

the Exchange represents that its staff found inconsistencies between the current automatic execution procedures and the text of Amex Rule 118(j) with respect to certain order types.

Accordingly, the Exchange proposes amendments to Amex Rule 118(j) to correct these discrepancies. In addition, the Exchange proposes a six-month extension for the pilot program.

a. Amendments to Odd-Lot Execution Procedures

The Exchange proposes to amend subparagraph (j)(i) of Amex Rule 118 ("Market and Executable Limit Orders") to state that, after the opening, only odd-lot market orders and executable odd-lot limit orders received through the Amex Order file would be automatically executed at the qualified national best bid or offer. Odd-lot orders received at the trading post (e.g., handled by a floor broker) would be manually executed at the qualified national best bid or offer. Furthermore, the Exchange proposes to amend subparagraph (j)(i) of Amex Rule 118 to state that executable odd-lot limit orders entered before the opening of Exchange trading would be executed manually at the price of the first round-lot or Part of Round Lot ("PRL") transaction on the Exchange. The Amex represents that, currently, only odd-lot market orders entered before the opening are held in accumulation and receive automatic execution at the price of the first round lot or PRL transaction.

The Exchange also proposes to amend subparagraph (j)(iv)(b) of Amex Rule 118 to more accurately describe the Exchange's odd-lot execution procedures in crossed markets (i.e., where the bid is higher than the offer). In a crossed market, odd-lot market orders, but not executable odd-lot limit orders, would receive automatic executions at the mean of the bid and offer prices when the displayed national best bid is higher than the displayed national best offer by \$.05 or less. When the displayed national best bid is higher than the displayed national best offer by more than \$.05, odd-lot market orders, but not executable odd-lot limit orders, would be executed manually when the crossed market no longer exists in accordance with subparagraph (j)(i) of Amex Rule 118. Executable odd-lot limit orders would be automatically executed at the crossed market bid price (in the case of an order to sell) or at the crossed market offer price (in the case of an order to buy). For example, if the bid and offer were to be 20.10 and 20.00, respectively, an executable odd-lot sell limit order priced at 20.10 or less would be automatically executed at 20.10, and an executable odd-lot buy

limit order priced at 20.00 or higher would be automatically executed at 20.00.

b. Extension of Odd-Lot Pilot Program

In addition to the abovementioned proposed amendments to paragraph (j) of Amex Rule 118, the Exchange seeks an extension of its odd-lot pilot program for an additional six-month period ending on June 27, 2004. The program was originally approved on August 2, 2002, for a six-month period, and was extended on July 14, 2003, for an additional six-month period ending on December 27, 2003.⁸ The current odd-lot procedures have operated efficiently, and the Exchange has received no complaints or adverse comments from members or the public regarding odd-lot executions. Accordingly, the Exchange believes that it is appropriate to extend the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,⁹ in general, and the provisions of section 6(b)(5) of the Act,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, and, in general, 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

No written comments were solicited or received with respect to the proposed rule change, as amended.

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

Because the foregoing proposed rule change, as amended, does not: (1) 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 if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.¹³ At any time within 60 days of the filing of the proposed rule change, as amended, 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 purpose of the Act.¹⁴

The Amex has requested that the Commission waive the 30-day operative delay. The Exchange represents that its current odd-lot procedures have operated efficiently, and that it has experienced nonoperational problems relating to odd-lot executions in Nasdaq securities under these procedures. Moreover, the Exchange states that it has received no adverse comments from its members or the public regarding such execution procedures, and believes that continued operation of the six-month pilot program beyond December 27, 2003, would continue to provide efficient execution of investors' odd-lot orders.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁵ Acceleration of the operative date will allow the Exchange to continue its pilot odd-lot execution procedures applicable to trading in Nasdaq securities without interruption for an additional six months, expiring on June 27, 2004. For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.

In addition, the Commission requests that the Exchange report any problems or complaints from members and the

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

¹⁴ For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on December 23, 2003, the date at which the Exchange filed Amendment No. 1.

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

⁸ See *id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).