## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45234; File No. SR–AMEX–2001–109]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Pilot Program Eliminating Position and Exercise Limits for Certain Broad Based Index Options

January 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act),'' [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2001, the American Stock Exchange LLC (''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act [3] which renders the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The Exchange seeks a six-month extension of the pilot program that provides for the elimination of position and exercise limits for the Major Market (''XMI'') and Institutional (''XII'') broad-based index options, as well as FLEX Options.

### 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 Amex 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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

On February 1, 1999, The Commission approved the elimination of position and exercise limits for the XMI and XII index options, as well as FLEX options on these indexes on a two-year basis (the ''Pilot Program'').[5] The Pilot Program originally ended on February 1, 2001 with an extension for six months approved on July 3, 2001.[6] The purpose of this proposed rule change is to request a six-month extension of the Pilot Program.[7]

The Original Approval Order required the Exchange to submit a report to the Commission regarding the status of the Pilot Program so that the Commission could use this information to evaluate any effects of the program.[8] The Exchange submitted the required report to the Commission on May 22, 2001 in connection with the first six-month extension of the Pilot Program. The report indicated that from February 1, 1999 through March 30, 2001, no customer and/or firm accounts reached a level of 100,000 or more options contracts in XMI or XII options. The Amex during the review period and the extended pilot program did not discover any instances where an account maintained an unusually large unhedged position. Accordingly, because the Exchange has not experienced any aberrations due to the large unhedged positions during the operation of the Pilot Program, it requests that the effectiveness of the Pilot Program be extended for an additional six months until July 3, 2002.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act [9] in general and furthers the objects of section 6(b)(5) [10] 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*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

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder [12] because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not, by its terms, become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with notice of its intent to file the proposed rule change, along with a brief description and text of the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] 17 CFR 240.19b–4(f)(6).

[4] The Exchange has represented that the proposed rule change: (i) Will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4 under the Act. *id.*

[5] *See* Securities Exchange Act Release No. 41011, 64 FR 6405 (February 9, 1999) (''Original Approval Order'').

[6] *See* Securities Exchange Act Release No. 44507, 66 FR 36348 (July 11, 2001).

[7] By separate filing, the Exchange intends to seek permanent approval by the Commission of the Pilot Program.

[8] The Commission requests that the Amex update the Commission on any problems that have developed with the pilot since the last extension, including any compliance issues, and whether there have been any large unhedged positions that have raised concerns for the Amex. In addition, the Commission expects that the Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. *See also* Original Approval Order.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

rule change, more than five business days prior to the date of the filing of the proposed rule change.

The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become operative on January 4, 2002.[13] Acceleration of the operative date will allow the Exchange to continue its Pilot Program without interruption. Further the Commission has approved a similar pilot program proposed by another options exchange.[14]

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 Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it 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 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 provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 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–2001–109 and should be submitted by January 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–633 Filed 1–9–02; 8:45 am]

**BILLING CODE 8010–01–M**

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* Securities Exchanges Act Release No. 44335 (May 22, 2001), 66 FR 29369 (May 30, 2001) (SR–CBOE–2001–26).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45236; File No. SR–Amex–2001–42]**

## Self-Regulatory Organizations; Notice of Proposed Rule Change by American Stock Exchange LLC To Increase Position and Exercise Limits for Nasdaq-100 Index Tracking Stock Options

January 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2001, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 26, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[3]

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 proposed to increase position and exercise limits for Nasdaq-100 Index Tracking Stock ("QQQ") options to 300,000 contracts on the same side of the market. In order to codify the financial requirements imposed by the Exchange and the Commission, the Amex also proposes to add Commentary .11 to Exchange Rule 904.

The text of the proposed rule change 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 Amex 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 supersedes and replaces the original 19b–4 filing in its entirety.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to increase position and exercise limits for QQQ options up to 300,000 contracts on the same side of the market. The Exchange will continue to require that member organizations report all QQQ options positions exceeding 200 contracts pursuant to Exchange Rule 906. Moreover, for accounts holding positions in excess of 10,000 contracts on the same side of the market, the Exchange will also continue to require information concerning the extent to which such positions are hedged. The Amex believes that increasing position and exercise limits from 75,000 to 300,000 contracts for QQQ options will provide greater flexibility for market participants attempting to hedge their market risks.[4] In addition, Exchange staff will be able to re-focus efforts and resources to other notable areas.

**Manipulation**

Position limits restrict the number of options contracts that an investor, or a group of investors acting in concert, may own or control. Similarly, exercise limits prohibit the exercise of more than specified a number of contracts on a particular instrument within five (5) business days. The Commission by imposing these limits on exchange-traded options has sought to: (1) Minimize the potential for mini-manipulations,[5] as well as other forms of market manipulations; (2) impose a ceiling on the position that investor with inside corporate or market information can establish; and (3) reduce the possibility of disruption in the options and underlying cash markets.[6] The Amex believes that the structure of the QQQ option and the tremendous liquidity of both the underlying cash and option market for QQQs should allay regulatory concerns of potential manipulation. The Amex further believes that QQQ options are not readily susceptible to manipulation based largely on the liquidity and

[4] Although the current position limit is 75,000 contracts, due to a 50% reduction in the value of the underlying QQQ on March 20, 2000, the limit was adjusted to 150,000.

[5] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established options position.

[6] *See* Becker and Burns, Regulation of Exchange-Traded Options in *The Handbook of Derivatives and Synthetics* (1994), Probus Publishing Company and Regulating the Options Market, *Institutional Investor Forum* (November 1991).