

which is outside the knowledge of the insider before a confirmation or other notice of the transaction is sent to the insider, with a delay not to exceed a specified number of days; and

- A discretionary transaction involving an employee benefit plan,¹⁸ whether or not exempted by Rule 16b-3, where the delay would again be tied to notice of the transaction.

By the Commission.

Dated: August 6, 2002.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46309; File No. SR-Amex-2002-58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Pilot Program Involving Crossing Transactions in Nasdaq Securities

August 5, 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 July 18, 2002, 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. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 proposes to add Commentary .06 to Amex Rule 126(g) relating to crossing procedures on the

Amex in Nasdaq National Market securities. The text of the proposed rule change is below. Proposed new language is in italics.

Precedence of Bids and Offers

Rule 126

(a)-(f) No change.

(g) No change.

Commentary

.01 through .03 No change.

.04 *Reserved*

.05 *Reserved*

.06 *If prior to presenting a cross transaction in a Nasdaq National Market security involving 5,000 shares or more, a broker requests that the specialist and market makers at the post quote their current market for the subject security, the broker may execute a cross transaction at a price between the quoted market without interference by a specialist or market maker.*

In no event shall an agency order in the book, having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

* * * * *

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 its proposal and discussed any comments it received regarding the proposal. 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

The Amex filed SR-Amex-2001-106⁶ to accommodate trading in Nasdaq National Market ("NNM") securities. The Exchange now proposes to adopt crossing procedures under Amex Rule 126(g) to provide additional flexibility to permit brokers to effect crosses of orders of 5,000 shares or more in NNM securities. Under Amex Rule 126(g), Commentary .01, orders to cross 5,000 shares or more (where one or both sides is for the account of a member or member organization) can establish size precedence if the orders are represented

at the specialist's post when a sale removing all bids and offers from the Floor takes place. Commentary .01 has been approved on a pilot basis until September 27, 2002.⁷

Amex Rule 126(g), Commentary .02 provides that orders of 5,000 shares or more for the accounts of non-members or member organizations can be crossed at a price at or within the prevailing quotation. The member's bid or offer is entitled to priority at the cross price, irrespective of pre-existing bids or offers at that price. Under either Commentaries .01 or .02, a cross can be "broken-up" by the specialist or another Floor member that is willing to provide price improvement to all or a portion of one side of the proposed cross. With the advent of decimal pricing, such price improvement could be as small as \$.01. This may result in frequent interference with crosses being effected, and with minimal price betterment, notwithstanding the choice of a broker's customers that a cross be effected and the broker's assessment that such cross is in the customer's best interest. In connection with trading in Nasdaq securities, this can place the Amex and its members at a competitive disadvantage to other markets that may have crossing procedures that are less restrictive than those of the Amex. The Amex, therefore, proposes to provide additional flexibility to brokers proposing to effect crosses in Nasdaq securities.

Proposed Amex Rule 126(g), Commentary .06 provides that a floor broker would be permitted to effect cross transactions in NNM securities involving 5,000 shares or more without interference by the specialist or market makers if, prior to presenting the cross transaction, the floor broker requests a quote for the subject security. These requests will place the specialist and market makers on notice that the floor broker intends to cross within the bid-offer spread. The Amex believes this arrangement will ensure that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but will preclude the specialist or market maker from breaking up a cross transaction after the cross transaction is presented. The floor broker will retain the ability to present both sides of the order at the post if the customers so desire.

The proposed rule change will be implemented on a pilot basis through September 30, 2002. The Exchange notes that it has filed a separate

¹⁸ Such a "discretionary transaction" is defined in Rule 16b-3(b)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange provided the Commission with notice of its intention to file the proposed rule change on June 25, 2002. The Amex has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ Securities Exchange Act Release No. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002).

⁷ See Securities Exchange Act Release No. 45658 (March 27, 2002), 67 FR 15842 (April 3, 2002) (SR-Amex-2002-22).

proposed rule change relating to cross transactions in Nasdaq securities.⁸ In the event SR-Amex-2002-26 is approved by the Commission prior to September 30, 2002, the pilot program for Commentary .06 would terminate.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives 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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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 purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes

waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will (i) permit the Amex to have these revised crossing procedures in place by the time the Amex begins trading Nasdaq securities on the Amex; and (2) provide the Amex with sufficient time to notify its members of the new crossing procedures before trading Nasdaq securities begins on the Amex. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 the Amex. All submissions should refer to file number SR-Amex-2002-58 and should be submitted by August 30, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46304; File No. SR-Amex-2002-56]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by American Stock Exchange LLC Relating to Odd-Lots in Nasdaq Securities

August 2, 2002.

I. Introduction

On June 17, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to describe odd-lot execution procedures applicable to trading Nasdaq National Market ("NNM") securities. The proposed rule change was published for comment in the **Federal Register** on July 10, 2002.³ On July 26, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

II. Description

A. Background

The Exchange filed a proposed rule change to permit trading of NNM securities pursuant to unlisted trading privileges.⁵ The Exchange currently is modifying its existing system in order to provide automatic execution of market and executable limit orders in NNM securities of less than 100 shares in a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46148 (June 28, 2002), 67 FR 45773 (July 10, 2002).

⁴ See Letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 25, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange: (1) Amended proposed Amex Rule 118(j)(i) to change the word "adjusted" to "qualified" in the first paragraph; (2) deleted paragraph (j)(i)(A) for proposed Amex Rule 118, which stated that the bid or offer in another market center will be considered in determining the qualified national best bid or offer only if it is no more than 25 cents above the bid or below the offer disseminated by the Amex; (3) re-numbered the provisions contained in the third paragraph of proposed Amex Rule 118(j)(i); and (4) changed the date of approval of the proposed rule change by the Exchange's Board of Governors to September 19, 2001.

⁵ See Securities Exchange Act Release No. 45365 (January 30, 2001), 67 FR 5626 (February 6, 2002)(SR-Amex-2001-106).

⁸ See SR-Amex-2002-26.

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).