

Commission will amend the Plan directly.¹⁴ The Participants submitted the 12th Amendment to the Plan to the Commission on August 30, 2001, which, among other things, includes a process for selecting an alternative securities information processor. Therefore, to enable the Commission to consider and to solicit comment on the 12th Amendment, the Commission believes that it is appropriate to extend the current Plan.

The Commission notes that the revised final Plan must provide for either (1) A fully viable alternative exclusive securities information processor ("SIP") for all Nasdaq securities, or (2) a fully viable alternative non-exclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan Participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) The Plan processor is chosen on the basis of bona fide competitive bidding and the Participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuring review or renewal of such contract, is made without that Plan Participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP shall operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by the Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq-listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that quality, and to disseminate transaction information and individually identified quotation

information for these members through the SIP.

Furthermore, the revised final Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters¹⁵ as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-16¹⁶ under the Act until the earlier of November 19, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission believes that the temporary extension of the exemptive relief provided to vendors is consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f)¹⁷ and 11A¹⁸ of the Act and in Rules 11Aa3-1¹⁹ and 11Aa3-2²⁰ thereunder.

VII. Conclusion

It Is Therefore Ordered, pursuant to Sections 12(f)²¹ and 11A²² of the Act and paragraph (c)(2) of Rule 11Aa3-2²³ thereunder, that the Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on an exchange on an unlisted or listed basis through November 19, 2001, and certain exemptive relief through November 19, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

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¹⁵ See also discussion in the SuperMontage order, *supra* note 4.

¹⁶ 17 CFR 240.11Ac1-2.

¹⁷ 15 U.S.C. 781(f).

¹⁸ 15 U.S.C. 78k-1.

¹⁹ 17 CFR 240.11Aa3-1.

²⁰ 17 CFR 240.11Aa3-2.

²¹ 15 U.S.C. 781(f).

²² 15 U.S.C. 78k-1.

²³ 17 CFR 240.11Aa3-2(c)(2).

²⁴ 17 CFR 200.30-3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 52468, October 15, 2001].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 18, 2001 at 10 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the closed meeting scheduled for Thursday, October 18, 2001:

Report of an investigation.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 16, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-26526 Filed 10-17-01; 12:03 pm]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 22, 2001:

A closed meeting will be held on Tuesday, October 23, 2001, at 9:30 a.m., and an open meeting will be held on Thursday, October 25, 2001, in Room 1C30, the William O. Douglas Room, at 2:30 p.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5

¹⁴ See *supra* note 4. The Commission notes that the SuperMontage order stated the Participants were directed to produce a revised plan by July 19, 2001. The Commission, however, provided for a 3-month extension of the July 19, 2001 deadline if requested by the Participants for good cause. The Commission recognizes that the Participants have been meeting to discuss the alternatives for a new plan and has submitted the 12th Amendment to the Plan.

U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, October 23, 2001, will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature; and
- Formal orders.

The subject matters of the open meeting scheduled for Thursday, October 25, 2001, will be:

1. The Commission will consider whether to adopt final amendments to its broker-dealer books and records rules, Rule 17a-3 and Rule 17a-4 under the Securities Exchange Act of 1934. The amendments to Rule 17a-3 would clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. The amendments to Rule 17a-4 would expand the types of records that broker-dealers must maintain and require broker-dealers to maintain or promptly produce certain records at each office to which those records relate. These amendments are designed to assist securities regulators, particularly state securities regulators, when conducting sales practice examinations of broker-dealers. These amendments were originally proposed on October 22, 1996 (see Exchange Act Release No. 37850, 61 FR 55593 (Oct. 28, 1996)), and were repropounded on October 2, 1998 (see Exchange Act Release No. 40518, 63 FR 54404 (Oct. 9, 1998)).

For further information, please contact Michael Macchiaroli, Associate Director, Division of Market Regulation at (202) 942-0132, Thomas McGowan, Assistant Director, Division of Market Regulation at (202) 942-4886, or Bonnie Gauch, Attorney, Division of Market Regulation at (202) 942-0765.

2. The Commission will consider the Pacific Exchange's proposal, filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, to establish the Archipelago Exchange as its equities trading facility.

For further information, please contact John Polise at (202) 942-0068.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 17, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-26570 Filed 10-17-01; 3:57 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44929; File No. SR-Amex-2001-86]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Temporary Use of Personal Cellular Telephones

October 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 11, 2001, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Amex asserts that the proposed rule change meets the criteria set forth in Rule 19b-4(f)(6)³ under the Act, which renders the proposal effective upon receipt of the filing by the Commission.⁴ 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

A proposed rule change adopting temporary Amex Rule 220T, which allowed Amex members to use personal cellular telephones on a temporary 10-business day basis, became effective on filing on October 1, 2001.⁵ The Amex adopted temporary Amex Rule 220T as a result of damage to Amex-provided telephones sustained during the September 11, 2001, attacks on the World Trade Center. The Amex proposes to extend the effectiveness of temporary Amex Rule 220T through and including November 9, 2001, to permit members continue to use personal cellular telephones as long as their service on Amex-provided telephones continues to be limited as a result of damage sustained in the attacks on the World Trade Center. In addition, the Amex proposes to include in the text of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The Amex has requested that the Commission waive the five-business day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii).

⁵ See Securities Exchange Act Release No. 44890 (October 1, 2001), 66 FR 51482 (October 9, 2001) (notice of filing and immediate effectiveness of File No. SR-Amex-2001-82 ("October 1 Release").

temporary Amex Rule 220T procedures applicable to a floor broker who receives an incoming call on a cellular telephone or initiates an outgoing call on a cellular telephone.⁶

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

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 Amex 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Telecommunications facilities in the western half of downtown New York sustained serious damage as the result of the attacks on the World Trade Center on September 11, 2001. In light of the damage sustained during the September 11, 2001, attacks, the Amex filed a proposal with the Commission to adopt temporary Amex Rule 220T. The proposal to adopt temporary Amex Rule 220T became effective on filing on October 1, 2001.⁷ Temporary Amex Rule 220T allowed Amex members to use personal cellular telephones on a temporary ten-business day basis, subject to the conditions in temporary Amex Rule 220T.

The Amex notes that its staff has worked diligently with the Amex's primary telecommunications service providers and member firms to restore the damaged telecommunications facilities to full operational status. The repairs, however, have not been completed. Accordingly, the Amex seeks to extend the effectiveness of temporary Amex Rule 220T through and including November 9, 2001, to permit Amex members (*i.e.*, specialists, registered traders, and floor brokers) to

⁶ These procedures were included in Amendment No. 2 to the proposal adopting temporary Amex Rule 220T on a temporary ten-business day basis and were discussed in the October 1 Release. See note 5, *supra*. The current proposal codifies the procedures applicable to floor brokers in the text of temporary Amex Rule 220T.

⁷ See October 1 Release, *supra* note 5.