

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 Board consents the Commission will:

- (a) By order approve such proposed rule; or
- (b) Institute proceedings to determine whether the proposed rule should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of 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/pcaob.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number PCAOB-2004-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number PCAOB-2004-02. 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/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCAOB. All comments received will be posted without change; we do 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 PCAOB-2004-02 and should be submitted on or before January 25, 2005.

By the Commission,  
**Margaret H. McFarland,**  
*Deputy Secretary.*  
 [FR Doc. E4-3923 Filed 1-3-05; 8:45 am]  
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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50934; File No. SR-Amex-2004-108]

#### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Odd-Lots in Nasdaq Securities

December 27, 2004.

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 December 22, 2004, 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. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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.

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

The Amex proposes to extend for an additional six-month period ending June 30, 2005, the Exchange's pilot program for odd-lot execution procedures for Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges.

#### 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 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 Commission approved, and the Exchange implemented, a pilot program for odd-lot order<sup>5</sup> executions in Nasdaq securities transacted on the Exchange pursuant to unlisted trading privileges. Paragraph (j) of Rule 118 ("Trading in Nasdaq National Market Securities") describes the Exchange's odd-lot execution procedures for Nasdaq securities, and Commentary .05 of Amex Rule 205 ("Manner of Executing Odd-Lot Orders") references rule 118(j) odd-lot procedures. The pilot program was originally approved on August 2, 2002, for a six-month period, and was reestablished on July 14, 2003, for an additional six-month period ending December 27, 2003.<sup>6</sup> On November 20, 2003, the Commission provided notice of the Exchange's proposed rule change to amend paragraph (j) of Amex Rule 118 and to extend the pilot program through June 27, 2004,<sup>7</sup> and on June 14, 2004, the Commission provided notice of a further extension of the pilot program through December 27, 2004.<sup>8</sup>

Under the Exchange's current pilot program, after the opening of trading in Nasdaq securities, odd-lot market orders and executable odd-lot limit orders are executed at the qualified national best bid or offer<sup>9</sup> at the time the order is

<sup>5</sup> An odd-lot order is an order for less than 100 shares.

<sup>6</sup> See Securities Exchange Act Release No. 46304 (August 2, 2002) 67 FR 51903 (August 9, 2002) approving SR-Amex-2002-56, and Securities Exchange Act Release No. 48174 (July 14, 2003) 68 FR 43409 (July 22, 2003) (SR-Amex-2003-56).

<sup>7</sup> See Securities Exchange Act Release No. 48995 (December 24, 2003) 68 FR 75670 (December 31, 2003) (SR-Amex-2003-102).

<sup>8</sup> See Securities Exchange Act Release No. 49855 (June 14, 2004) 69 FR 35399 (June 24, 2004) (SR-Amex-2004-30).

<sup>9</sup> In Amex Rule 118(j), the qualified national best bid and offer are defined as the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis; provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Amex Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or

<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).

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

received at the trading post or through the Amex Order File. Odd-lot market orders and executable odd-lot limit orders entered before the opening of trading in Nasdaq securities are executed at the price of the first round-lot or part of round-lot transaction on the Exchange. Non-executable limit orders, stop orders, stop limit orders, orders filled after the close and non-regular way trades are executed in accordance with Amex Rule 205 A(2), A(3), A(4), C(1) and C(2), respectively. Orders to buy or sell "at the close" are filled at the price of the closing round-lot sale on the Exchange. In a locked market condition, odd-lot market orders and executable odd-lot limit orders are executed at the locked market price. In a crossed market condition, odd-lot market orders are executed at the mean of the bid and offer prices when the displayed national best bid is higher than the displayed national best offer by \$.05 or less. When the displayed national best bid is higher than the displayed national best offer by more than \$.05, odd-lot market orders are executed when the crossed market condition no longer exists. In addition, in a crossed market condition, executable odd-lot limit orders are executed at the crossed market bid price (in the case of an order to sell) or at the crossed market offer price (in the case of an order to buy). For example, if the bid and offer were \$10.10 and \$20.00, respectively, an executable odd-lot sell limit order priced at \$20.10 or less would be executed at \$20.10, and an executable odd-lot buy limit order priced at \$20.00 or higher would be executed at \$20.00.

The Exchange believes that the existing odd-lot execution procedures have operated efficiently. Furthermore, the Exchange has received no complaints from members or the public regarding odd-lot executions. Therefore, the Exchange seeks an extension to the pilot program for an additional six-month period ending June 30, 2005, which would provide the Exchange with time to assess further enhancements to the odd-lot execution procedures.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general and

system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Amex Rule 11 Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11 Ac1-1.

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

further the objectives of section 6(b)(5)<sup>11</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 regulating, clearing, in 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 not designed to permit unfair discrimination between customers, issuers, brokers, or 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.

### 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 foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 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, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> 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.

The Exchange has requested that the Commission waive the 30-day operative

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that Amex provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because acceleration of the operative date will allow the Amex to continue its pilot odd-lot execution procedures applicable to trading in Nasdaq securities without interruption. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>14</sup> In addition, the Commission requests that the Exchange report any problems complaints from members and the public regarding odd-lot execution procedures applicable to trading Nasdaq securities, and that the Amex submit any proposal to extend, or permanently approve, the pilot at least two months before the expiration of the six-month pilot.

## 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-2004-108 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-108. 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

<sup>14</sup> For purposes only of waiving the 30-day operative delay of the proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 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 submission should refer to File Number SR-Amex-2004-108 and should be submitted on or before January 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05-79 Filed 1-3-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50935; File No. SR-CHX-2004-44]

### Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Extension of Pilot Rule Change Relating to Transactions in Certain Exchange-Traded Funds

December 27, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 22, 2004, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a request for extension of a pilot rule change as described in items I, II and III below, which items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the rule change effective upon filing with the Commission. 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

In its submission, the Exchange requested extension of a pilot rule change to CHX Article XX, Rule 37(a), which governs manual execution of eligible market and marketable limit orders. The pilot rule change, which will remain in effect for an additional 60-day pilot period, permits a CHX specialist, acting in its principal capacity, to manually execute an incoming market or marketable limit order in one of three exchange-traded funds at a price other than the national best bid or offer. The text of the proposed rule change is available at the Office of the Secretary, CHX 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, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. The CHX 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 August 28, 2002, the Commission issued an order granting a *de minimis* exemption (the "Exemption") for transactions in certain exchange-traded funds ("Exempt ETFs")<sup>5</sup> from the trade-through provisions of the Intermarket Trading System ("ITS") Plan.<sup>6</sup>

According to the CHX, as stated by both Commission staff and commissioners at an open meeting on August 27, 2002, rapid-fire quotations and executions in Exempt ETFs occur consistent throughout the trading day within a range around the NBBO,

<sup>5</sup> The three affected Exempt ETFs are the exchange-traded funds tracking the Nasdaq-100 Index ("QQQ"), the Dow Jones Industrial Average ("DIAMONDS") and the Standard & Poor's 500 Index ("SPDRs"). The Commission notes that the QQQ is now traded on Nasdaq.

<sup>6</sup> See Securities Exchange Act Release No. 46428 (August 28, 2002). At present, the Exemption extends to transactions that are "executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS."

rendering it extremely difficult, if not impossible, to access liquidity at an exact NBBO price point. Compounding the "flickering" noted by the Commission, the Exchange has noted a marked increase in the incidence of locked and crossed markets in Exempt ETFs.

CHX Article XX, Rule 37(a), commonly referred to as the Exchange's "Best Rule," requires that with respect to any market or marketable limit order not executed automatically, a CHX specialist must " \* \* \* either (a) manually execute such order at a price and size equal to the NBBO price and size at the time the order was received; or (b) act as agent for such order in seeking to obtain the best available price for such order on a marketplace other than the Exchange, using order routing systems where appropriate."

According to the CHX, given the unique environment in which the ETFs are traded, and the difficulty that CHX represents that its specialists often encounter in accessing NBBO price points, the Exchange's Department of Market Regulation (the "Department") believes that its enforcement of the Best Rule must take the ETF trading environment into account when the Department evaluates the execution prices of eligible market and marketable limit orders for Exempt ETFs. The Department believes that in certain instances, execution of an order in an Exempt ETF at a price other than the NBBO may nonetheless be consistent with the specialist's best execution obligation, in light of the unique environment that characterizes trading in Exempt ETFs. The Exchange believes that the current version of the BEST Rule contains sufficient latitude with respect to an order executed by a CHX specialist acting as agent for the order,<sup>7</sup> but does not contemplate any flexibility for specialists acting in their principal capacity.<sup>8</sup> Accordingly, the Exchange proposed a rule change on a pilot basis, which permits a CHX specialist, acting in its principal capacity, to manually execute an incoming market or marketable limit order in an Exempt ETF at a price other than the NBBO.<sup>9</sup>The

<sup>7</sup> The Best Rule provision governing manual agency executions obligates the CHX specialist to seek " \* \* \* the best available price." CHX Article XX, Rule 37(a)(2).

<sup>8</sup> The Best Rule provision governing manual principal executions obligates the CHX specialist to execute the order at the " \* \* \* NBBO price and size at the time the order was received." CHX Article XX, Rule 37(a)(2).

<sup>9</sup> The CHX represents that this proposed rule change is closely analogous to the Exchange's previously submitted interpretation regarding execution of resting limit orders in Exempt ETFs. Under the limit order interpretation, CHX

<sup>15</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).

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