

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.

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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

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

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").

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.

use personal cellular telephones in the event that their service on the Amex's telephone system continues to be limited. In addition, the Amex proposes to amend temporary Amex rule 220T to include in the text of 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.

Under temporary Amex Rule 220T, the use by members of personal cellular telephones is subject to the following conditions:

- A member must have (1) tested his or her Exchange-provided telephones and found significant limitations on service, and (2) furnished a written statement to the Exchange to that effect. Members that previously applied to use a personal cellular telephone will be required to reapply for the extension of the effectiveness of temporary Amex Rule 220T;
- A member may not use a personal cellular telephone once full service is restored to the member's or member organization's Exchange telephone systems;
- A member must maintain his or her cellular telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records;
- If a floor broker receives an incoming call on a cellular telephone and the caller wishes to give the floor broker an order for a security traded at the post where the broker is standing, the broker must step out of the crowd prior to accepting the order. In contrast, if a broker receives an incoming call on a cellular telephone and the caller wishes to give the broker an order for a security traded at some other location on the floor, the broker does not have to leave the crowd where he or she is standing in order to receive the order. A floor broker also may initiate an outgoing call on a cellular telephone and (1) accept an order for a security traded at the post where the broker is standing without leaving the trading crowd, or (2) accept an order for a security traded at some other location on the floor; and
- Except as provided in temporary Amex Rule 220T, all other requirements applicable to the use of Exchange-provided telephones by members shall apply to the use by members of personal cellular telephones.⁸

⁸ The rules of the Exchange continue to prohibit individuals who are not properly qualified to take public orders for securities (*i.e.*, non-Series 7 member or member firm employees) from interacting with the public. Surveillance of such telephone usage will be accomplished through the

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no 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

The Amex has filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹² Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3) of the Act and Rule 19b-4(f)(6) thereunder. 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

record-maintenance requirements of temporary Amex Rule 220T, which requires members to maintain OSC cellular telephone records for at least one year and to give the Exchange the authority to inspect such records.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Amex has asked the Commission to designate such shorter time period so that the proposed rule change may become operative immediately. In this regard, the Amex believes that it would be prudent to permit members to use personal cellular telephones as a temporary back up in the event that regular phone service is not fully restored. In addition, the Amex notes that the Commission previously has permitted floor brokers, lead market makers, specialists, and registered traders on the Pacific Exchange and the Philadelphia Stock Exchange to use personal cellular telephone to conduct business.¹³ Moreover, the Amex notes that its proposal contemplates the use of personal cellular telephones on a temporary basis until the current telecommunications difficulties resulting from the September 11, 2001, attacks on the World Trade Center are resolved.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately to allow Amex members to continue to use personal cellular telephones through and including November 9, 2001, subject to the requirements of temporary Amex Rule 220T.¹⁴ The Commission finds that permitting the proposal to become operative immediately is consistent with the protection of investors and the public interest because it will help the Amex to continue to operate effectively while the Exchange and its telecommunications service providers work to repair the damage to the Amex's telecommunications facilities resulting from the September 11, 2001, attacks on the World Trade Center.

The Commission notes that temporary Amex Rule 220T is effective only on a temporary basis through and including November 9, 2001. In addition, the

¹³ See Securities Exchange Act Release Nos. 43972 (February 15, 2001), 66 FR 12579 (February 27, 2001) (order approving File No. SR-PHLX-00-48); and 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (order approving File No. SR-PCX-00-33).

¹⁴ For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission notes that the relief provided under temporary Amex Rule 220T applies in limited circumstances. Specifically, the Commission notes that under temporary Amex Rule 220T a member may use a personal cellular telephone only if the member has provided the Amex with a written statement indicating that service on the member's Exchange-provided telephone is limited significantly. In addition, a member may not continue to use a personal cellular telephone after full service is restored to the member's Amex telephone systems. The Commission also notes that temporary Amex Rule 220T provides safeguards in connection with the use of personal cellular telephones. In this regard, temporary Amex Rule 220T requires a member to maintain records of his or her cellular telephone calls, including logs of calls placed, for a period of not less than one year. In addition, as described more fully above, temporary Amex Rule 220T specifies procedures applicable to a floor broker who receives an incoming call on a cellular telephone or initiates an outgoing call on a cellular telephone.

A proposed rule change filed under Rule 19b-4(f)(6) normally requires that the self-regulatory organization give the Commission 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. However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the five-business day pre-filing notice requirement. The Amex has asked the Commission waive the pre-filing notice requirement. The Commission finds good cause to waive the five-business day pre-filing requirement because the Exchange's staff discussed with the Commission staff the need for an extension of temporary Amex Rule 220T prior to filing the proposed rule change. In addition, the Commission notes that the Amex submitted a draft of its proposal for review prior to filing the proposal.

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, 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 No. SR-Amex-2001-86 and should be submitted by November 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-26400 Filed 10-8-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Self Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Nasdaq National Market Execution System Fees Charged to Non-Members

October 12, 2001.

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 October 9, 2001, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") 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 Nasdaq. On October 11, 2001, Nasdaq filed Amendment No. 1 with the Commission.³ 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

Nasdaq proposes to modify the fees for use of the Nasdaq National Market Execution System ("NNMS" or "SuperSOES") charged to national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges ("UTP Exchanges"), on a pilot basis.⁴ The rule filing will become effective upon approval by the Commission and will be implemented the later of (i) December 1, 2001, or (ii) the first day of the month immediately following Commission approval. The rule filing will remain in effect, on a pilot basis, until November 30, 2002. During the pilot period, Nasdaq will assess the effect of the rule change on market participants and Nasdaq and may file additional changes to the level or structure of its fees. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

7010. System Services

(a)(1) Nasdaq Level 1 Service

The charge to be paid by the subscriber for each terminal receiving Nasdaq Level 1 Service is \$20 per month. This Service includes the following data:

(A) inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market and securities quoted in the OTCC Bulletin Board (OTCBB) service;

(B) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and

(C) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series.

⁴ Nasdaq also filed a companion rule filing (SR-NASD-2001-71) to apply these rule changes to NASD members. See Securities Exchange Act Release No. 44918 (October 10, 2001). SR-NASD-2001-71, proposes on a pilot basis, or: (1) Modify the fees for use of SuperSOES; (2) modify Nasdaq's liquidity provider rebate; (3) institute a quotation update charge; and (4) introduce a mechanism for sharing market data revenue with NASD members that report substantially all of their trades through the Automated Confirmation Transaction Service ("ACT"). SR-NASD-2001-71 is effective upon filing, and Nasdaq will implement it for a pilot period commencing on December 1, 2001 and ending on November 30, 2002.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from John M. Yetter, Assistant General Counsel, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (October 11, 2001) ("Amendment No. 1"). Amendment No. 1 is a technical amendment that amends the proposed rule language to clarify that the filing seeks to modify the fees for use of NNMSs by non-NASD members. Amendment No. 1 also notes that the rule filing, once effective, will be implemented the later of (i) December 1, 2001, or (ii) the first day of the month immediately following Commission approval, and will remain in effect, on a pilot basis, until November 30, 2002.