

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.

#### 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 the Exchange. All submissions should refer to file number SR-Amex-2003-59 and should be submitted by August 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48174; File No. SR-Amex-2003-56]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Reestablish on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable to Trading in Nasdaq Securities

July 14, 2003.

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 June 2, 2003, 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 and II below, which Items have been prepared by the Exchange. On June 27, 2003, the Exchange amended the proposal.<sup>3</sup> The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> 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 Exchange proposes to reestablish on a six-month pilot basis paragraph (j) to Amex Rule 118 (Trading in Nasdaq National Market Securities) and Commentary .05 to Rule 205 (Manner of Executing Odd-Lot Orders) to describe odd-lot execution procedures applicable to trading Nasdaq securities. The previous six-month pilot lapsed as of February 3, 2003, due to Amex's failure to request an extension before the previous pilot program expired. Amex is making no substantive changes to the pilot program, other than to reestablish it and extend its operation through December 27, 2003. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

\* \* \* \* \*

#### Trading in Nasdaq National Market Securities

Rule 118. (a) through (i) No change.

(j) *Odd-Lot Orders—Odd-lot orders in Nasdaq National Market securities shall be executed in the following manner:*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter dated June 27, 2003, from Geraldine M. Brindisi, Vice President and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Amex added language to clarify the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The Amex provided the Commission with written notice of its intent to file the proposed rule change on May 27, 2003. The Exchange 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). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to have commenced on June 27, 2003, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

(i) *Market and Executable Limit Orders—A market or executable limit order shall receive automatic execution, unless otherwise provided herein, at the price of the qualified national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the Amex Order File.*

*All market and executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall receive automatic execution at the price of the first round-lot or Part of Round Lot (PRL) transaction on the Exchange.*

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"); provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

(ii) *Limit Orders; Stop Orders; Stop-Limit Orders; Other Order Types—Unless otherwise provided herein, non-executable limit, stop, and stop-limit orders shall be executed in accordance with Rule 205, Parts A (2), A(3), and A(4), respectively. Orders to buy or sell "at the close" shall be filled at the price of the closing round-lot sale on the Exchange. An odd-lot order received prior to the close but not filled either before the close or on the close may be filled after the close in accordance with the provisions of Rule 205, Part C (1).*

(iii) *Non-Regular Way Trades—Non-regular way trades shall be effected in accordance with the provisions of Rule 205, Part C (2).*

<sup>14</sup> 17 CFR 200.30-3(a)(12).

(iv) *Locked and Crossed Market Conditions*

(a) *For market and executable limit orders entered after the opening, when the national best bid and offer is in a locked market condition (i.e., the bid and offer are the same), odd-lot buy and sell orders will be executed at that locked market price.*

(b) *Crossed Market Condition—When a crossed market condition exists (i.e., bid higher than offer) and the national best displayed bid is higher than the national best displayed offer by \$.05 or less, market and executable limit orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest \$.01. When the national best displayed bid is higher than the offer by more than \$.05, an odd-lot order will not receive automatic execution and is to be executed manually at the time a crossed market condition no longer exists, in accordance either with subparagraph (i) or (iv)(a) of this paragraph (j), as appropriate.*

(v) *No odd-lot differential may be charged on any odd-lot orders, except for non-regular way trades effected under Rule 118 (j)(iii).*

(vi) *Odd-lot orders in Nasdaq National Market securities are permitted to be marked ("short") and are acceptable for all order types, and Rule 7, Commentary .02 shall apply to such orders.*

\* \* \* \* \*

#### Manner of Executing Odd-Lot Orders

##### Rule 205

##### Commentary

.01 through .04 No Change.

.05 *Odd-lot orders in Nasdaq National Market securities shall be executed in accordance with Rule 118(j).*

\* \* \* \* \*

## 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 August 2, 2002, the Commission approved the Exchange's proposed rule change establishing odd-lot execution procedures with respect to Nasdaq National Market securities pursuant to unlisted trading privileges on a six-month pilot basis.<sup>7</sup> The proposed rule change revised Amex Rule 118 to add paragraph (j) to describe procedures applicable to the execution of odd-lot orders. The Exchange modified its systems in order to provide automatic execution of market and executable limit orders in Nasdaq National Market securities of less than 100 shares in a manner generally consistent with procedures set forth in Amex Rule 205. (Round lot orders (e.g., 100 shares) and Part of Round Lot ("PRL") orders (e.g., 175 shares) are not subject to the automatic execution procedures applicable to odd-lots.) The Exchange's previous pilot program was approved on August 2, 2002 for a six-month period expiring February 3, 2003.<sup>8</sup> The Exchange inadvertently failed to request an extension of the pilot beyond that date, and now proposes to reestablish these procedures on a six-month pilot basis. The Exchange believes that these procedures have operated efficiently and has received no complaints from members or the public regarding odd-lot executions. Therefore, the Exchange is requesting that the program be reestablished on a six-month pilot basis while the Exchange assesses whether to request that the procedures be permanently approved.

Under this program, market and executable odd-lot limit orders to buy (sell) would be executed at the price of the qualified national best offer (bid) at the time the order is received at the trading post or through the Amex Order File ("AOF"). Market and executable limit orders entered before the opening of trading in Nasdaq securities on the Exchange would receive an execution at the price of the first reported round-lot or PRL on the Amex.

For purposes of this provision, the qualified national best bid or offer would be the highest bid and lowest offer disseminated by the Amex or by another market center that is a participant in the Joint Self-Regulatory Organization Plan Governing the

Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. The bid or offer of such other market center would be considered in determining the qualified national best bid or offer only if it met the conditions specified in proposed Rule 118(j)(i), including (i) that the quotation conform to Amex Rule 127 (Minimum Price Variations), that is, the bid or offer be in a one cent increment; (ii) that the quotation not result in a locked or crossed market; (iii) that the market center not be experiencing operational or system problems affecting quotation dissemination; and (iv) that members of the other market center disseminating the quotations not be relieved of their obligations with respect to their quotations pursuant to the "unusual market" exception of Commission Rule 11Ac1-1.<sup>9</sup> These exceptions are similar to those applied to execution of odd-lots in Amex-listed securities under Amex Rule 205, Commentary .04.

Procedures for the execution of non-executable limit orders, stop orders, stop limit orders, other order types, orders filled after the close and non-regular way trades would be similar to existing odd-lot execution procedures under Amex Rule 205 A(2)-A(4), B and C. Such orders would be processed manually and would not be automatically executed.

#### *Locked and Crossed Market Conditions*

The proposed rule change, as amended, would implement specific procedures for automatically executing market and executable limit odd-lot orders entered after the opening of Amex trading in Nasdaq securities when the national best bid and offer is in a locked market condition (i.e., bid is equal to the offer) or a crossed market condition (i.e., bid is higher than the offer). In the case of a locked market, market orders and executable buy and sell limit orders would be executed at the same price as the locked price. In the case of a crossed market in which the bid is higher than the offer by \$.05 or less, market and executable limit orders would be executed at the mean of the crossed bid and offer. If the mean resulted in less than \$.01, the execution would be rounded up to the nearest \$.01.

#### *Examples:*

- (1) BBO is \$10.04 to \$10.00, Market odd lot order to buy or sell arrives, Execute at \$10.02

<sup>7</sup> See Securities Exchange Act Release No. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002) (SR-Amex-2002-56).

<sup>8</sup> *Id.*

<sup>9</sup> 17 CFR 240.11Ac1-1.

(2) BBO is \$10.05 to \$10.00, Market odd lot order to buy or sell arrives, Execute at \$10.03 (\$10.025 is rounded to \$10.03)

In the case of a crossed market in which the bid is higher than the offer by more than \$.05, an odd-lot order would not be executed automatically, but would be executed manually in accordance with, as appropriate, either proposed Rule 118(j)(i) (*i.e.*, filled at the price of the next uncrossed qualified national bid or offer), or proposed Rule 118(j)(iv)(a) (*i.e.*, at the locked market price, when the national best bid and offer is in a locked market condition).

Commentary .05 to Amex Rule 205 would be added to reference the Rule 118(j) odd-lot procedures.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of section 6(b)(5)<sup>11</sup> 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change, as amended, 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*

Written comments were neither solicited nor 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, as amended, 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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, as amended, 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 allow the Exchange to reestablish its odd-lot execution procedures applicable to trading in Nasdaq securities without delay. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>14</sup>

In addition, the Commission requests that the Exchange report any problems or complaints from members and the public regarding odd-lot execution procedures applicable to trading Nasdaq securities, and that the Amex submit any proposal to extend, or permanently approve, the pilot at least two months before the expiration of the six-month pilot.

## 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 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 Exchange. All submissions should refer to file number SR-Amex-2003-56 and should be submitted by August 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48161A; File No. SR-NASD-2003-57]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval To Amendment No. 3 to the Proposed Rule Change Relating to Revisions to the Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)**

July 16, 2003.

## Correction

In Release No. 34-48161, issued on July 10, 2003 ("Approval Order"), an inaccurate reference to Question 14J of the Uniform Application for Securities Industry Registration or Transfer ("Form U4") appeared. The Approval Order's Purpose Section contained the inaccurate reference due to a typographical, non-substantive error on the part of the National Association of Securities Dealers, Inc. ("NASD") in the third amendment to the proposed rule change.<sup>1</sup> Specifically, in footnote 11 of the Approval Order, Question 14J is inaccurately referenced in three instances, rather than Question 14M. The corrected text of footnote 11 of the

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission (July 1, 2003) ("Amendment No. 3") (The Commission notes that the NASD inadvertently numbered Amendment No. 3 as Amendment No. 1). In Amendment No. 3, the NASD responded to comments submitted by the Association of Registration Management ("ARM") arguing, primarily, that the information being sought by the additional questions being added to the Form U4 was already captured by pre-existing questions on the Form U4 and that the addition of such questions would create a monumental administrative burden for member firms.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 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).