

14. In addition, the Applicants seek relief herein with respect to Future Underwriters (*i.e.*, a class consisting of NASD member broker-dealers that may also act as principal underwriter of the Contracts and Future Contracts). The Commission has regularly granted relief to "future underwriters" that are not named, and are not affiliates of the applicants. The Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent.

15. Without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. These additional requests for exemptive relief would present no issues under the Act not already addressed herein. If the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. The requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would enhance the Applicants' ability to effectively take advantage of business opportunities as such opportunities arise. The Applicants' request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an Applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

For the Commission, by the Division of Investment Management, under delegated authority.

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

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of Artec, Inc.; Order of Suspension of Trading

December 23, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Artec, Inc. ("ATKJ") because of questions regarding the accuracy of assertions by ATKJ and others, on ATKJ's Web site, in ATKJ's press releases, and in public statements to investors concerning, among other things, the testing of ATKJ's Tubercin substance for use in treating cancer patients.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. e.s.t. December 23, 2004 through 11:59 p.m. e.s.t., on January 7, 2005.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50894; File No. SR-Amex-2004-93]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to Customer Transaction Charges for the Trading of Nasdaq-100 Index Tracking Stock(®)

December 20, 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 November 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. On December 7, 2004, Amex 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, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules to provide for customer transactions charges for the trading of Nasdaq-100 Index Tracking Stock(®) (Symbol: QQQQ) pursuant to the Nasdaq Unlisted Trading Privileges Plan. The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex, 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock(®) listed on the Nasdaq Stock Market, Inc. It trades on Nasdaq under the symbol QQQQ. The Amex trades the QQQQ on an unlisted trading privileges basis. The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules ("Amex Fee Schedules") to provide that the customer transaction charges in QQQQ would be \$.0015 per share (\$.15 per 100 shares), capped at \$100 per trade. This would be one-fourth of the regular customer transaction charge for the Nasdaq-100 Index Tracking Stock(®) when it was listed on the Amex (although the Amex has suspended

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

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

<sup>3</sup> In Amendment No. 1, the Amex restated the proposed rule change in its entirety.