

CSC NY, as owner of the Project's assets, and TEUS, as operator; (iii) the Limited Liability Company Agreement of CSC NY, effective October 13, 2000 and as amended from time to time, and (iv) the Project's financing documents.

### III. Requested Orders and Other Requests

As noted above, Applicants request an order under sections 9(a)(2) and 10 of the Act authorizing HQ, through TEI and TEUS to acquire interests in CSC NY. In addition, Applicants request an order exempting TEUS from registration under section 3(a)(1) of the Act. TEUS states that, following the Transaction, both it and CSC NY will be predominantly intrastate in character and carry on their business substantially in New York, the state in which both will be organized. HQ requests an order under section 3(a)(5) of the Act exempting it from registration. HQ states that, following the Transaction, it will continue to be a holding company that is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

Applicants further request that the Commission look through TEI, an intermediate holding company, for purposes of the analysis under section 11(b)(2) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary,

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48244; File No. SR-Amex-2003-47]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Commentary .02 of Amex Rule 126(g) to Restrict the Crossing of Agency Orders of 5,000 Shares or More To Orders for the Accounts of Persons Who Are Not Brokers or Dealers

July 29, 2003.

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 May 19, 2003, 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 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 Exchange proposes to amend Commentary .02 to Amex Rule 126(g) ("Special Rules" under "Precedence of Bids and Offers")<sup>3</sup> to restrict the crossing of agency orders of 5,000 shares or more to orders for the accounts of persons who are not brokers or dealers. The text of the proposed rule change is below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

\* \* \* \* \*

#### Rule 126(g)

##### Commentary

.02 When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 5,000 shares or more and are for the accounts of persons who are not [members or member organizations] *brokers or dealers (including, all U.S. registered and foreign registered brokers or dealers)*, the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 151, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price. No specialist or registered trader may effect a proprietary transaction to provide price improvement to one side or the other of

a cross transaction effected pursuant to this Commentary .02. A transaction effected at the cross price in reliance on this Commentary .02 shall be printed as "stopped stock".

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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

Amex Rule 126(g), Commentary .02 provides that a member may cross an order to buy and an order to sell an equivalent amount of the same security at or within the prevailing quotation if both orders are for 5,000 shares or more, and if they are for the accounts of non-members or member organizations. These are referred to as "clean agency crosses" or "agency cross transactions." A member is not permitted to break up a proposed clean agency cross at the cross price, but may trade with the bid or offer side to provide price improvement to all or part of the bid or offer. The purpose of the rule is to permit more crosses to take place on the Exchange without risk of being "broken up" at the cross price and to reduce the amount of crossing activity lost to regional exchanges or the third market.

In addition, because these crosses are required under Amex Rule 151 to be effected at the minimum price variation, since the advent of decimal pricing, it is possible for members to interfere with a cross while providing price improvement of only \$.01 to a portion of the cross. The Commission approved an amendment to Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader acting as

<sup>3</sup> The Exchange made a typographical correction to the reference of Amex Rule 126. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Andy Shipe, Special Counsel, Division of Market Regulation, Commission, on July 16, 2003.

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

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