

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44143; File No. SR-Amex-01-12]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Fees on Transactions of the Specialist and Registered Option Traders in Nasdaq 100 Index Options

April 2, 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 March 1, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the Amex has prepared. 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 Amex proposes to impose a \$0.40 equity option marketing fee on the transactions of the specialist and registered options traders ("ROTs") in options on the Nasdaq 100 Index shares, which trade under the symbol "QQQ," and to decrease the separate transaction fee that is imposed on some transactions in QQQ options from \$0.47 to \$0.27 per contract.

#### 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 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 IV below. The Amex has prepared summaries, set forth in section 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

In August 2000 the Amex filed two proposed rule changes under section

19(b)(3)(A)(ii) of the Act<sup>3</sup> that imposed transaction fees on specialists and ROTs. One proposal imposed a new equity option marketing fee of \$0.40 on transactions of specialist and ROTs, excluding transactions in QQQ options, and allowed the specialists to use the proceeds from the marketing fee to attract order flow in equity options traded on the Amex.<sup>4</sup> The other proposal increased, from \$0.17 to \$0.47 per contract, the fee imposed on the specialist and ROTs for transactions in QQQ options in which a public customer (defined as a non-broker-dealer) is a party to the trade.<sup>5</sup> The Amex now proposed to apply the equity option marketing fee to the transactions of the specialist and ROTs in QQQ options, and to decrease from \$0.47 to \$0.27 per contract the fee that the Amex imposes on the specialist and ROTs for transactions in QQQ options that involve a public customer.

a. *Application of the Marketing Fee.* Consistent with the program currently in place for all other equity options, the Amex will collect a fee of \$0.40 on every QQQ option contract that the specialist and ROTs execute on the Exchange, with the exception that trades between ROTs and trades between the specialist and ROTs will not be subject to the program. The Amex will collect the fees and then allocate the funds to the specialist in QQQ options. The specialist in turn will use the funds to attract orders in the classes of options that the specialist trades. The specialist may use the funds to pay broker-dealers for orders that they direct to the Amex for execution. The specific terms governing the orders that qualify for payment, and the amount of any payment to be made, will be determined by the specialist in whatever manner the specialist believes is most likely to be effective in attracting order flow to the Amex in the options that the specialist trades. The specialist will be obligated to account to the Amex for its use of the funds made available for this purpose, but the specialist, and not the Amex, will make all determinations concerning the amount paid for orders and the types and sizes of orders that qualify for payment.

This marketing fee will be assessed monthly, beginning as of March 1, 2001. The Amex will make the funds generated by the fee available to the QQQ option specialist for the

specialist's use in attracting orders in the classes of options that are traded at the specialist's station. ROTs who contribute to the fees collected will also be able to participate in the order flow derived from the program. The Amex believes that there will be a fair correlation between the fees that the specialist and the ROTs contribute to the program and the benefits that they will receive from it.

Under the program, the Amex provides administrative support to the QQQ option specialist in such matters as keeping track of the number of qualified orders that each firm directs to the Exchange, and making debits and credits to the accounts of the specialist and the firms to reflect the payments that are to be made. The Amex may pay such amounts directly to the member order flow provider (pursuant to payment parameters that the specialist establishes) if the amount of the payment that the order flow provider is to receive would exceed any fees that it owes to the Amex.

The Amex believes that the application of the program to QQQ options is necessary to promote the Amex's competitiveness with other exchanges that trade the QQQ options.

b. *Decrease in Other Transaction Fee.* The Amex currently imposes a transaction fee on options trades executed on the Exchange, with the charges varying depending on whether the transaction involves an equity or index option and whether the transaction is executed for a specialist or market maker account, a member firm's proprietary account, a non-member broker-dealer, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge which depend upon the type of account for which the trade is executed. All three types of charges—transaction, options clearance, and options floor brokerage—are subject to caps on the number of options contracts subject to the charges on a given day.<sup>6</sup> Currently, no transaction, clearance, or floor brokerage fees are charged for customer equity option transactions.

To offset the costs of providing for the trading of QQQ options and to enhance the marketing of those options, the Amex currently charges the specialist and ROTs a fee of \$0.47 per contract for transactions in which a public customer

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

<sup>4</sup> See Securities Exchange Act Release No. 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000) (SR-Amex-00-38).

<sup>5</sup> See Securities Exchange Act Release No. 43152 (August 14, 2000), 65 FR 51376 (August 23, 2000) (SR-Amex-00-39).

<sup>6</sup> The current caps are set at 2,000 contracts for customer trades and 3,000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

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

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

is a party to the trade.<sup>7</sup> The Amex now proposes to decrease the fee to \$0.27. Options clearance and floor brokerage fees for the specialist and ROTs will remain unchanged at \$0.04 and \$0.03 per contract side, respectively. The Amex believes that the proposed decrease is necessary to allow for the application of \$0.40 marketing fee on QQQ options.

2. *Statutory Basis.* The Amex believes that the proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>9</sup> in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

#### *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.

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

The Amex did not solicit or receive any comments with respect to the proposed rule change.

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

The Amex has designated the foregoing proposed rule change as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder.<sup>11</sup> Accordingly, the proposal has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

### **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 submission

<sup>7</sup> The term public customer shall have the meaning set forth in Amex Rule 958A (*i.e.*, a non-broker-dealer).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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 Amex. All submissions should refer to File No. SR-Amex-01-12 and should be submitted by April 27, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44142; File No. SR-NASD-01-03]

### **Self, Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Interval Delay Between Executions for Initial Public Offerings and Secondary Offerings in the Nasdaq National Market Execution System**

April 2, 2001.

#### **I. Introduction**

On January 5, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 10b-4 thereunder,<sup>2</sup> a proposed rule change, on a six-month pilot basis, to amend NASD Rule 4710, "Participant Obligations in NNMS," to eliminate the internal delay between executions

against the same market maker at the same price level during the first day of trading of the securities of initial public offerings ("IPOs") and secondary offerings in the Nasdaq National Market Execution System ("NNMS" or "SuperSOES").<sup>3</sup> On January 31, 2001, the NASD filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change Amendment No. 1 was published for comment in the **Federal Register** on February 21, 2001.<sup>5</sup> No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

#### **II. Description of the Proposed Rule Change**

The rules governing Nasdaq's Small Order Execution System ("SOES") currently establish a delay of 17 seconds (15 seconds for quote management and two seconds for system processing) between executions against the same market maker in the same security at the same price level. This delay will be reduced to five seconds (plus two seconds system processing time) for the majority of Nasdaq NMS securities when Nasdaq implements SuperSOES. In response to market participants' concerns that significant order flow could potentially produce queuing within the the system, Nasdaq filed a rule change with the Commission in December 2000 to reduce the interval delay between executions in Nasdaq 100 Index securities to two seconds, commencing on the date that Nasdaq launches SuperSOES.<sup>6</sup>

Nasdaq filed the current proposal to address similar queuing concerns raised by market participants in connection with the rapid flow of orders accompanying IPOs and secondary

<sup>3</sup> On January 14, 2000, the Commission approved the creation of SuperSOES, a new platform for trading Nasdaq National Market ("NNM") securities. See Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3897 (January 25, 2000). SuperSOES will become Nasdaq's primary automatic execution trading platform. To date, Nasdaq has not implemented SuperSOES.

<sup>4</sup> See Letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Jack Drogin, Assistant Director, Division of Market Regulation, Commission, dated January 30, 2001 ("Amendment No. 1"). In Amendment No. 1, the Nasdaq added a footnote to proposed NASD Rule 4710(b)(1)(D)(3) requiring the lead underwriter of a secondary offering to submit a written request to the Nasdaq Market Operations Department no later than the business day prior to the start of trading in the secondary offering to obtain immediate processing of executions in the secondary offering.

<sup>5</sup> See Securities Exchange Act Release No. 43958 (February 13, 2001), 66 FR 11076.

<sup>6</sup> See Securities Exchange Act Release No. 43720 (December 13, 2000), 65 FR 79909 (December 20, 2000) (notice of filing and immediate effectiveness of File No. SR-NASD-00-67) ("2000 Notice"). Nasdaq will implement the two-second interval delay on a six-month pilot basis.

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

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

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