

Amex Rule 128A also provides that the Chairman and Vice Chairman of the Exchange, acting jointly, determine which ETFs are Auto-Ex eligible.

2. Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,⁹ in general, and with section 6(b)(5) of the Act,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 regulating, clearing, 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 and dealers.

The proposed rule change will allow the Auto-Ex for ETFs pilot program to continue for an additional six months. The Exchange believes that the proposal also facilitates the comparison and settlement of trades since Auto-Ex transactions result in "locked-in" trades.

Moreover, Auto-Ex for ETFs automatically provides investors with price improvement on their orders.

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

Amex believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal, in fact, will enhance competition among markets and market makers and thereby benefit investors by allowing the Exchange to continue to provide Auto-Ex for ETFs with price improvement.

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 (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any

significant burden on competition; and (3) by its terms, does not become operative until 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, and the exchange provided the Commission with 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 or such shorter time as designated by the Commission, it has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

Amex has requested that the Commission waive the usual five-business-day notice period and the usual 30-day pre-operative waiting period. The Commission notes that this proposal simply extends the existing pilot program and does not alter the pilot in any way. As a result, the Commission believes that it is consistent with the protection of investors and the public interest to waive the five-business-day notice period and accelerate the operative date so that the pilot can continue without delay and because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.¹³ This pilot extension will expire on December 19, 2003.

At any time within 60 days of the filing of this 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.

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. 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 Amex. All submissions should refer to File No. SR-Amex-2003-61 and should be submitted by July 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03-17476 Filed 7-9-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48123; File No. SR-NASD-2002-77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Disclosure of Audit Opinions With Going Concern Qualifications

July 2, 2003.

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 June 11, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. 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 Change

Nasdaq proposes to amend NASD Rule 4350(b) to add a requirement for issuers to announce publicly any audit opinions with going concern

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).