

appropriateness of the specialist's quoted market.

2. Section 6(b)(4) of the Act.²⁹ The Amex believes that the proposed Specialist Fee does not violate Section 6(b)(4) of the Act³⁰ requirements regarding equitable allocation of dues and other charges. The Amex represents that the proposed fees would be equitable because they would apply to all specialists equally for all third party payments, operate on a cost recovery basis, and could not be reduced or waived by the Exchange. The Amex believes that the Commission has not historically involved itself with the level of fees set by an SRO for its members as long as they are equitably applied.

3. Section 6(b)(5) of the Act.³¹ The Amex believes that the proposed Specialist Fee does not violate Section 6(b)(5) of the Act³² requirements that an SRO's rules avoid unfair discrimination among dealers and promote just and equitable principles of trade. The Amex believes that the proposed Specialist Fee would not be unfairly discriminatory against Susquehanna as the QQQ specialist. As specialist, Susquehanna has the principal Exchange obligations with respect to QQQ under Amex rules, and also has the potentially largest financial reward of any member group. The Amex believes that the Act does not require that all exchange fees, or any fee in particular, be allocated among all member groups, or to all members permitted to trade a product. The Exchange, in exercise of its appropriate business discretion consistent with its SRO responsibilities under the Act, has determined that the specialist unit allocated a security should assume the burden of third party fees required to be paid by the Exchange to list a particular product.

4. Amex Rule 27(f). The Amex believes that allegations of indirect reallocation are wholly unfounded. In the event of reallocation proceedings for QQQ, or any other security, the Exchange would follow the requirements of Amex Rule 27(f).

5. The Amex/NASD Transaction Agreement. The March 1 letter also asserts that Amex Committee Floor Members are required to review the fee under Section 9.19 of the Amex/NASD Transaction Agreement. The Amex represents that the proposed Specialist Fee would not be the type of fee to which Section 9.19 applies. The

Exchange also notes that the Amex in recent years has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidization of such services.³³ The Amex believes that the proposed Specialist Fee would be consistent with reduced or eliminated subsidies.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective on May 16, 2002³⁴ pursuant to Section 19(b)(3)(A)(ii) of the Act³⁵ and subparagraph (f)(2) of Rule 19b-4³⁶ thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of May 16, 2002, 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.³⁷

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, as amended, 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-2002-08 and should be submitted by June 21, 2002.

³³ See e.g., Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (SR-Amex-2001-102); and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (SR-Amex-2001-22).

³⁴ See *supra* note 5.

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁶ 17 CFR 240.19b-4(f)(2).

³⁷ See 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45974; File No. SR-Amex-2001-65]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to the Proposed Rule Change Relating to the Implementation of Quick Trade

May 22, 2002.

I. Introduction

On August 22, 2001, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to implement Quick Trade, an enhancement to the Amex Order File ("AOF") and Amex Options Display Book ("AODB").³ On October 19, 2001 and December 4, 2001, respectively, the Amex filed Amendment Nos. 1 and 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.⁴ The Commission received no comments on the proposal. On April 23, 2002 and May 7, 2002, respectively, the Amex filed Amendment Nos. 3 and 4 to the proposed rule change.⁵ This order

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The AODB is the Exchange's specialist's book.

⁴ See Securities Exchange Act Release No. 45180 (December 20, 2001), 66 FR 67585 ("Notice").

⁵ See Letters from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 25, 2002 and May 6, 2002, respectively. In Amendment No. 3, the Amex added proposed rule text to codify the ratios that would be used by Quick Trade in allocating orders among the specialist and registered options traders; eliminated "Sweep of the Book" as one of the proposed functions for which Quick Trade would be used; and elaborated on the manner in which the opening price for an options series is established. In Amendment No. 4, the Amex amended the proposed rule text submitted in Amendment No. 3 to clarify that Quick Trade would allocate orders on a rotating basis in lots of ten contracts or less. See more at *infra* note and accompanying text.

²⁹ 15 U.S.C. 78f(b)(4).

³⁰ *Id.*

³¹ 15 U.S.C. 78f(b)(5).

³² *Id.*

approves the proposed rule change, accelerates approval of Amendment Nos. 3 and 4, and solicits comments from interested persons on those amendments.

II. Description of the Proposal

Currently, for orders executed through the AODB in which some or all of the contra-parties are registered options traders, the specialist or the specialist's clerk must manually allocate the contracts to those registered options traders participating in the trade. The Amex states that, for option classes with large trading crowds, the procedure can be very time consuming and can delay the processing of trades.

The Amex thus proposes to implement a feature, to be known as "Quick Trade," that would automate the process of allocating trades for the three situations described below, and thereby obviate the need for the specialist or the specialist's clerk to allocate the trades manually in those situations.

Quick Trade would allocate trades by means of a rotational wheel, as further detailed below. Registered options traders would be able to log on to the Quick Trade wheel through the AOF, and the specialist would be able to activate the wheel at the opening of trading and throughout the day. While registered options traders would not be required to participate in Quick Trade, they would be encouraged to sign on and remain on the Quick Trade wheel throughout the trading day. Each registered option trader signed on to Quick Trade would have the ability to advise the specialist, prior to the feature's activation on any given trade, that he or she does not want to receive an allocation through Quick Trade. In this situation, and in the situation where a registered options trader wishes to participate in a given trade but is not signed on to Quick Trade, the specialist would not use Quick Trade to allocate the trade but would allocate the trade manually.⁶

The Quick Trade wheel would allocate executed orders of ten or fewer contracts among the specialist and registered options traders in accordance with the ratios set forth below. If an executed order is greater than ten contracts, Quick Trade would divide the execution into lots of ten (or fewer) and allocate a lot to each participant in the rotation. Each lot would be considered

a separate trade for purposes of Quick Trade allocations.

ALLOCATION RATIO⁷

Number of traders on Quick Trade	Approximate percentage of trades allocated to the specialist	Approximate percentage of trades allocated to the traders (as a group)
1	60	40
2-4	40	60
5-7	30	70
8-15	25	75
16 or more	20	80

⁷ The ratios set forth below were described in the Notice in terms of the number contracts allocated to the specialist and traders. In Amendment No. 4, Amex proposed new rule text to codify these ratios, expressing them in terms of the percentage of trades allocated to the specialist and traders. This reflects the rotational system described above, in which orders are divided into lots of ten or fewer contracts, with the allocation wheel rotating one turn for each lot.

Quick Trade would provide automated allocation of trades for three AODB functions:

(1) Quick Openings. The Amex states that a specialist opens trading in each options series by establishing an opening price for that series based on the market orders to buy and sell and the prices of limit orders prior to the opening, and executing by pairing off all market and marketable limit orders at this price.⁸ If, after all opening orders have been paired off, an imbalance exists, Quick Trade would automatically allocate the imbalance of executed contracts to the specialist and registered options traders signed on to Quick Trade in accordance with the ratios set forth above.

(2) Block Window. The Amex represents that this function enables a specialist, in situations when there are limit orders on the book at various prices, to execute such limit orders at a single price.⁹ For example, assume the specialist has limit orders on the book to sell at \$5.00, \$5.05, \$5.10, \$5.15, and \$5.20, and these orders represent in aggregate 50 contracts. The specialist has determined to buy all 50 contracts at \$5.20. The contracts would be allocated by Quick Trade to the specialist and registered traders in accordance with the ratios set forth above.

(3) Auto-Match. According to the Exchange, the Auto-Match feature of AODB automatically matches and

executes market and marketable limit orders that have bypassed the Exchange's automatic execution system ("Auto-Ex") with limit orders on the AODB. This feature is proposed to be modified to include registered options trader participation when an imbalance occurs.¹⁰ Quick Trade would distribute the imbalance among the specialist and registered options traders. For example, assume the best bid is represented by a limit order to buy 10 contracts in an option class in which the Auto-Ex eligible size is 20 contracts. A market order of 20 contracts to sell bypasses Auto-Ex and is routed to the AODB. Ten contracts would be matched and executed with the limit order and the remaining 10 contracts would be allocated through Quick Trade to the specialists and registered options traders in accordance with the allocation ratios set forth above.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of Section 6 of the Act¹¹ and the rules and regulations thereunder.¹² The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act¹³ because it will enable the Exchange to automate a process that until now has been performed manually, thus enhancing the speed and efficiency with which the allocation of trades can be effected.

The Commission further believes that it is reasonable to allocate to the specialist the percentage of trades specified in the chart above, in view of the specialist's obligations under Exchange rules. The Commission notes that the proposed entitlement would never be greater than 40 percent (except in the one case where only one registered options trader is participating

¹⁰ See Securities Exchange Act Release No. 42652 (April 7, 2000), 65 FR 20235 (April 14, 2000) (notice of immediate effectiveness of proposed rule change relating to Auto-Match, in which Amex indicated that this function would be enhanced to allow the excess portion of an Auto-Ex eligible order to be allocated to the specialist and any registered options traders participating in the crowd).

¹¹ 15 U.S.C. 78f.

¹² In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

⁶ As indicated above, the specialist would have the ability to determine on a trade-by-trade basis whether to use Quick Trade or to allocate the contracts manually. However, once Quick Trade was activated, it would be assumed to remain on and would be used to allocate contracts in all the functions described below, unless the specialist informed the crowd that he was turning it off. See Notice, at note 5.

⁸ See Amendment No. 3.

⁹ The Amex represents that the specialist unilaterally determines this clean-up price. Telephone conversation between Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, and Ira L. Brandriss, Special Counsel, Division, Commission, on May 16, 2002.

in the trade). The Commission has found with respect to participation guarantees in other contexts that 40 percent is not inconsistent with statutory standards of competition and free and open markets.¹⁴ In addition, the Commission believes that the allocation of orders among the specialist and registered options traders on a rotating basis, as described above, is consistent with the Act.

The Commission finds good cause for approving Amendment Nos. 3 and 4 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 strengthens the proposed rule change in that it would codify the proposed allocation ratios as part of the Exchange's rules.¹⁵ The removal in Amendment No. 3 of "Sweep of the Book" as a Quick Trade function, on account of the inability of the system's technology to accommodate that function, poses no regulatory issues. Amendment No. 4 simply clarified the operation of the rotating wheel to be used by Quick Trade. The Commission believes that accelerating approval of these amendments will enable the Amex to expeditiously implement a feature that may serve to enhance the speed and efficiency of its marketplace.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)¹⁶ and 19(b)(2)¹⁷ of the Act to accelerate approval of Amendments Nos. 3 and 4 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4, including whether Amendment Nos. 3 and 4 are 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-2001-65 and should be submitted by June 20, 2002.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁸, that the proposed rule change (File No. SR-Amex-2001-65) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45967; File No. SR-CBOE-2002-22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to a Pilot Program To Give the Index Floor Procedure Committee the Authority To Permit Broker-Dealer Orders for Options on the QQQs to be Executed on RAES

May 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 26, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. CBOE submitted Amendment No. 1 to the

proposed rule change on May 3, 2002.³ 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 CBOE proposes to amend Interpretations and Policies .01 of CBOE Rule 6.8 to give the Index Floor Procedure Committee ("IFPC"), on a six-month pilot, the authority to permit broker-dealer orders for options on Nasdaq-100 Index® Tracking Stock ("QQQ") to be executed on the Exchange's Retail Automatic Execution System ("RAES"). Below is the text of the proposed rule change. Proposed new language is italicized.

Rule 6.8

* * * * *

* * * Interpretations and Policies:

.01 [[Reserved.]] a. *Notwithstanding 6.8(c)(ii), for a six-month pilot period ending [insert date six months from approval of proposed rule change], the Index Floor Procedure Committee may determine to allow the following types of orders for options on Nasdaq-100 Index® Tracking Stock ("QQQ") to be executed on RAES:*

1. *Broker-dealer orders; or*
2. *Broker-dealer orders that are not for the accounts of market-makers or specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Securities Exchange Act of 1934.*
- b. *Broker-dealer orders entered through the Exchange's order routing system will not be automatically executed against orders in the limit order book. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to a floor broker for representation in the trading crowd. Broker-dealer orders are not eligible to be placed in the limit order book pursuant to Rule 7.4.*

c. *If the Index Floor Procedure Committee permits broker-dealer orders to be automatically executed in the QQQ pursuant to this Interpretations and Policies .01 of Rule 6.8, then it may also permit the following with respect to such orders:*

1. *The maximum order size eligibility for the broker-dealer orders may be less*

¹⁴ See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96-99 and accompanying text.

¹⁵ The Commission is approving Quick Trade only with respect to its implementation for the "Quick Openings," "Block Window," and "Auto-Match" features described herein.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised Exhibit 1 to conform to the requirements of the Act. See letter from Madge M. Hamilton, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 2, 2002 ("Amendment No. 1").