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 the 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to add Commentary .03 to Amex Rule 174, Disclosures by Specialists, to permit Amex specialists to disseminate a depth indication, indicating that there is additional market interest in a security to buy below the current displayed bid or interest to sell above the current displayed offer. The Amex believes this change will enhance market transparency and thereby facilitate execution of orders at the best available price. The depth indication of additional market interest would include specialist proprietary interest, orders on the specialist's book, and other orders, including percentage orders, that the specialist is representing

as agent. A specialist would disseminate a depth indication on a "best efforts basis," exercising professional judgment based on current market conditions.

The depth indication would not include the actual number of shares available at better prices, but would provide information that a minimum aggregate number of shares is available within a specified variation from the current bid or offer. The Exchange would establish and communicate the parameters to specialists and other members and member organizations, as well as any change to those parameters based on the Exchange's experience. At the start-up of dissemination of the depth indication, the indication would signify that there is additional market interest aggregating 20,000 shares within \$0.15 below the published bid or above the published offer or both. Any change to these parameters will be filed with the Commission pursuant to Section 19(b) of the Act.<sup>5</sup> The depth indication would be disseminated over the Consolidated Quotation System ("CQS"). The depth indication would be for informational purposes only and would not constitute a firm quotation for purposes of Amex rules or the SEC's Firm Quote Rule.<sup>6</sup> The Exchange has determined to implement these procedures on a Floor-wide basis to all equities, including Exchange-Traded Funds.

The proposed depth indication procedures and share/price parameters relating to the depth indication are similar to those filed and implemented by the New York Stock Exchange, Inc. ("NYSE").<sup>7</sup> The Amex's proposal differs from the NYSE's in that, in addition to the depth indication, the NYSE proposed to implement a "depth condition," which would be disseminated via the NYSE's proprietary distribution network, and which would show the actual number of shares of additional market interest at a particular price below the published bid or above the published offer, with no specified minimum number of shares or range of prices below (above) the bid (offer). The Amex is not proposing to implement a depth condition at this time.

The Exchange is also amending the captioned title for Amex Rule 174 to delete the word "prohibited." Amex believes this amendment is appropriate because Amex Rule 174 currently deals principally with information that a specialist is permitted to disclose rather

than information prohibited to be disclosed.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and the provisions of Section 6(b)(5) of the Act,<sup>9</sup> in particular, which requires, among other things, that the rules of an exchange be 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The proposed rule change will impose no 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>12</sup> At any time within 60 days of the filing of such 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>13</sup>

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date should provide immediate additional market transparency regarding interest within specified size and price parameters. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.

## 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 Exchange. All submissions should refer to File No. SR-Amex-2002-62 and should be submitted by September 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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

<sup>6</sup> Rule 11Ac1-1 under the Act, 17 CFR 240.11Ac1-1.

<sup>7</sup> See Securities Exchange Act Release No. 44084 (March 16, 2001), 66 FR 16307 (March 23, 2001) (SR-NYSE-2001-06).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> As required under Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date. See letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 18, 2002.

<sup>13</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>14</sup> 17 CFR 200.30-3(a)(12).