

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49855; File No. SR-Amex-2004-30)

June 14, 2004

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 Extend on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable to Trading in Nasdaq Securities

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 May 5, 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 and II below, which Items have been prepared by the Exchange. On May 10, 2004, the Amex amended the proposed rule change.³ The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 Amex proposes to amend paragraph (j) of Amex Rule 118 ("Trading in Nasdaq National Market Securities") and Commentary .05 of Amex Rule 205 ("Manner of Executing Odd-Lot Orders") that were implemented on a pilot program basis and to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Eric Van Allen, Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 7, 2004, replacing Form 19b-4 in its entirety ("Amendment No. 1").

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

extend the pilot program for an additional six-month period ending on December 27, 2004. The text of the proposed rule change is set forth below. Proposed new language is in italics.

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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:

(i) Market and Executable Limit Orders – A market or executable limit order shall be executed, 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. An order entered through the Amex Order File shall receive automatic execution at such price.

All market 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. Executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall be executed manually at the price of the first round-lot or 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).

(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 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 market 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. An executable limit order will receive automatic execution at the crossed market national best displayed bid (in the case of an order to sell) or at the crossed market national best displayed offer (in the case of an order to buy).

(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.

(k) No change.

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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).

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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

The Commission originally approved, and the Exchange implemented, a pilot program for odd-lot order⁶ executions in Nasdaq securities transacted on the Exchange pursuant to unlisted trading privileges.⁷ Paragraph (j) of Amex Rule 118 describes the

⁶ An odd-lot order is an order for less than 100 shares.

⁷ See Securities Exchange Act Release Nos. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002) (SR-Amex-2002-56); 48174 (July 14, 2003), 68 FR 43409 (July 22, 2003) (SR-Amex-2003-56); and 48995 (December 24, 2003), 68 FR 75670 (December 31, 2003) (SR-Amex-2003-102).

Exchange's odd-lot execution procedures for Nasdaq securities, and Commentary .05 to Amex Rule 205 references the odd-lot procedures described in Amex Rule 118(j).

The pilot program was originally approved on August 2, 2002, for a six-month period, and was thereafter extended twice. It is currently set to expire on June 27, 2004.⁸ The Exchange proposes to extend the pilot program for an additional six months to expire on December 27, 2004.

Under the Exchange's pilot program, after the opening of trading in Nasdaq securities, odd-lot market orders and executable odd-lot limit orders would be executed at the qualified national best bid or offer as defined under proposed Amex Rule 118(j)(i) at the time the order is received at the trading post or through Amex Order File. Odd-lot market orders and executable odd-lot limit orders entered before the opening of trading in Nasdaq securities would be executed at the price of the first round-lot or part of round-lot transaction on the Exchange. Non-executable limit orders, stop orders, stop limit orders, orders filled after the close and non-regular way trades would be executed in accordance with Amex Rule 205, Parts A(2), A(3), A(4), C(1) and C(2), respectively. Orders to buy or sell "at the close" would be filled at the price of the closing round-lot sale on the Exchange. In a locked market condition, odd-lot market orders and executable odd-lot limit orders would be executed at the locked market price. In a crossed market condition, odd-lot market orders would be executed at the mean of the bid and offer prices when the displayed national best bid is higher than the displayed national best offer by \$.05 or less. When the displayed national best bid is higher than the displayed national best offer by more than \$.05, odd-lot market orders would be executed when the crossed market

⁸ Id.

condition no longer exists. In addition, in a crossed market condition, executable odd-lot limit orders would be executed at the crossed market bid price (in the case of an order to sell) or at the crossed market offer price (in the case of an order to buy). For example, if the bid and offer were 20.10 and 20.00, respectively, an executable odd-lot sell limit order priced at 20.10 or less would be executed at 20.10, and an executable odd-lot buy limit order priced at 20.00 or higher would be executed at 20.00.

The Exchange believes that the existing odd-lot execution procedures have operated efficiently. Furthermore, the Exchange has received no complaints from members or the public regarding odd-lot executions. Therefore, the Exchange seeks an extension to the pilot program for an additional six-month period ending on December 27, 2004, which would provide the Exchange with time to assess further enhancements to the odd-lot execution procedures.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

No written comments were solicited or received with respect to the proposed rule change, as amended.

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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,¹¹ 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.¹³

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange provided 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 period as designated by the Commission.

¹³ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section

The Amex has requested that the Commission waive the 30-day operative delay since the proposed rule change only seeks to extend the Exchange's pilot program for odd-lot executions in Nasdaq securities for an additional six months and does not seek to alter the current rules of the pilot program in any manner. Furthermore, the Exchange represents that it has experienced no operational problems relating to such executions, and has not received any adverse comments from Amex members regarding the pilot program.

The Commission believes that 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 continue its pilot odd-lot execution procedures applicable to trading in Nasdaq securities without interruption for an additional six months, expiring on December 27, 2004. For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.¹⁴

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.

19(b)(3)(C) of the Act, the Commission considers the period to commence on May 10, 2004, the date on which the Amex filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹⁴ For purposes of accelerating the operative date of this proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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. 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. Please include File Number SR-Amex-2004-30 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-2004-30. 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 Room. Copies of the 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 available publicly. All submissions should refer to File Number SR-Amex-2004-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).