

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.*

[FR Doc. 04-28473 Filed 12-23-04; 11:55 am]

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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.

these charges since August 2001) and for other Exchange Traded Fund Shares. The Exchange believes that this fee level would encourage competition among markets trading QQQQ and enhance the Amex's competitiveness in trading this security. In order to reflect the lower transaction charges in QQQQ for customers on the Exchange Traded Funds and Trust Issued Receipts Fee Schedule ("ETF Fee Schedule"), a new Section IV would be added specifically to set forth transaction charges in QQQQ for customers as well as the specialist and registered traders. The transaction charges for all three market participants previously were included in Section II of the ETF Fee Schedule since they were the same in each case as the transaction charges for other Exchange Traded Funds for which the Exchange pays unreimbursed fees to a third party. Although the text of Section IV is entirely new, it would reflect the current transaction charges in place for specialists and registered traders, this proposal is not seeking to establish new transaction charges for the specialist and registered traders.

In addition, the Amex has determined that during the first month of trading QQQQ pursuant to unlisted trading privileges, it would suspend these customer charges. The Amex Fee Schedules also would be amended to reflect this temporary suspension.

## 2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.<sup>6</sup>

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, would 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. 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-2004-93 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-2004-93. 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 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 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 publicly available. All submissions should refer to File Number SR-Amex-2004-93 and should be submitted on or before January 18, 2005.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the proposed change in customer transaction charges is not unreasonable and should not discriminate unfairly among market participants.

The Amex has requested that the Commission find good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that granting accelerated approval of the proposal would allow the Amex to implement the proposed changes to its fee schedule for QQQQ in a manner which coincides with the start of trading QQQQ pursuant to unlisted trading privileges. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-2004-93), and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

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

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<sup>7</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> The Commission changed this sentence to reflect statutory basis for the proposed rule change pursuant to Section 6(b)(4) of the Act, rather than Section 6(b)(5). Telephone conversation among Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, Ann E. Leddy, Special Counsel, and Ted Venuti, Attorney, Division of Market Regulation, Commission (December 9, 2004).