

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54262; File No. SR-Amex-2006-64)

August 1, 2006

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

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 July 7, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) submitted to 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 July 27, 2006, the Exchange submitted 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, as amended, from interested persons.

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 transaction charges for specialist orders in connection with the trading of the Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from July 1, 2006 through July 12, 2006.

The text of the proposed rule change is available on Amex’s Web site (<http://www.amex.com>), at Amex’s principal office, and at the Commission’s Public Reference Room.

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

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

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

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, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to retroactively apply a suspension of transaction charges for specialist orders in the QQQQ from July 1, 2006 through July 12, 2006. The Exchange previously extended the suspension of the QQQQ from March 1, 2006 through June 30, 2006.<sup>4</sup> The Exchange, in a companion filing, also proposed the adoption of a suspension of transaction charges for specialist orders in the Nasdaq-100 Tracking Stock (QQQQ) from July 13, 2006 through August 31, 2006.<sup>5</sup> In order to waive transaction fees for specialist orders in the QQQQ from July 1, 2006 through August 31, 2006, the Exchange has proposed to retroactively suspend transaction fees for specialist transactions from July 1, 2006 through July 12, 2006.

Specialist orders currently are charged \$0.0034 (\$0.34 per 100 shares), capped at \$300 per trade (88,235 shares). Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock®

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<sup>4</sup> See, e.g., Securities Exchange Act Release Nos. 53871 (May 25, 2006), 71 FR 31236 (June 1, 2006) and 54094 (July 3, 2006), 71 FR 39135 (July 11, 2006) (SR-Amex-2006-42) (retroactively applying a suspension of transaction charges for specialist orders in connection with the trading of the QQQQ from March 1, 2006, through April 5, 2006). See also Securities Exchange Act Release No. 53701 (April 21, 2006), 71 FR 25253 (April 28, 2006) (SR-Amex-2006-30) (suspending specialist transaction charges in connection with the QQQQ from April 6, 2006, through June 30, 2006).

<sup>5</sup> See Securities Exchange Act Release No. 54227 (July 27, 2006).

(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 on an unlisted trading privileges basis.

The Exchange believes that the retroactive suspension of transaction charges for specialist transactions in the QQQQ from July 1, 2006 through July 12, 2006 is consistent with the adoption of the proposal to suspend transaction charges for specialist orders generally in the QQQQ through August 31, 2006. The Exchange further believes that a retroactive suspension of transaction fees on specialist orders in the QQQQ is appropriate to enhance the competitiveness of executions on Amex. The Exchange proposes to amend the Amex Fee Schedule to indicate that transaction charges for specialist orders in the QQQQ have been suspended from July 1, 2006 through August 31, 2006.

As provided in the companion filing, the Exchange submits that a suspension of transaction fees for specialist orders in connection with the QQQQ is consistent with Section 6(b)(4) of the Act.<sup>6</sup> Specifically, the Exchange believes that suspending transaction charges for QQQQ specialist orders is an equitable allocation of reasonable fees among Exchange members. The Exchange believes that 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

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<sup>6</sup> Section 6(b)(4) states that the rules of a national securities exchange must provide for an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78f(b)(4).

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, a specialist unit, in order to adequately “make a market” in assigned securities, must be sufficiently staffed<sup>9</sup> and have adequate technology resources to handle the volume of orders (especially in the QQQQ) that are sent to the Exchange. The Exchange believes that these operational costs borne by specialists further support the proposal to temporarily suspend QQQQ transaction fees on specialist orders.

Specialists have certain obligations under Exchange rules, as well as the Act, that do not exist for other market participants. For example, pursuant to Amex Rule 170, a specialist 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 the proposed retroactive suspension of transaction charges for specialist orders in the QQQQ is reasonable and equitable, given the obligations that specialists must adhere to in making markets. The Exchange further submits that the fee suspension will provide greater incentive to specialists to continue to provide market liquidity, rendering the Exchange an attractive venue for market participants to execute orders.

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<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 \$6,000 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.

<sup>9</sup> See Securities Exchange Act Release No. 53386 (February 28, 2006), 71 FR 11250 (March 6, 2006) (requiring specialists to employ an adequate number of clerks).

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>11</sup> in particular, and is an 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 1934 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 the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, as amended, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-64 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-64. 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-2006-64 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Nancy M. Morris  
Secretary

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