

post at the Exchange. These operational costs that are incurred by a specialist further support the Exchange proposal to extend the suspension of QQQQ transaction fees on specialist orders.

Specialists have certain obligations under the 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. Other members of the Exchange, as well as non-member market participants, do not have this obligation. As a result, the Exchange believes that an extension of the transaction charge fee waiver for specialist orders in QQQQ is reasonable and equitable.

The Exchange is amending the Amex Fee Schedules to indicate that transaction charges for specialist orders in connection with QQQQ executed on the Exchange will be further suspended from August 1, 2005, through August 31, 2005. The Exchange also 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, as amended, is consistent with section 6(b) of the Act¹⁰ in general and furthers the objectives of section 6(b)(4) of the Act¹¹ 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 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 Act¹² and subparagraph (f)(2) of Rule 19b-4 thereunder¹³ 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.¹⁴

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-2005-081 on the subject line.

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-2005-081. 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-2005-081 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52273; File No. SR-Amex-2005-078]

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

August 16, 2005.

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 ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by Amex. On August 12, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ The effective date of the original proposed rule change is August 1, 2005 and the effective date of the amendment is August 15, 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 commence on August 11, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, 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).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

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

The Exchange proposes to retroactively apply a suspension of specialist transaction charges for the trading of Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from July 1, 2005 through July 17, 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, Amex 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. 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 in a companion filing (File No. SR-Amex-2005-077) proposed to suspend transaction charges for specialist orders in the Nasdaq-100 Tracking Stock ("QQQQ") from July 18, 2005 through July 31, 2005. In order to waive transaction fees for specialist orders in QQQQ for the entire month of July 2005, the Exchange has proposed to retroactively suspend transaction fees for specialist transactions from July 1, 2005 through July 17, 2005.

Under the existing Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (the "Amex Fee Schedules"), specialist orders in QQQQ executed on the Exchange will be charged \$0.0037 (\$0.37 per 100 shares), capped at \$300 per trade from July 1, 2005 through July 17, 2005. The Exchange believes that the retroactive suspension of transaction charges for specialist transactions from July 1, 2005 through July 17, 2005 is consistent with the companion filing to suspend transaction charges for specialist orders generally through July 31, 2005. The Exchange further believes that a retroactive suspension of transaction fees on specialist orders in QQQQ is appropriate to enhance the

competitiveness of executions on Amex. The Exchange is amending the Amex Fee Schedules to indicate that transaction charges for specialist orders have been suspended from July 1, 2005 through July 31, 2005 in QQQQ.

As detailed in File No. SR-Amex-2005-077, the Exchange submits that a suspension of transaction fees for specialist orders in connection with QQQQ is consistent with Section 6(b)(4) of the Act.⁴ Specifically, the Exchange believes that suspending transaction charges for QQQQ specialist orders is an equitable allocation of reasonable fees among Exchange members. The fact that specialists have greater obligations than other members and are also subject to other Exchange fees, in addition to transaction fees, supports this proposal to retroactively apply the fee suspension.

The Exchange notes that specialists are subject to a variety of Exchange fees other than transaction charges, such as a floor clerk fee, a floor facility fee, a post fee, and a registration fee.⁵ In addition, specialists and other floor members of the Exchange are subject to technology and membership fees.⁶ 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, specialist units, unlike registered traders and other floor members, must be sufficiently staffed and provide adequate technology resources in order to handle the volume of orders (especially in QQQQ) that are sent to the specialist post at the Exchange. These operational costs that are incurred by a specialist further support the Exchange proposal to extend the suspension of QQQQ transaction fees on specialist orders.

Specialists also 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

⁴ 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."

⁵ The floor clerk, floor facility, post, and registration fees on an annual basis are \$900, \$2,400, \$1,000, and \$800, respectively.

⁶ 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.

Exchange as well as non-member market participants do not have this obligation. As a result, the Exchange believes that this proposal to retroactively apply the transaction charge fee waiver for specialist orders in QQQQ is reasonable and equitable. As noted above, the Exchange is amending the Amex Fee Schedules to indicate that transaction charges for specialist orders in connection with QQQQ executed on the Exchange will be suspended from July 1, 2005 through July 31, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(4) of the Act⁸ 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

The Exchange 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

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 Amex consents, the Commission will:

(A) By order approve such 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, as amended, is consistent with

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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-2005-078 on the subject line.

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-2005-078. 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 the 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-2005-078 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52275; File No. SR-Amex-2005-003]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change, and Amendment No. 1 Thereto, to Expand the Types of Trusts Permitted to Directly Own Amex Memberships

August 16, 2005.

On January 7, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rule 356 to expand the types of trusts permitted to directly own Amex memberships. On June 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on June 28, 2005.⁴ The Commission received no comments on the proposal.

The Exchange proposed to amend Amex Rule 356 to permit grantor trusts to directly own Exchange memberships. Currently, the Exchange permits certain pension trusts (generally comprised of trusts or custodial accounts, *i.e.*, Keoghs and IRAs) to directly own Exchange memberships for investment purposes and either lease the seat or designate a nominee to operate the seat.

Under the proposed rule change, grantor trusts will be able to acquire one or more Amex memberships either by transfer from an existing owner of an Amex membership or by a direct purchase. The grantor of the trust (*i.e.*, either the member transferring a membership to a trust or the grantor of the trust purchasing a membership) will be required during the grantor's lifetime or existence (in the case of a non-natural person) to be a beneficiary of the trust. In the event that the trust terminates or is amended such that it no longer

qualifies to own an Amex membership, any memberships held by the trust will revert to the grantor.

As is the case with pension trusts, the trustee and grantor will be required on behalf of the trust to execute an agreement with the Exchange acknowledging that the trust will own the membership subject to the Exchange's Constitution and Rules, as well as certain other limitations and indemnifications, and will also be required to provide a legal opinion confirming that the trust was validly created and is authorized to own a membership and that the trustee is vested with all necessary authority to either appoint a nominee to operate the seat on behalf of the trust and/or lease the seat, as well as to enter into the requisite agreement. Additionally, the trustee and the grantor will be required to become allied members or approved persons of the Exchange, as applicable.

After careful review, 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 exchange⁵ and, in particular, the requirements of Section 6(b) of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act⁷ 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.

The Commission believes that permitting grantor trusts to directly own Amex memberships is designed to provide Amex members with increased estate and tax planning options and to achieve a reasonable balance between the Exchange's interest in providing members with the flexibility to plan their estates and the Exchange's interest in regulating and protecting its membership. The Commission notes that the grantor of the trust would be required during the grantor's lifetime or existence to be a beneficiary of the trust. Moreover, the trustee and grantor will be required on behalf of the trust to execute an agreement with the Exchange acknowledging that the trust will own

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised the proposed rule text to clarify that an Exchange member owner who does not conduct broker-dealer activities on the floor of the Exchange is not required to be registered with the Commission as a broker-dealer. Member owners can be individuals, partnerships, corporations, custodial accounts or, pursuant to the proposed rule change, grantor trusts. Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 51900 (June 22, 2005), 70 FR 37139.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).