

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 15, 2003.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48494; File No. SR-Amex-2003-79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Make Permanent Procedures on the Amex in Nasdaq National Market Securities

September 16, 2003.

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 September 5, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 Amex proposes to implement on a permanent basis crossing procedures on the Amex in Nasdaq National Market securities under Commentary .06 to Amex Rule 126(g). These procedures are currently implemented on a pilot basis, and are set to expire on September 30, 2003. The text of the proposed rule change is available at the 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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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

The Amex has implemented crossing procedures under Amex Rule 126(g), Commentary .06 on a pilot basis extending until September 30, 2003.⁶ The Exchange initially filed the pilot program on July 18, 2002⁷ and subsequently extended the program until March 31, 2003.⁸ The Exchange proposes that the procedures under Amex Rule 126(g), Commentary .06 become permanently effective.

Amex Rule 126(g), Commentary .06 provides that a floor broker is permitted to effect cross transactions in Nasdaq National Market securities involving 5,000 shares or more without interference by the specialist or market

makers if, prior to presenting the cross transaction, the floor broker first requests a quote for the subject security. These requests place the specialist and market makers on notice that the floor broker intends to cross within the bid-offer spread. This arrangement ensures that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but precludes the specialist or market maker from breaking up a cross transaction after the cross transaction is presented. The floor broker retains the ability to present both sides of the order at the post if the customers so desire.

The Exchange is making no change to Amex Rule 126(g), Commentary .06 as filed with the Commission in SR-Amex-2002-58, other than to implement Commentary .06 on a permanent basis. The Exchange is making no change to the manner in which crossing procedures under the pilot program currently operate.

2. Statutory Basis

The Exchange believes that the proposal 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, 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 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

The Exchange did not receive any written comments on 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:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange provided the Commission with notice of its intention to file this proposed rule change on August 29, 2003. The Commission reviewed the pre-filing notice and advised the Amex to file the proposed rule change. See August 29, 2003 email letter to Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, from

Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), Commission. The Amex asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ See Securities Exchange Act Release No. 47622 (April 2, 2003), 68 FR 17416 (April 9, 2003)(SR-Amex-2003-20).

⁷ See Securities Exchange Act Release No. 46309 (August 5, 2002), 67 FR 59102 (August 9, 2002)(SR-Amex-2002-58).

⁸ See Securities Exchange Act Release No. 46635 (October 10, 2002), 67 FR 64424 (October 18, 2002)(SR-Amex-2002-74).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).