

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

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*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44598; File No. SR-Amex-2001-38]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, LLC, Relating to Rebate of Marketing Fees to Specialists and Registered Option Traders**

July 26, 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 5, 2001 the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items the Amex has prepared. On July 10, 2001, the Amex filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

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

The Amex proposes to institute a rebate of certain funds in connection with its marketing fee program for equity options transactions of specialists and Registered Options Traders ("ROTs"). The text of the proposed rule change is available at the principal offices of the Amex.

#### **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. 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 Amex proposes to establish a rebate of certain funds in connection with its marketing fee program for equity options transactions of specialists and ROTs. In July 2000, the Amex began imposing a marketing fee of \$0.40 per contract on the transactions of specialists and ROTs in equity options.<sup>3</sup> Thereafter, the Amex imposed a \$0.40 per contract marketing fee on the transactions of the specialist and ROTs in options on the Nasdaq 100 Index, which trade under the symbol "QQQ."<sup>4</sup> Trades between ROTs and trades between specialists and ROTs are specifically excluded from the marketing fee. The Amex collects the fee and allocates the funds to the Amex's specialists in amounts proportional to each specialist's share of the overall volume of the options traded at that particular trading station on the Amex. Specialists may then use these funds to pay broker-dealers for orders they direct to and that are executed on the Amex. The specialists, in their discretion, determine the specific terms governing the orders that qualify for payment and the amount of any payments.

The funds that the marketing fee generates are identified according to the trading station where the options subject to the fee are traded, and are then made available to the specialist for use in attracting order flow at that station. The Amex states that ROTs who contribute fees at a particular trading station also participate in the order flow derived from the program. According to the Amex, some broker-dealers and other financial firms will not accept payment for order flow. As a result, the Amex has found that excess fee proceeds remain in the marketing fee fund after distribution. The Amex therefore believes that a marketing fee rebate program is necessary in order to return these unspent funds.

Pursuant to the rebate program, the Amex would initially rebate to specialists and ROTs, on a *pro rata* basis, the excess funds that have

accumulated in the marketing fee fund since the commencement of the rebate program. Following the end of every calendar quarter, the Amex would then rebate to specialists and ROTs their *pro rata* shares of the marketing fee proceeds that were raised but not paid to order flow providers during that quarter. For example, before September 30, 2001 (the last day of the 2001 third quarter), the Amex would rebate to specialists and ROTs the balance of the marketing fee funds that it collected during the calendar year 2001 and the first quarter of 2001. Shortly after the end of the third quarter of 2001, the Amex would rebate to specialists and ROTs, on a *pro rata* basis, the unspent portions of the fees that it collected in the second quarter of 2001.

The amount of each specialist's or ROT's refund would vary depending on the percentage of the total marketing fees that the specialist or ROT paid at a trading station during the rebate time period. The Amex would multiply a specialist's or ROT's percentage of the total marketing fees at a trading station by the full amount to be rebated. For example, if a specialist or an ROT contributed 1T of the total marketing fees at a particular trading station during the rebate time period, the specialist or ROT would receive 1% of the trading station's overall rebate amount for the rebate time period. The Amex would rebate the funds directly to the specialist's or ROT's clearing firm.

Currently, trades between ROTs and trades between specialists and ROTs are excluded from the marketing fee because the nature of the marketing fee program is to attract customer order flow to the floor of the Amex. The Amex also proposes to exempt certain types of strategies employed by a public customer (*i.e.*, broker-dealers) from the imposition of the marketing fee.

The Amex proposes to exempt the following strategies from the fee: (1) Cabinet trades,<sup>5</sup> (2) reversals and

<sup>33</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> Securities Exchange Act Release No. 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000) (SR-Amex-2000-38).

<sup>4</sup> Securities Exchange Act Release No. 44143 (April 2, 2001), 66 FR 18330 (April 6, 2001) (SR-Amex-2001-12). The Amex includes QQQ options within the classification of "equity options."

<sup>5</sup> According to the Amex, a "cabinet" trade refers to trades in listed options on the Amex that are worthless and not actively traded. The Amex's procedure for engaging in cabinet or accommodation trades is set forth in Amex Rule 959. The Amex believes that the lack of trading in a "cabinet" option renders the imposition of the marketing fee unwarranted because the nature of these transactions will not attract order flow to the Amex, and therefore does not serve the purpose of the marketing fee program.

conversions,<sup>6</sup> (3) dividend spreads,<sup>7</sup> and (4) box spreads.<sup>8</sup> Because of the inability of the Amex's billing system to distinguish among these transactions, however, the Amex proposes to employ a manual procedure. Specifically, within thirty calendar days after the particular transaction, a specialist or an ROT must request reimbursement of the marketing fee that was imposed on any trade that was effected pursuant to any of the above-specified trading strategies. To request reimbursement, a specialist or an ROT must submit a Marketing Fee Reimbursement Form to the Service Desk on the Amex Floor. If the Amex approves the request, the Amex will deliver to that member's clearing firm a reimbursement check in the amount of the marketing fee charged for the transaction.

## 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> 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 Amex 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 neither solicited nor received written comments with respect to the proposed rule change.

<sup>6</sup> According to the Amex, a "conversion" is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly riskless profit. The Amex describes a "reversal" as a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly riskless profit.

<sup>7</sup> According to the Amex, a "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

<sup>8</sup> According to the Amex, a "box spread" is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price; this is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

Because 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>11</sup> and Rule 19b-4(f)(2) thereunder,<sup>12</sup> 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 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.

## IV. Solicitation of Comments

The Commission invites interested persons 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 amendment, 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-2001-38 and should be submitted by August 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44618; File No. SR-EMCC-2001-01]

## Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Fees

July 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 29, 2001, EMCC 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 EMCC. 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 Term of Substance of the Proposed Rule Change

The proposed rule change modified EMCC's fee schedule to charge members that use the Match-EM formats or the Datatrack/Autoroute communications network.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and 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. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When EMCC first began operations, EMCC supported the message formats created for the Match-EM trade comparison system operated by General Electric Corporation. In October 1999, however, EMCC stopped accepting trade data via the Match-EM system although it has continued to accept data directly from those members still using the Match-EM formats. Similarly, the Datatrack/Autoroute communications

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 USC 78s(b)(1)

<sup>2</sup> The Commission has modified the text of the summaries prepared by EMCC.