

(iv) *Locked and Crossed Market Conditions*

(a) *For market and executable limit orders entered after the opening, when the national best bid and offer is in a locked market condition (i.e., the bid and offer are the same), odd-lot buy and sell orders will be executed at that locked market price.*

(b) *Crossed Market Condition—When a crossed market condition exists (i.e., bid higher than offer) and the national best displayed bid is higher than the national best displayed offer by \$.05 or less, market and executable limit orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest \$.01. When the national best displayed bid is higher than the offer by more than \$.05, an odd-lot order will not receive automatic execution and is to be executed manually at the time a crossed market condition no longer exists, in accordance either with subparagraph (i) or (iv)(a) of this paragraph (j), as appropriate.*

(v) *No odd-lot differential may be charged on any odd-lot orders, except for non-regular way trades effected under Rule 118 (j)(iii).*

(vi) *Odd-lot orders in Nasdaq National Market securities are permitted to be marked ("short") and are acceptable for all order types, and Rule 7, Commentary .02 shall apply to such orders.*

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Manner of Executing Odd-Lot Orders

Rule 205

Commentary

.01 through .04 No Change.

.05 *Odd-lot orders in Nasdaq National Market securities shall be executed in accordance with Rule 118(j).*

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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 August 2, 2002, the Commission approved the Exchange's proposed rule change establishing odd-lot execution procedures with respect to Nasdaq National Market securities pursuant to unlisted trading privileges on a six-month pilot basis.⁷ The proposed rule change revised Amex Rule 118 to add paragraph (j) to describe procedures applicable to the execution of odd-lot orders. The Exchange modified its systems in order to provide automatic execution of market and executable limit orders in Nasdaq National Market securities of less than 100 shares in a 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) are not subject to the automatic execution procedures applicable to odd-lots.) The Exchange's previous pilot program was approved on August 2, 2002 for a six-month period expiring February 3, 2003.⁸ The Exchange inadvertently failed to request an extension of the pilot beyond that date, and now proposes to reestablish these procedures on a six-month pilot basis. The Exchange believes that these procedures have operated efficiently and has received no complaints from members or the public regarding odd-lot executions. Therefore, the Exchange is requesting that the program be reestablished on a six-month pilot basis while the Exchange assesses whether to request that the procedures be permanently approved.

Under this program, market and executable odd-lot limit orders to buy (sell) would 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 Nasdaq securities on the Exchange would 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 would be 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. The bid or offer of such other market center would be considered in determining the qualified national best bid or offer only if it met the conditions specified in proposed Rule 118(j)(i), including (i) that the quotation conform to Amex Rule 127 (Minimum Price Variations), that is, the bid or offer be in a one cent increment; (ii) that the quotation not result in a locked or crossed market; (iii) that the market center not be experiencing operational or system problems affecting quotation dissemination; and (iv) that members of the other market center disseminating the quotations not be relieved of their obligations with respect to their quotations pursuant to the "unusual market" exception of Commission Rule 11Ac1-1.⁹ These exceptions are similar to those applied to execution of odd-lots in Amex-listed securities under Amex Rule 205, Commentary .04.

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 would be similar to existing odd-lot execution procedures under Amex Rule 205 A(2)-A(4), B and C. Such orders would be processed manually and would not be automatically executed.

Locked and Crossed Market Conditions

The proposed rule change, as amended, would implement specific procedures for automatically executing market and executable limit odd-lot orders entered after the opening of Amex trading in Nasdaq securities when the national best bid and offer is in a locked market condition (i.e., bid is equal to the offer) or a crossed market condition (i.e., bid is higher than the offer). In the case of a locked market, market orders and executable buy and sell limit orders would be executed at the same price as the locked price. In the case of a crossed market in which the bid is higher than the offer by \$.05 or less, market and executable limit orders would be executed at the mean of the crossed bid and offer. If the mean resulted in less than \$.01, the execution would be rounded up to the nearest \$.01.

Examples:

- (1) BBO is \$10.04 to \$10.00, Market odd lot order to buy or sell arrives, Execute at \$10.02

⁷ See Securities Exchange Act Release No. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002) (SR-Amex-2002-56).

⁸ *Id.*

⁹ 17 CFR 240.11Ac1-1.