

coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, 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 is designed to prohibit unfair discrimination between customers, issuers, brokers and dealers.

#### *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 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 Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and subparagraph (f)(6) thereunder.<sup>11</sup> Amex represents that the proposed rule change: (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 thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to thirty days after the date of filing. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative upon filing.

The Commission hereby grants the request.<sup>13</sup> The Commission notes that Amex has represented that the

theoretical price calculators for the final two options classes are not installed and/or functioning properly and that it has not yet implemented the functionality for floor brokers customer orders. The Commission believes that extending the deadline for implementing Amex Rules 900—ANTE and 935—ANTE by a month should afford Amex the time needed to install and test the theoretical price calculators and to implement the floor broker customer order functionality. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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**

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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-109 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-2005-109. 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 the Exchange. 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-2005-109 and should be submitted on or before December 5, 2005.

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

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. E5-6250 Filed 11-10-05; 8:45 am]  
BILLING CODE 8010-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52736; File No. SR-Amex-2005-111]

#### **Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Suspension of Transaction Charges for Specialist Orders in the Nasdaq-100 Tracking Stock® (QQQQ)**

November 4, 2005.

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 October 31, 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. Amex has designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>14</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

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

<sup>12</sup> *Id.*

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

The Exchange proposes to amend Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (the "Amex Fee Schedules") to extend the suspension of transaction charges for specialist orders in connection with the trading of the Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from November 1, 2005 through December 31, 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, 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

The Exchange is proposing to extend the suspension of transaction charges for specialist orders in QQQQ from November 1, 2005 through December 31, 2005. The current suspension of specialist transaction charges in QQQQ will otherwise terminate on October 31, 2005.<sup>5</sup>

Specialist orders in QQQQ executed on the Exchange currently are charged \$0.0037 per share (\$0.37 per 100 shares), capped at \$300 per trade (81,081 shares). Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® formerly "QQQ" transferred its listing from Amex to The Nasdaq Stock Market, Inc ("Nasdaq"). It now trades on Nasdaq under the symbol QQQQ. After the transfer, Amex began trading QQQQ pursuant to unlisted trading privileges.

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.<sup>6</sup> Specifically, the Exchange believes that extending the suspension of 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 temporarily extend the fee suspension.

The Exchange notes that specialists are also 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 registration fee.<sup>7</sup> In addition, specialists and other floor members of the Exchange are subject to technology and membership fees.<sup>8</sup> Certain market participants, such as customers, non-member broker-dealers and 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 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 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.

<sup>6</sup> Section 6(b)(4) 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." See Securities Exchange Act Release Nos. 52460 (September 16, 2005), 70 FR 55639 (September 22, 2005); 52267 (August 15, 2005), 70 FR 49338 (August 23, 2005); and 52268 (August 15, 2005), 70 FR 49336 (August 23, 2005) (proposals introducing and extending this specialist transaction fee waiver).

<sup>7</sup> The floor clerk, floor facility, post, and registration fees on an annual basis are \$900, \$2,400, \$1,000, and \$800, respectively.

<sup>8</sup> 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.

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 November 1, 2005 through December 31, 2005.

##### 2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> 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 has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> 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.

### 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. Comments may be submitted by any of the following methods:

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

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 52460 (September 16, 2005), 70 FR 55639 (September 22, 2005) (proposal previously extending this specialist transaction fee waiver).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-111 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-2005-111. 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-2005-111 and should be submitted on or before December 5, 2005.

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

**Jonathan G. Katz,**  
*Secretary.*

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**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52739; File No. SR-CBOE-2004-53]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Partial Amendment No. 1 Relating to Margin Requirements for Complex Options Spreads**

November 4, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 30, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on August 23, 2005, filed a partial amendment to its proposed rule change<sup>3</sup> as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

CBOE is proposing to incorporate margin requirements that are currently set forth in a Regulatory Circular into the Exchange's rules. The margin requirements pertain to complex option spreads. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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

In its filing with the Commission, CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

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

<sup>3</sup> SR-CBOE-2004-53: Amendment No. 1. CBOE, in coordination with the New York Stock Exchange, Inc. ("NYSE"), filed the partial amendment to conform the complex options spreads strategies to which its rule amendments apply to those of the NYSE.

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

1. Purpose

The CBOE is proposing to incorporate the provisions of a Regulatory Circular (RG03-066—*Margin Requirements for Certain Complex Spreads*, dated August 13, 2003) into the Exchange's margin rules (Chapter 12). CBOE Regulatory Circular RG03-066 presents an interpretation of current margin requirements that allows the Exchange to derive, and put into effect, margin requirements for certain complex option spreads. This Regulatory Circular, a copy of which is attached as Exhibit A, was approved by the Commission on a one-year pilot basis.<sup>4</sup> This Regulatory Circular has been reissued as RG04-90 (dated August 16, 2004) and RG05-37 (dated April 6, 2005) pursuant to extensions of the pilot period granted by the Commission.<sup>5</sup>

As shown in Exhibit B, the Exchange is proposing to add definitions in Rule 12.3(a) of a "long condor spread," "short iron butterfly spread" and "short iron condor spread." These definitions cover six of the seven strategies identified in RG03-066. Each definition covers two strategies identified in RG03-066 because each definition provides for a base strategy, in which all options expire at the same time, and a calendar spread strategy, in which a long option may expire after the other options expire concurrently.

The Exchange is proposing a revision to its current definition of a butterfly spread to provide for the remaining strategy, a calendar spread version of the long butterfly spread (configuration number three in RG03-066). These revisions consist of (1) splitting the current butterfly spread definition into two definitions, one for the long butterfly spread and one for the short butterfly spread, (2) fashioning the two definitions so that they are consistent with the style and format of the new definitions referred to in the prior paragraph, and (3) providing for a calendar spread version in the long butterfly spread definition.

In Regulatory Circular RG03-066, call options were utilized to construct three of the seven strategy examples. Each of these three strategies has a parallel application with put options. For

<sup>4</sup> See Securities Exchange Act Release No. 48306 (Aug. 8, 2003), 68 FR 48974 (Aug. 15, 2003) (approving SR-CBOE-2003-24).

<sup>5</sup> See Securities Exchange Act Release No. 50164 (Aug. 6, 2004), 69 FR 50405 (Aug. 16, 2004) and Securities Exchange Act Release No. 51407 (Mar. 22, 2005), 70 FR 15669 (Mar. 28, 2005).

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