

*Brief description of amendment:* The amendment revised the Safety Limit Minimum Critical Power Ratio values for two recirculation loop and one recirculation loop operation for all fuel types to be used in the core.

*Date of issuance:* December 22, 2004.

*Effective date:* As of the date of issuance, to be implemented within 60 days.

*Amendment No.:* 158.

*Facility Operating License No. NPF-57:* This amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 22, 2004 (69 FR 34704). The September 9, 2004 and December 2, 2004 letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 2004.

No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* March 31, 2004, as supplemented by letters dated August 9, 2004, and October 20, 2004.

*Brief description of amendment:* The amendment created a Technical Specification (TS) for the Oscillation Power Range Monitor system. Additionally, it revised TS 3/4.4.1 to remove Thermal Hydraulic instability-related limiting conditions for operation and required actions.

*Date of issuance:* December 22, 2004.

*Effective date:* As of the date of issuance, to be implemented within 60 days.

*Amendment No.:* 159.

*Facility Operating License No. NPF-57:* This amendment revised the TSs.

*Date of initial notice in Federal Register:* August 3, 2004 (69 FR 46588). The August 9, 2004, and October 20, 2004 letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 27th day of December 2004.

For the Nuclear Regulatory Commission.

**James E. Lyons,**

*Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 05-2 Filed 1-3-05; 8:45 am]

**BILLING CODE 7590-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50936; File No. PCAOB-2004-02]

### Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule and Amendment No. 1 Amending Bylaws

December 27, 2004.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on March 18, 2004, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule amendments described in Items I and II below, which items have been prepared by the Board and are presented here in the form submitted by the Board. On November 12, 2004, the PCAOB filed with the Commission Amendment No. 1 to the proposed rule amendments. The Commission is publishing this notice to solicit comments on the proposed rule amendments, as amended by Amendment No. 1, from interested persons.

#### I. Board's Statement of the Terms of Substance of the Proposed Rule

On March 9, 2004, the Board adopted amendments to its bylaws. On October 26, 2004, the Board adopted amendments to the bylaws as adopted on March 9. The portions of its bylaws that the Board has amended through these cumulative adoptions are set out below, with italics indicating the text that is added, and brackets surrounding text that has been deleted, by the amendments adopted by the Board.

#### Bylaws of the Public Company Accounting Oversight Board[, Inc.]

[A Nonprofit Membership Corporation] Pursuant to the Provisions of Title I of the Sarbanes-Oxley Act of 2002

#### Bylaws of the Public Company Accounting Oversight Board[, Inc.]

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#### Article I

Name

1. The name of the [Corporation] *body corporate* shall be the Public Company Accounting Oversight Board[, Inc] (*the "Corporation"*).

#### Article II

Object

2.1. *Organization.* The Corporation is organized pursuant to, and shall be operated for such purposes as are set forth in, Title I of the Sarbanes-Oxley Act of 2002 (the "Act").

2.2. *Exempt Organization Purposes.* *The Corporation is organized exclusively for charitable, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.*

2.3. *Exempt Organization Uses of Earnings and Activities.* *No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, members or trustees of the Corporation, if any, or to officers of the Corporation, or other private persons, except that the Corporation shall be authorized and empowered to*

pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this document, the Corporation shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

### Article III

#### Officers

3.1. Principal Office. The principal office of the Corporation shall be in the City of Washington, District of Columbia.

3.2. Other Offices. The Governing Board of the Corporation (the "Governing Board") may designate other office locations, [outside of] within or without the District of Columbia, as the Governing Board may determine are necessary or appropriate to meet the [Corporation's] Governing Board's objectives.

3.3. Agent and Office for Service of Process. The Secretary (or Acting Secretary, as applicable) of the Corporation shall serve as the agent of the Corporation upon whom any process, notice or demand required or permitted by law to be served upon the Corporation may be served. The office of the Corporation for purposes of such service of process, notice or demand shall initially be the office located at 1666 K Street, NW, Washington, DC 20006.

### Article IV

#### Governing Board

4.1. Composition. The Governing Board shall consist of those persons appointed thereto by the Securities and Exchange Commission, pursuant to Section 101 of the Act.

4.2. Powers and Duties. The Governing Board shall have such powers and duties as are provided in Title I of the Act.

4.3. Quorum [and Majority]. A majority of the members of the Governing Board shall constitute a quorum.

4.4. Board Action. [An] Any act (i) authorized [approved] by majority vote of the members of the Governing Board present at a meeting of the Governing Board at which a quorum is present, or (ii) authorized by at least a majority of the Governing Board (other than at a meeting of the Governing Board) in accordance with any other procedure permitted by law, shall be [the] an act by vote of the Governing Board. If a Governing Board member has recused himself or herself from a decision, and a quorum of otherwise qualified Governing Board members cannot reasonably be assembled in time to meet the exigencies of that particular situation, the recused Governing Board member may be counted for quorum purposes only. As used in this section, "the exigencies of that particular situation" shall be defined to require circumstances in which the Governing Board is required to act within a limited period of time or in which the public interest or the protection of investors otherwise [prevent] prevents the deferral of action until a quorum of non-recused Governing Board members is available.

4.5[4]. Compensation and Expenses. The Governing Board shall set the compensation for its [Members] members. The Corporation shall pay or reimburse members [Members] of the Governing Board [shall be reimbursed by the Board] for reasonable expenses incurred in the discharge of their duties.

### Article V

#### Governing Board Meetings

[5.1. General. As soon as practical after the adoption of these bylaws, the Governing Board shall adopt a written policy defining the circumstances under which meetings of the Board will be open to the public (the "Open Meeting Policy").]

5.[2]1. [Regular Public] Governing Board Meetings. The Governing Board shall hold at least one (1) public meeting each [month, which meeting shall take place on the first Tuesday of each month (the "Regular Public Meeting"), or at] calendar quarter, and such other [time] meetings, which may be either public or non-public (in accordance with the Open Meeting Policy of the Governing Board), as the Chair [shall determine. The Board shall ensure that, under procedures defined in its Open Meeting Policy] (as defined below) deems necessary or appropriate to further the purposes of the Act. The Governing Board shall ensure that,

absent exigent circumstances as determined by the Governing Board, the public is informed, at least five (5) calendar days in advance, of the time, location, and general topics scheduled for discussion of each [Regular Public Meeting.] public meeting, and, in the event of such exigent circumstances, shall ensure that notice of a public meeting is provided as soon as practicable.

[5.3. Special Meetings. The Governing Board may hold additional meetings ("Special Meetings"), which may be public or non-public (in accordance with the Open Meeting Policy) as it deems necessary or appropriate to further the purposes of the Act. The Open Meeting Policy shall set forth procedures for providing the public with reasonable notice of public Special Meetings.]

5.[4]2. Telephonic Participation. [The Governing Board] Provided that all Governing Board members are able to hear each other (and, in the case of public meetings, the public located at the location specified in the meeting notice is able to hear all of the participating members of the Governing Board), the Governing Board may meet via telephone or teleconference, and any member thereof may participate in a meeting by telephone, provided that, in the case of a meeting that is open to the public, at least one Governing Board member shall be present at the location specified in the meeting notice.

### Article VI

#### Officers

6.1. General. The [Chair] Chairman of the Governing Board (the "Chair") shall also be the President and Chief Executive Officer of the Corporation. All other Governing Board members shall also be Vice Presidents of the Corporation. Governing Board members shall serve as officers of the Corporation without additional compensation.

6.2. Other Officers. The other officers of the Corporation shall include a Secretary, Treasurer, General Counsel, Chief Auditor, Chief Administrative Officer, Director of [Inspections and] Registration and Inspections, Director of [Investigations and] Enforcement and Investigations, and such other officers as the Governing Board may establish in accordance with such rules of the Governing Board as may be adopted for establishing officers.

6.3. Powers of the Chief Executive Officer.

(a) The Chief Executive Officer is responsible for, and has authority over, the management and administration of the Corporation, including

responsibility and authority for the appointment, dismissal, and supervision of personnel (other than *Governing Board* members and personnel employed regularly and full-time within the immediate offices of the *Governing Board* members), the distribution of business among such personnel and among organizational units of the Corporation, the use and expenditure of funds (including the procurement of goods and services), and the development (for *Governing Board* review) of strategic policy initiatives.

(b)(1) In carrying out any of the responsibilities under the provisions of this section 6.3, the Chief Executive Officer shall be governed by the general policies of the *Governing Board* and by such rules and decisions as the *Governing Board* may lawfully make.

(2) The appointment by the Chief Executive Officer of the officers of the Corporation designated in and established under section 6.2 shall be subject to the approval of, and made in consultation with, the *Governing Board*, and the dismissal of the officers of the Corporation designated in and established under section 6.2 shall be made in consultation with the *Governing Board*, except that when the *Governing Board* determines that the dismissal arises out of a conflict regarding the general policies of the *Governing Board*, it is also subject to the approval of the *Governing Board*.

(3) Each *Governing Board* member has responsibility and authority for the appointment, dismissal, and supervision of personnel employed regularly and full-time within the immediate office of the *Governing Board* member, subject to the *Governing Board's* overall personnel policies.

(4) The Chief Executive Officer has the responsibility and authority to develop, and present to the *Governing Board* for approval, an annual budget as well as mid-year adjustments, if any. There is reserved to the *Governing Board* its responsibility and authority with respect to determining the distribution of funds according to major programs and purposes, including those related to salary schedules and other conditions of employment.

(c) *Notwithstanding any other provision of these bylaws, however, the Director of the Office of Internal Oversight and Performance Assurance shall report directly to the Governing Board and the Governing Board shall have exclusive authority to hire, fire, and establish the compensation and other terms of employment of the Director.*

## Article VII

### Liability and Indemnification

7.1. No Personal Liability. No contract entered into by or on behalf of the Corporation shall personally obligate any employee, officer, or *Governing Board* member of the Corporation, including the employee, officer or *Governing Board* member authorizing such contract or executing same.

7.2. Indemnification.

(a) Unless *and to the extent* otherwise prohibited by law and as *otherwise* provided in *this* Section 7.2[(b)], the Corporation shall indemnify any employee, officer, or *Governing Board* member, or any former employee, officer, or *Governing Board* member (each, a "Potential Indemnitee"), against any and all [expenses and] liabilities (*including without limitation judgments, fines, and penalties against such Potential Indemnitee*) and reasonable expenses (*including without limitation reasonable counsel fees and other reasonable related fees*) actually and necessarily incurred by [him or her,] or imposed on him or her, in connection with *such Potential Indemnitee's* defense against any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, including appeals)[.] (*each, a "Proceeding"*) to which he or she may be or is made a party by reason of being or having been such [employee, officer, or Board member.] a *Potential Indemnitee* (*such liabilities and expenses, collectively, "Indemnifiable Amounts"*). *Notwithstanding the foregoing, Indemnifiable Amounts shall include amounts paid in settlement by a Potential Indemnitee only if such amounts are approved by the Governing Board.*

(b) [Notwithstanding section 7.2(a), there] *There* shall be no indemnification in relation to matters as to which the *Governing Board* finds that the [employee, officer, or Board member] *Potential Indemnitee* acted or omitted to act, in either case in bad faith, or engaged in willful misconduct in the performance of a duty to the Corporation. *Prior to making any such finding, the Governing Board shall provide the Potential Indemnitee with at least ten (10) business days written notice of its intent to consider the matter, within which time the Potential Indemnitee shall have the right to submit relevant written materials to the Governing Board for its consideration.*

[(c) Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel and other related fees; costs and

disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, such employee, officer, or Board member.]

[(d) The Corporation may advance expenses to, or where appropriate may itself, at its expense, undertake the defense of any employee, officer, or Board member; provided, however, that such employee, officer, or Board member shall undertake to repay or to reimburse such expense if it should be ultimately determined that he or she is not entitled to indemnification under this Article.]

(c) *In lieu of providing the advancements or indemnification provided for herein, the Corporation may, at its own expense not to be reimbursed by the Potential Indemnitee, undertake the defense of any such Potential Indemnitee, in which case the Governing Board in its discretion may determine whether the Corporation shall reimburse such Potential Indemnitee for any fees and expenses incurred as a result of his or her engagement of separate counsel, whether through advancements or indemnification. The provisions of this subsection 7.2(c) shall not apply to any Proceeding by or in the right of the Corporation.*

(d) *Except as otherwise provided herein, within fifteen (15) business days after the Corporation's receipt of a request therefore, and of a written undertaking by the Potential Indemnitee to repay or to reimburse all such amounts if it is determined that such Potential Indemnitee is not entitled to indemnification under this Article, the Corporation shall advance Indemnifiable Amounts to a Potential Indemnitee.*

(e) The provisions of this Article shall be applicable to [claims, actions, suits, or proceedings] *Proceedings* made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after adoption hereof.

(f) The indemnification *and advancements* provided by this Article shall not be deemed exclusive of any other rights to which [such employee, officer, or Board member] *any Potential Indemnitee* may be entitled under any applicable law.

(g) The indemnification *and advancements* provided by this Article shall not restrict the power of the *Governing Board* to provide any additional indemnification *and advancements* permitted by law.

(h) *As a condition precedent to a Potential Indemnitee's right to be indemnified or receive advancements hereunder, he or she shall (i) give to the Corporation notice in writing directed to*

the Secretary of the Corporation (or to such other individual as the Corporation may designate) as soon as practicable of any Proceeding made against such Potential Indemnitee for which indemnity will or could be sought, and (ii) other than in connection with a Proceeding by or in the right of the Corporation, provide the Corporation with such information and cooperation as it may reasonably request.

7.3. Insurance. The Governing Board may purchase insurance on behalf of any [employee, officer, or Governing Board member] Potential Indemnitee against any liability which may be asserted against or incurred by him or her [which] that arises out of such person's status as [an employee, officer, or Board member] a Potential Indemnitee or out of acts taken in such capacity, whether or not the Corporation would have the power to indemnify such person against that liability under law. To the extent that any applicable insurance is available to respond to any [claim] Proceeding addressed in this Article, such insurance shall be exhausted before any payment is made pursuant to the advancement and indemnification provisions in this Article.

[7.4. Severability. If any part of this Article shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and effectiveness of the remaining parts shall not be affected.]

#### Article VIII

Bylaw Amendments and Rules of the Governing Board [Corporation]

8.1. Amendments to Bylaws. Subject to the approval of the U.S. Securities and Exchange Commission as provided in the Act, the [The] Governing Board may from time to time amend, repeal, or supplement these bylaws.

8.2. Rules. In addition to, and separate from, these bylaws, the Governing Board may adopt such rules of the Governing Board [Corporation] as it deems necessary or appropriate to discharge its responsibilities under the Act.

#### Article IX

Miscellaneous Provisions

9.1. Fiscal Year. The Corporation's fiscal year shall be the calendar year.

9.2. Capital Expenditures. Except as expressly delegated by the Governing Board, no capital expenditure or investment shall be made without the approval of the Governing Board.

9.3. Selection of Auditor. The Governing Board shall retain an accounting firm to annually audit the

Corporation's financial records, which firm shall not perform any other services, except tax services, for the Corporation.

9.4. Headings. Section and other headings contained herein are for reference purposes only, and are not intended to describe, interpret, define, or limit the scope, extent, or intent of any of the provisions hereof.

9.5. Variation of Terms. All terms and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the respective person or persons may require.

9.6. Severability. If any part of these bylaws shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and effectiveness of the remaining parts shall not be affected.

\* \* \* \* \*

### II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Amendments to Its Bylaws

#### (a) Purpose

The purpose of the amendments is to clarify existing bylaws provisions, and to cause the bylaws of the PCAOB to address the following internal operational and administrative PCAOB matters in the manner best suited to the organization:

The PCAOB's Status as a Tax-Exempt Organization

The amendments specify that the PCAOB's purposes, activities and uses of earnings comport with the requirements of the Internal Revenue Service for exemption from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

Agent and Office for Service of Process, Notices and Demands

The amendments identify the office and agent of the PCAOB for purposes of service of process, notices, and demands.

Board Meetings and Action

The amendments modify the prior provisions regarding the frequency, scheduling and notice requirements of public Board meetings. The amendments require the Board to hold at least one public meeting per calendar quarter and, absent exigent circumstances, to ensure that public notice thereof is provided at least five days prior to the meeting. The amendments also address the manner in

which the Board may act by vote outside of a Board meeting.

Officer Titles

The amendments clarify the current titles of two of the Board's officers.

Director of the Office of Internal Oversight and Performance Assurance

The Board has established an Office of Internal Oversight and Performance Assurance in order to provide internal examination of the programs and operations of the PCAOB to help ensure the efficiency, integrity and effectiveness of those programs and operations. The amendments specify that the Director of this office reports directly to the Board, and that the Board has the exclusive authority to hire, fire and establish the compensation and other terms of employment of this Director.

Indemnification

The amendments condense portions of the indemnification provisions of the prior bylaws and include substantive modifications. These substantive modifications clarify (i) the types of costs and expenses for which the PCAOB will provide indemnification; (ii) the manner in which the Board may determine whether indemnification is to be provided; (iii) the right of the Board to undertake an individual's defense in lieu of payment of indemnification; (iv) the availability of payment of indemnifiable amounts in advance of the final disposition of a proceeding; and (v) basic conditions a potential indemnitee must satisfy in order to receive payment from the PCAOB.

(b) Statutory Basis

The statutory basis for the proposed amendments to the Bylaws is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed bylaws amendments will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

Not applicable.

### III. Date of Effectiveness of the Proposed Rule 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 Board consents the Commission will:

- (a) By order approve such proposed rule; or
- (b) Institute proceedings to determine whether the proposed rule 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 is consistent with the requirements of Title I of 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/pcaob.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number PCAOB-2004-02 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 PCAOB-2004-02. 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/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCAOB. All comments received will be posted without change; we do 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 PCAOB-2004-02 and should be submitted on or before January 25, 2005.

By the Commission,  
**Margaret H. McFarland,**  
*Deputy Secretary.*  
 [FR Doc. E4-3923 Filed 1-3-05; 8:45 am]  
**BILLING CODE 8010-01-P**

#### 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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.

#### 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 order<sup>5</sup> 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.<sup>6</sup> 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 pilot program through June 27, 2004,<sup>7</sup> and on June 14, 2004, the Commission provided notice of a further extension of the pilot program through December 27, 2004.<sup>8</sup>

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 offer<sup>9</sup> at the time the order is

<sup>5</sup> An odd-lot order is an order for less than 100 shares.

<sup>6</sup> 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).

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

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

<sup>9</sup> 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

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).