

proposed rule change relating to cross transactions in Nasdaq securities.⁸ In the event SR-Amex-2002-26 is approved by the Commission prior to September 30, 2002, the pilot program for Commentary .06 would terminate.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act⁹ 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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 in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes

waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will (i) permit the Amex to have these revised crossing procedures in place by the time the Amex begins trading Nasdaq securities on the Amex; and (2) provide the Amex with sufficient time to notify its members of the new crossing procedures before trading Nasdaq securities begins on the Amex. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 number SR-Amex-2002-58 and should be submitted by August 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46304; File No. SR-Amex-2002-56]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by American Stock Exchange LLC Relating to Odd-Lots in Nasdaq Securities

August 2, 2002.

I. Introduction

On June 17, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to describe odd-lot execution procedures applicable to trading Nasdaq National Market ("NNM") securities. The proposed rule change was published for comment in the **Federal Register** on July 10, 2002.³ On July 26, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

II. Description

A. Background

The Exchange filed a proposed rule change to permit trading of NNM securities pursuant to unlisted trading privileges.⁵ The Exchange currently is modifying its existing system in order to provide automatic execution of market and executable limit orders in NNM securities of less than 100 shares in a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46148 (June 28, 2002), 67 FR 45773 (July 10, 2002).

⁴ See Letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 25, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange: (1) Amended proposed Amex Rule 118(j)(i) to change the word "adjusted" to "qualified" in the first paragraph; (2) deleted paragraph (j)(i)(A) for proposed Amex Rule 118, which stated that the bid or offer in another market center will be considered in determining the qualified national best bid or offer only if it is no more than 25 cents above the bid or below the offer disseminated by the Amex; (3) re-numbered the provisions contained in the third paragraph of proposed Amex Rule 118(j)(i); and (4) changed the date of approval of the proposed rule change by the Exchange's Board of Governors to September 19, 2001.

⁵ See Securities Exchange Act Release No. 45365 (January 30, 2001), 67 FR 5626 (February 6, 2002)(SR-Amex-2001-106).

⁸ See SR-Amex-2002-26.

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).

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. In this filing, the Exchange proposes to add paragraph (j) to proposed Rule 118 to describe procedures applicable to the execution of odd-lot orders. The Exchange proposes to implement these procedures on a six-month pilot basis.

B. Execution of Odd-Lots

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 NNM 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 ("Plan"). 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). These conditions are that: (1) The quotation conforms to Amex Rule 127 ("Minimum Price Variations"), that is, the bid or offer must be in a one cent increment; (2) the quotation does not result in a locked or crossed market; (3) the market center is not experiencing operational or system problems affecting quotation dissemination; and (4) 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 under the Act.

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 205 A(2)-A(4), B and C. Such orders will be processed manually.

C. Locked and Crossed Market Conditions

The Exchange also proposed procedures for automatically executing market and executable limit odd-lot orders entered after the opening of Amex trading in NNM securities when the national best bid and offer is locked or crossed. Specifically, 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 does not fall on a one-cent increment, the execution will be rounded up to the nearest \$.01. 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.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(5).⁷ The Commission believes that the proposal is designed to remove impediments to and to perfect the mechanism of a free and open market, to facilitate transactions in odd-lot orders, to help ensure the economically efficient execution of these transactions, and in general to protect investors and the public interest.⁸

The Commission believes that the Exchange's proposed pricing procedure for odd-lot orders in NNM securities will facilitate the execution of such orders. Because the orders will be priced off a current market quote, investors should receive a timely execution of their orders. Moreover, the Commission believes that pricing standard odd-lot market orders at the qualified national best bid or offer will result in orders receiving execution prices that accurately reflect market

conditions, and will ensure that customers receive the best execution, both in terms of price and time.

The Commission also believes that it is reasonable for the Exchange to establish certain requirements to trigger use of the qualified national best bid or offer in the odd-lot pricing system. The limited prerequisites for use of quotes disseminated by other participants in the Plan are appropriate to protect the automatic execution feature of the odd-lot pricing system against the inclusion of aberrant quotations. The Commission believes that, in the instances enumerated by the Exchange, it is appropriate to use the Amex best bid or offer in lieu of quotes disseminated by other participants in the Plan that do not satisfy the conditions of proposed Amex Rule 118(j)(1).

Moreover, the proposed rule will ensure that a differential is not charged for standard odd-lot market orders in NNM securities. This prohibition furthers the Commission's objective of ensuring that customers receive the best execution of such orders, and that the price charged for the execution of standard odd-lot market orders will reflect the market price without additional transaction costs.

Finally, the Commission believes that the manner in which the Exchange proposes to handle locked and crossed markets is consistent with the Act because it is designed to reduce the frequency of locked and crossed markets, which should help to provide reliable quotation information, facilitate price discovery, and contribute to the maintenance of a fair and orderly market. The proposal seeks to eliminate locked markets by matching marketable orders against one another, and to eliminate crossed markets by executing the orders at the mean of the crossed bid and offer, if the bid is higher than the offer by \$.05 or less.⁹ The Commission believes this approach is reasonable. As the Commission has concluded previously, continued locking and crossing of the market can negatively affect market quality.¹⁰ By helping to reduce the negative impact of locked and crossed markets by dealing with them in a timely manner, the Commission believes that the proposal should improve market quality and enhance the production of fair and orderly quotations.

The Commission finds good cause for approving the proposed rule change

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(6).

⁸ In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

⁹ If the bid is higher than the offer by more than \$.05, an odd-lot order will be executed manually.

¹⁰ See Securities Exchange Act Release No. 40455 (September 22, 1998), 63 FR 51978 (September 29, 1998) (order approving File No. SR-NASD-98-01).

prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that granting accelerated approval to the proposal will allow the Amex to commence trading of NNM securities on a UTP basis in a timely fashion. Therefore, the Commission finds that granting accelerated approval to the proposed rule change is appropriate and consistent with section 19(b)(2) of the Act.¹¹

IV. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, in addition to making technical, non-substantive changes to the rule text to correct minor errors contained therein, the Exchange deleted paragraph (j)(i)(A) for proposed Amex Rule 118. This provision stated that the bid or offer in another market center will be considered in determining the qualified national best bid or offer only if it is no more than 25 cents above the bid or below the offer disseminated by the Amex.

The Commission believes that this change to the proposal was necessary so that bids and offers from other market centers in NNM securities that better the quote disseminated by the Amex would be considered in determining the qualified NBBO for odd-lots. The Commission believes that it would be inconsistent with the Act to allow broker-dealers to ignore quotes from other markets simply because they are better than the Amex quote by a designated amount.

In sum, the Commission finds that this change is consistent with section 6(b)(5) of the Act¹² in that it will facilitate transactions in odd-lot orders, help ensure the economically efficient execution of these transactions, and in general protect investors and the public interest. The Commission also finds that the Amex's proposed changes in Amendment No. 1 further strengthen and clarify the proposed rule change and eliminate a potential regulatory issue. Therefore, the Commission finds that granting accelerated approval to Amendment No. 1 is appropriate and consistent with section 19(b)(2) of the Act.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning Amendment No. 1, including whether the proposed amendment 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 August 30, 2002.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder. Moreover, the Commission finds that there is good cause to grant accelerated approval to the proposed rule change and Amendment No. 1 on a pilot basis, to expire six months from the date of this order.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change and Amendment No. 1 thereto (SR-Amex-2002-56) are approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46308; File No. SR-CBOE-2001-66]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Registration Filing Requirements of Associated Persons of Member Organizations

August 2, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the CBOE Fee Schedule and CBOE Rules 2.22 (Other Fees or Charges), 3.6A (Qualification and Registration of Certain Associated Persons), 9.2 (Registration of Options Principals), and 9.3 (Registration and Termination of Representatives) relating to the registration filing requirements of associated persons of member organizations. The Exchange filed an amendment to its proposal on April 22, 2002.³ The Exchange filed a second amendment to its proposal on May 29, 2002.⁴ The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on June 18, 2002.⁵ The Commission did not receive any comment letters regarding the proposal. This order approves the proposed rule change, as amended, and sets an effective date for the proposed rule change of September 20, 2002.

II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to allow for associated persons of CBOE member firms that are not members of NASD to register their qualification status electronically via NASD's Web CRD System ("Web CRD"). Currently, the Exchange requires those associated persons of member

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (April 19, 2002) ("Amendment No. 1").

⁴ See letter from Christopher R. Hill, Attorney II, Legal Department, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (May 29, 2002) ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 46062 (June 11, 2002), 67 FR 41552.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).