

CSC NY, as owner of the Project's assets, and TEUS, as operator; (iii) the Limited Liability Company Agreement of CSC NY, effective October 13, 2000 and as amended from time to time, and (iv) the Project's financing documents.

III. Requested Orders and Other Requests

As noted above, Applicants request an order under sections 9(a)(2) and 10 of the Act authorizing HQ, through TEI and TEUS to acquire interests in CSC NY. In addition, Applicants request an order exempting TEUS from registration under section 3(a)(1) of the Act. TEUS states that, following the Transaction, both it and CSC NY will be predominantly intrastate in character and carry on their business substantially in New York, the state in which both will be organized. HQ requests an order under section 3(a)(5) of the Act exempting it from registration. HQ states that, following the Transaction, it will continue to be a holding company that is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

Applicants further request that the Commission look through TEI, an intermediate holding company, for purposes of the analysis under section 11(b)(2) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary,

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48244; File No. SR-Amex-2003-47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Commentary .02 of Amex Rule 126(g) to Restrict the Crossing of Agency Orders of 5,000 Shares or More To Orders for the Accounts of Persons Who Are Not Brokers or Dealers

July 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on May 19, 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, II and III below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend Commentary .02 to Amex Rule 126(g) ("Special Rules" under "Precedence of Bids and Offers")³ to restrict the crossing of agency orders of 5,000 shares or more to orders for the accounts of persons who are not brokers or dealers. The text of the proposed rule change is below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

* * * * *

Rule 126(g)

Commentary

.02 When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 5,000 shares or more and are for the accounts of persons who are not [members or member organizations] *brokers or dealers (including, all U.S. registered and foreign registered brokers or dealers)*, the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 151, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price. No specialist or registered trader may effect a proprietary transaction to provide price improvement to one side or the other of

³ The Exchange made a typographical correction to the reference of Amex Rule 126. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Andy Shipe, Special Counsel, Division of Market Regulation, Commission, on July 16, 2003.

a cross transaction effected pursuant to this Commentary .02. A transaction effected at the cross price in reliance on this Commentary .02 shall be printed as "stopped stock".

* * * * *

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

Amex Rule 126(g), Commentary .02 provides that a member may cross an order to buy and an order to sell an equivalent amount of the same security at or within the prevailing quotation if both orders are for 5,000 shares or more, and if they are for the accounts of non-members or member organizations. These are referred to as "clean agency crosses" or "agency cross transactions." A member is not permitted to break up a proposed clean agency cross at the cross price, but may trade with the bid or offer side to provide price improvement to all or part of the bid or offer. The purpose of the rule is to permit more crosses to take place on the Exchange without risk of being "broken up" at the cross price and to reduce the amount of crossing activity lost to regional exchanges or the third market.

In addition, because these crosses are required under Amex Rule 151 to be effected at the minimum price variation, since the advent of decimal pricing, it is possible for members to interfere with a cross while providing price improvement of only \$.01 to a portion of the cross. The Commission approved an amendment to Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader acting as

principal.⁴ However, the Exchange believes that this recent change to Commentary .02 of Amex Rule 126(g) continues to put orders for the accounts of non-member brokers and dealers in a more advantageous position than Amex specialists and Registered Traders, but, more importantly, continues to put orders for the accounts of non-member brokers and dealers in a more advantageous position than public customer orders represented in the trading crowd and on the specialist's book at the clean agency cross price. This is because such non-member broker-dealer orders always have priority over public customer (non-broker or dealer) orders at the clean agency cross price. In addition, such orders can participate in a clean agency cross even though an Amex specialist or Registered Trader is prohibited from interacting with a clean agency cross to provide price improvement.

The Exchange believes it is appropriate to amend Amex Rule 126(g), Commentary .02 to limit the advantages offered by this rule to public customer orders only, and not to orders for the accounts of brokers or dealers. This change will prohibit orders for the accounts of brokers and dealers (including all U.S. and foreign registered brokers or dealers) from having priority over existing bids and offers and from engaging in crosses without risk of being broken up by a specialist and/or Registered Trader who wishes to trade at an improved price with one side or the other of the cross. The Exchange believes this change will facilitate the efficient crossing of public customer orders by placing non-member brokers and dealers in the same position as member brokers and dealers with respect to crossing procedures under Commentary .02 of Amex Rule 126(g).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, because 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

⁴ See Securities Exchange Act Release No. 47345 (February 11, 2003), 68 FR 8316 (February 20, 2003).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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 believes that the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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, 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 number SR-Amex-2003-47 and should be submitted by August 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48253; File No. SR-NASD-2003-115]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Industrial 15 Notes

July 29, 2003.

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 July 29, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade Strategic Return Notes' linked to the Industrial 15 Index ("Notes") issued by Merrill Lynch & Co., Inc. ("Merrill Lynch").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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 III below. Nasdaq has prepared summaries, set forth in Sections A, B,

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.