

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50934; File No. SR-Amex-2004-108)

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Odd-Lots in Nasdaq Securities

December 27, 2004

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 December 22, 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, 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 Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 extend for an additional six-month period ending June 30, 2005, the Exchange’s pilot program for odd-lot execution procedures for Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges.

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).

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved, and the Exchange implemented, a pilot program for odd-lot order⁵ executions in Nasdaq securities transacted on the Exchange pursuant to unlisted trading privileges. Paragraph (j) of Rule 118 ("Trading in Nasdaq National Market Securities") describes the Exchange's odd-lot execution procedures for Nasdaq securities, and Commentary.05 of Amex Rule 205 ("Manner of Executing Odd-Lot Orders") references Rule 118(j) odd-lot procedures. The pilot program was originally approved on August 2, 2002, for a six-month period, and was reestablished on July 14, 2003, for an additional six-month period ending December 27, 2003.⁶ On November 20, 2003, the Commission provided notice of the Exchange's proposed rule change to amend paragraph (j) of Amex Rule 118 and to extend the

⁵ An odd-lot order is an order for less than 100 shares.

⁶ See Securities Exchange Act Release No. 46304 (August 2, 2002) 67 FR 51903 (August 9, 2002) approving SR-Amex-2002-56, and Securities Exchange Act Release No. 48174 (July 14, 2003) 68 FR 43409 (July 22, 2003) (SR-Amex-2003-56).

pilot program through June 27, 2004,⁷ and on June 14, 2004, the Commission provided notice of a further extension of the pilot program through December 27, 2004.⁸

Under the Exchange's current pilot program, after the opening of trading in Nasdaq securities, odd-lot market orders and executable odd-lot limit orders are executed at the qualified national best bid or offer⁹ at the time the order is received at the trading post or through the Amex Order File. Odd-lot market orders and executable odd-lot limit orders entered before the opening of trading in Nasdaq securities are 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 are executed in accordance with Amex Rule 205 A(2), A(3), A(4), C(1) and C(2), respectively. Orders to buy or sell "at the close" are 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 are executed at the locked market price. In a crossed market condition, odd-lot market orders are executed at the mean of

⁷ See Securities Exchange Act Release No. 48995 (December 24, 2003) 68 FR 75670 (December 31, 2003) (SR-Amex-2003-102).

⁸ See Securities Exchange Act Release No. 49855 (June 14, 2004) 69 FR 35399 (June 24, 2004) (SR-Amex-2004-30).

⁹ In Amex Rule 118(j), the qualified national best bid and offer are defined as 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; 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 Amex 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 Amex Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

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 are executed when the crossed market condition no longer exists. In addition, in a crossed market condition, executable odd-lot limit orders are 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 June 30, 2005, 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 Act¹⁰ in general and furthers the objectives of Section 6(b)(5)¹¹ 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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.

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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). The Commission notes that Amex 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because acceleration of the operative date will allow the Amex to continue its pilot odd-lot execution procedures applicable to trading in Nasdaq securities without interruption. For this reason, the Commission designates the proposal 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.

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. 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-2004-108 on the subject line.

Paper comments:

¹⁴ For purposes only of waiving the 30-day operative delay of the proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- 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-2004-108. 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 such 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-2004-108 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).