

Exchange filed Amendment No. 1 to the proposed rule change.⁵ 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 renumber Rule 131, Commentary .02, as approved in Release No. 34-47960,⁶ as Rule 131, Commentary .03. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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Types of Orders

Rule 131

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Commentary [.02] .03

(a) "Market at 4:00 p.m." orders. An order in Portfolio Depositary Receipts or Index Fund Shares that trade on the Exchange until 4:15 p.m. may be designated as "market at 4 p.m." to denote that it is a market order which is to be executed at or as close as practicable to the close of the regular equity trading session on the exchange (normally 4 p.m. Eastern Time).

(b) Where a member is holding simultaneously both buy and sell "market at 4 p.m." orders, and where there is an imbalance between the buy and sell "market at 4 p.m." orders, the member shall, at 4 p.m. or as close as practicable to 4 p.m., execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The member shall then pair off the remaining "market at 4 p.m." orders at the price of the immediately preceding sale described above.

(c) Where the aggregate size of buy "market at 4:00 p.m." orders equals the

aggregate size of sell "market at 4:00 p.m." orders in a given security, the buy and sell orders shall be paired off at the midpoint of the then prevailing bid and offer in that security on the Exchange. In the event that that midpoint consists of a number including a fraction of a cent, then the price of the transaction shall be at the next higher one cent increment above the midpoint.

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Precedence Accorded to Orders Entrusted to Specialists

Rule 155

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Commentary

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.06 Notwithstanding anything in Commentaries .03 and .04 above to the contrary, "market at 4 p.m." orders entered with the specialist in Portfolio Depositary Receipts and Index Fund Shares (see Rule 131, Commentary [.02] .03) shall be executed at one price at 4 p.m. or as close as practicable to 4 p.m. and shall have priority over limit orders priced at the execution price.

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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

On June 2, 2003, the Commission approved a proposed rule change in Release No. 34-47960 relating to "market at 4 p.m." orders for Exchange Traded Funds that added Commentary .02 to Rule 131 and Commentary .06 to Rule 155.⁷ The Exchange proposes to amend Rule 131, Commentary .02 as approved in Release No. 34-47960 to renumber it as Rule 131, Commentary .03. The Exchange also proposes to amend Rule 155, Commentary .06 to change the reference therein from Rule

131, Commentary .02 to Rule 131, Commentary .03. These changes would correct the erroneous numbering of two distinct provisions as Rule 121, Commentary .02, as approved in Release No. 34-47960 and Release No. 34-47658.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of 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 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, as amended, 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

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action¹¹

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act¹² and subparagraph (f)(1) of Rule 19b-4 thereunder¹³ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any

⁸ See Securities Exchange Act Release No. 47658 (April 10, 2003), 68 FR 19041 (April 17, 2003) (SR-Amex-2003-18).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ At the Exchange's request, the Commission corrected the rationale and the citation to the section of the Act pursuant to which the proposed rule change has become immediately effective. Telephone conversation between Michael Cavalier, Associate General Counsel, Exchange, and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (July 9, 2003).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(1).

⁵ In Amendment No. 1, the Exchange amended the proposal to replace Exhibit A as originally filed with a revised Exhibit A (i) to correct the text of Rule 131, Commentary .03 (as re-numbered) and (ii) to amend the text of Rule 155, Commentary .06, to change the reference therein from Rule 131, Commentary .02 to Rule 131, Commentary .03. See letter dated June 11, 2003, from Claire McGrath, Senior Vice President and Deputy General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that the period to commence on June 12, 2003, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁶ See Securities Exchange Act Release No. 47960 (June 2, 2003), 68 FR 34440 (June 9, 2003) (SR-Amex-2003-17).

⁷ *Id.*