

respondents collect information under Rule 17a-2 and that approximately 2,595 hours in the aggregate are required annually for these collections.

The collections of information under Regulation M and Rule 17a-2 are necessary for covered persons to obtain certain benefits or to comply with certain requirements. The collections of information are necessary to provide the Commission with information regarding syndicate covering transactions and penalty bids. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under Rule 104(i) and Rule 17a2(c), none of the information required to be collected or disclosed for PRA purposes will be kept confidential.

The recordkeeping requirement of Rule 17a-2 requires the information be maintained in a separate file, or in a separately retrievable format, for a period of three years, the first two years in an easily accessible place, consistent with the requirements of Exchange Act Rule 17a-4(f).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 12, 2002.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45756; File No. SR-Amex-2002-29]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to an Increase to Five Hundred Contracts in the Maximum Permissible Number of Nasdaq-100 Tracking Stock (QQQ) Option Contracts Executable Through AUTO-EX

April 15, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 5, 2002, 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. On April 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Exchange proposes to amend Commentary .02 to Exchange Rule 933 to increase to 500 contracts the maximum permissible number of Nasdaq-100 Tracking Stock (“QQQ”) option contracts in an order that is executable through the Exchange’s automatic execution system (“AUTO-EX”). The Exchange also proposes to amend Exchange Rule 933 to add new Commentary .03 to permit the Exchange, under certain circumstances, to immediately increase its AUTO-EX eligible order size to match the size of orders eligible for entry into the automated execution system of any other options exchange.

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

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

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 5, 2002 (“Amendment No. 1”). In Amendment No. 1, the Amex amended its initial filing to limit the increase in AUTO-EX eligible order size to 500 contracts for QQQ option contracts only, and requested that the filing be re-characterized as a “noncontroversial” rule change under Rule 19b-4(f)(6) of the Act, 17 CFR 240.19b-4(f)(6).

Below is the text of the proposed rule change. Proposed new language is *italicized*.

\* \* \* \* \*

Automatic Execution of Options Orders Rule 933

(a)-(b) No change.

Commentary

.01 No change.

.02 Auto-Ex eligible orders must be market or marketable limit orders for two hundred fifty or fewer contracts for series subject to Auto-Ex *except in the case of options on the Nasdaq-100 Tracking Stock (QQQ) which is limited to five hundred or fewer contracts*. Contract limits will be established on a case by case basis for an individual option class or for all option classes upon the approval of two Floor Governors or Senior Floor Officials. Notice concerning applicable size and types of Auto-Ex eligible orders will be provided to members periodically via Exchange circulars and/or posted on the Exchange’s web site.

.03 *Notwithstanding the provisions of Commentary .02 above, the size of auto-ex eligible orders in one or more classes of multiply-traded options may be increased to the extent necessary to match the size of orders in options of the same class or classes eligible for entry into the automatic execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.*

\* \* \* \* \*

#### 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 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 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**

On March 22, 2002, the Commission granted approval to an Exchange proposal increasing to 250 contracts, the maximum permissible number of equity and index option contracts in an order that can be executed through AUTO-EX.<sup>4</sup> At the same time, the Commission also approved similar proposals filed by the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Exchange, Inc. ("PCX"), although in the case of the Phlx proposal, the increase to 250 contracts was limited to options on the QQQ.<sup>5</sup> In the interim, the Chicago Board Options Exchange, Inc. ("CBOE") on April 4, 2002, in various press reports indicated that, effective immediately, orders in the QQQ options of up to 500 contracts were eligible for instantaneous execution on the CBOE's Retail Automated Execution System ("RAES"). Previously, the maximum order size for QQQ options on the CBOE was 100 contracts. The Exchange represents that the ability of the CBOE to increase their RAES-eligible size to 500 contracts is presumably based on an approval from the Commission relating to the dissemination of options quotations with size.<sup>6</sup>

The Exchange represents that, as a result, the CBOE amended CBOE Rule 6.8(c)(v) so that the eligible order size may be set as the disseminated size for options classes in which the Exchange disseminates options quotations with size. However, the Exchange states that, as indicated in Interpretation .09 to CBOE Rule 6.8, the number of contracts that may receive automatic execution on CBOE at its disseminated price may not exceed the disseminated size in that series. In addition, the Exchange understands that the number of contracts receiving automatic execution on CBOE for the disseminated size would decrease by the number of contracts that received a prior automatic execution at that price. At the point where the number of contracts receiving automatic execution on CBOE at a

particular price exhausts the accompanying dissemination size for that series, subsequent orders that are otherwise eligible for CBOE's RAES would not execute automatically for 30-seconds. Instead, they would be rerouted to the designated primary market maker ("DPM") via the CBOE's Public Automated Routing System ("PAR"), Booth Automated Routing System ("BART") or Live Ammo, CBOE's electronic screen display of market orders or limit orders that improve the market.

The Amex believes that its proposal to increase to 500 contracts the maximum permissible number of QQQ option contracts in an order executable through AUTO-EX is required to ensure a more level playing field among options exchanges for QQQ options. Therefore, the Exchange believes that the proposed rule change is immediately effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and Rule 19b-4(f)(6) thereunder.

In addition, the Exchange seeks to amend Exchange Rule 933 by adding new Commentary .03 to permit an immediate increase in its AUTO-EX eligible size to match the size of orders in multiply-listed options of the same class or classes eligible for entry into the automated execution system of any other options exchange, provided that a filing is made with the Commission under Section 19(b)(3)(A) of the Act.

**2. Statutory Basis**

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*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*

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**

Because the proposed rule change, as amended, (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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative as of April 5, 2002, in order to allow it to implement the increase to the maximum permissible number of QQQ option contracts executable through the AUTO-EX system. The Amex further believes that an operative date of April 5, 2001 is necessary so that trading in QQQ options does not hinge on a regulatory advantage, but instead remains competitive. In addition, under Rule 19b-4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

The Commission, consistent with the protection of investors and the public interest, has waived the five-day pre-notice and thirty-day operative date requirements for this proposed rule change, and has determined to make the proposed rule change, as amended, become operative as of April 5, 2002, to allow the Amex to compete with the CBOE, which currently has a maximum automatic execution eligibility limit of 500 contracts in QQQ options contracts.<sup>11</sup> At any time within 60 days

<sup>4</sup> See Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002).

<sup>5</sup> See Securities Exchange Act Release Nos. 45629 (March 22, 2002), 67 FR 15271 (March 29, 2002) (order approving File No. SR-Phlx-2001-89); and 45641 (March 25, 2002), 67 FR 15445 (April 1, 2002) (order approving File No. SR-PCX-2001-48).

<sup>6</sup> See Securities Exchange Act Release Nos. 45490 (March 1, 2002), 67 FR 10778 (March 8, 2002) (notice of filing of File No. SR-CBOE-2001-70); and 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (order approving File No. SR-CBOE-2001-70).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has

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>12</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. 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 Amex. All submissions should refer to File No. SR-Amex-2002-29 and should be submitted by May 13, 2002.

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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considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> For purposes of calculating the 60 day abrogation period, the Commission considers the period to commence on April 8, 2002, the date that the Exchange filed Amendment No. 1.

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

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45757; File No. SR-CBOE-99-45]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Partial Approval of Proposed Rule Change and Amendment No. 2 Thereto To Clarify Certain Aspects of Interpretation and Policy .02 to CBOE Rule 6.8

April 15, 2002.

On August 19, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to clarify certain aspects of Interpretation and Policy .02 to CBOE Rule 6.8. On December 28, 1999, the proposed rule change was published for comment in the **Federal Register**.<sup>3</sup> On November 19, 2001, the Exchange amended the proposal to establish criteria to describe the circumstances in which Exchange Floor Officials may determine that quotes from one or more markets in one or more particular classes of options are not reliable, and, thus, may be excluded from CBOE's Retail Automatic Execution System ("RAES") determination of the National Best Bid and Offer ("NBBO").<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on January 8, 2002.<sup>5</sup> The Commission received one comment letter on the amended proposal from the International Securities Exchange LLC ("ISE").<sup>6</sup> The Commission is granting approval to that portion of the proposal that: (i) Allows two Floor Official to determine that quotes in one or more particular options classes in a market are not reliable and thus may be excluded from the NBBO under the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 42256 (December 20, 1999), 64 FR 72707 (December 28, 1999).

<sup>4</sup> See letter from Joanne Moffic-Silver, General Counsel and Corporate Secretary, Legal Department, CBOE to Stephen M. Cutler, Director, Division of Enforcement, Commission, Annette L. Nazareth, Director, Division of Market Regulation, Commission, and Lori A. Richards, Director, Office of Compliance, Inspections and Examination, Commission, dated November 19, 2001 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release No. 45221 (January 2, 2002), 67 FR 947.

<sup>6</sup> See letter from Michael J. Simon, Senior Vice President and Secretary, ISE, to Mr. Jonathan G. Katz, Secretary, Commission, dated January 23, 2002.

following two circumstances: (a) where a market confirms that its quotes are not firm based upon direct communication to CBOE from the market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; or (b) where a market directly communicates to CBOE or otherwise confirms that it is experiencing systems or other problems affecting the reliability of its disseminated quotes; (ii) sets forth the procedures to be followed once a determination of unreliability has been made; (iii) sets forth when such determination will expire; (iv) sets forth the documentation and reporting requirements as a result of such determination; and (v) relabels a portion of the current Interpretation .02(a) text as .02(b) and relabels the current Interpretation .02(b) text as .02(c) (together, the "Confirmed Unreliable Quote and Related Procedures Portion").

#### I. Description of Proposal

The CBOE proposed that two Floor Officials could determine that quotes in one or more particular option classes in a market were not reliable and thus could be excluded from the NBBO determination under any of the following circumstances: (a) Receipt of direct communication from the market or dissemination through OPRA of a message indicating that the exchange's disseminated quotes are not firm; (b) direct communication or confirmation from another market that it is experiencing systems or other problems affecting the reliability of its disseminated quotes; (c) one or more Floor Officials observe that six or more option series in a particular options class are crossed or locked with the disseminated quotes of two or more other markets, and continue to be crossed or locked for 30 seconds or more (and are crossed or locked at the time Floor Officials determine to exclude the quote from the determination of the NBBO); or (d) a Floor Official observes any of the following: (1) One or more orders originating from an exchange's designated market maker or market maker for a particular options class that are filled by the market at a worse price than its disseminated quote without a required quote change; (2) one or more market orders or marketable limit orders originating from an exchange's designated market maker or market maker for a particular options class that are confirmed to be unfilled or partially unfilled by the market without a required quote change; or (3) one or more market orders or marketable limit