

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46148; File No. SR-Amex-2002-56]

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

June 28, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 17, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend Amex Rule 118 (Trading in Nasdaq National Market Securities) and Rule 205 (Manner of Executing Odd-Lot Orders) to describe odd-lot execution procedures applicable to trading Nasdaq Market securities. These procedures are proposed to be implemented on a six-month pilot program basis. The text of the proposed rule change is 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:*

(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 adjusted 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 (i) by the Exchange or (ii) 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 (A) the (bid or offer) is no more than 25 cents above the bid (or below the offer), respectively, disseminated by the Exchange, (B) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (c) the quotation does not result in a locked or crossed market, (D) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (E) 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 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 locked or crossed market condition no longer exists, in accordance with subparagraph (i) of this paragraph (j).*

(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 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 Exchange has filed a proposed rule change to permit trading of Nasdaq National Market securities pursuant to unlisted trading privileges.<sup>3</sup> The Exchange proposes to add new paragraph (j) to proposed Rule 118 to describe procedures applicable to the execution of odd-lot orders. The

<sup>3</sup> See Securities Exchange Act Release No. 45365 (January 30, 2001), 67 FR 5626 (February 6, 2002)(SR-Amex-2001-106).

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

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

Exchange currently is modifying its existing system 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) will not be subject to automatic execution. The Exchange proposes to implement these procedures on a six-month pilot program basis.

Market and executable odd-lot limit orders to buy (sell) will 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 will 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 is 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 will be considered in determining the qualified national best bid or offer only if it meets the conditions specified in proposed Rule 118(j)(i), including that the best bid or offer is no more than 25 cents away from Amex's displayed bid or offer; the quotation conforms to Amex Rule 127 ("Minimum Price Variations"), that is, the bid or offer must be in a one cent increment; the quotation does not result in a locked or crossed market; the market center is not experiencing operational or system problems affecting quotation dissemination; and members of the other market center disseminating the quotations are not relieved of their obligations with respect to their quotations pursuant to the "unusual market" exception of Rule 11Ac1-1. These exceptions are similar to those applied to execution of odd-lots in Amex-listed securities under 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 will be similar to existing odd-lot execution procedures under Amex Rule 205A(2)-A(4), B and C. Such orders will be processed

manually and will not be automatically executed.

#### Locked and Crossed Market Conditions

The Exchange will be implementing 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). If a locked market exists, market orders and executable buy and sell limit orders will be executed at the same price as the locked price. If a crossed market exists, and the bid is higher than the offer by \$.05 or less, market and executable limit orders will be executed at the mean of the crossed bid and offer. If the mean is less than \$.01, the execution will be rounded up to the nearest \$.01.

#### Examples:

BBO is \$10.04 to \$10.00

Market odd lot order to buy or sell arrives

Execute at \$10.02

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)

If a crossed market exists and the bid is higher than the offer by more than \$.05, then an odd-lot order will not be automatically executed, but will be executed manually in accordance with proposed Rule 118(j)(i) (*i.e.*, filled at the price of the next unlocked and uncrossed qualified national bid or offer).

The Exchange also proposes to add new Commentary .05 to Rule 205 to reference Rule 118(j) odd-lot procedures.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(5)<sup>5</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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 Amex. All submissions should refer to File No. SR-Amex-2002-56 and should be submitted by July 25, 2002.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(6).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-17132 Filed 7-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 46159/July 2, 2002]

### In the Matter of: The National Association of Securities Dealers, Incorporated, (File Nos. SR-NASD-2002-61 and SR-NASD-2002-68); The Cincinnati Stock Exchange, Incorporated, (File No. SR-CSE-2002-06); and The Pacific Exchange, Incorporated, (File No. SR-PCX-2002-37); Order of Summary Abrogation

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> is summarily abrogating certain proposed rule changes of The National Association of Securities Dealers, Incorporated ("NASD"), The Cincinnati Stock Exchange, Incorporated ("CSE"), and The Pacific Exchange, Incorporated ("PCX").

On May 3, 2002, the NASD, through its subsidiary, The Nasdaq Stock Market ("Nasdaq"), filed SR-NASD-2002-61.<sup>2</sup> The proposed rule change (1) instituted a fee for the regulatory services provided in connection with the operation of The Nasdaq Stock Market; (2) expanded the market data revenue available for sharing with members under NASD Rule 7010(a)(2) by eliminating the deduction for the cost of regulatory services provided by NASD Regulation, Incorporated and increased the percentage of eligible revenue that is shared; and (3) extended the pilot period with respect to which market data revenue sharing is available through December 31, 2002.<sup>3</sup>

On June 13, 2002, the NASD, through its subsidiary, Nasdaq, filed with the Commission SR-NASD-2002-68.<sup>4</sup> The proposed rule change (1) modified the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System and Nasdaq's Computer

Assisted Execution System; and (2) modified and extended the transaction credit pilot program for InterMarket trades through December 31, 2002.

On June 28, 2002, the CSE filed with the Commission SR-CSE-2002-06. The proposed rule change extended a pilot revenue sharing program for trading Nasdaq National Market securities through August 30, 2002.<sup>5</sup>

On June 28, 2002, the PCX filed SR-PCX-2002-37, which extended a pilot program for sharing market data revenue with ETP Holders and Sponsored Participants on the Archipelago Exchange. The proposal extended the pilot through August 30, 2002.

Each of these filings was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.<sup>6</sup>

Pursuant to section 19(b)(3)(C) of the Act,<sup>7</sup> at any time within 60 days of the date of filing a proposed rule change pursuant to section 19(b)(1) of the Act,<sup>8</sup> the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of section 19(b)(1) of the Act<sup>9</sup> and reviewed in accordance with section 19(b)(2) of the Act,<sup>10</sup> 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 Commission believes that the above-referenced proposed rule changes raise serious questions as to whether they are consistent with the Act and with the protection of investors. These questions include, among other things, the effect of market data rebates on the accuracy of market data and on the regulatory functions of self-regulatory organizations.

Accordingly, the Commission believes that the procedures provided by section 19(b)(2) of the Act<sup>11</sup> will provide a more appropriate mechanism for determining whether the proposed rule changes are consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule changes.

*It is therefore ordered*, pursuant to section 19(b)(3)(C) of the Act,<sup>12</sup> that File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37 be, and they hereby are, summarily abrogated. If the self-regulatory organizations choose to re-file the proposed rule changes, they must do so pursuant to sections 19(b)(1)<sup>13</sup> and 19(b)(2) of the Act.<sup>14</sup>

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02-17249 Filed 7-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3425, Amdt. #2]

### State of Iowa; Disaster Loan Areas

In accordance with a notice received from the Federal Emergency Management Agency, dated July 1, 2002, the above numbered declaration is hereby amended to include Des Moines, Henry, Lee and Louisa Counties in the State of Iowa as disaster areas due to damages caused by severe storms and flooding beginning on June 3, 2002 and continuing through June 25, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Jefferson and Van Buren Counties in Iowa; Hancock, Henderson and Mercer Counties in Illinois; and Clark County in Missouri. All other counties contiguous to the above named primary counties have been previously declared.

The economic injury number assigned to Missouri is 9Q4800.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 18, 2002, and for economic injury the deadline is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-17262 Filed 7-9-02; 8:45 am]

**BILLING CODE 8025-01-P**

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

<sup>13</sup> 15 U.S.C. 78s(b)(1).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>2</sup> See Securities Exchange Act Release No. 45916 (May 10, 2002).

<sup>3</sup> This pilot, which was effective on filing, replaced the pilot filed in SR-NASD-2002-17.

<sup>4</sup> See Securities Exchange Act Release No. 46153 (July 1, 2002).

<sup>5</sup> See Securities Exchange Act Release No. 46147 (June 28, 2002).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>8</sup> 15 U.S.C. 78s(b)(1).

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> *Id.*