

the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Credit Facility Committee will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Committee will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. PBA will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. The Credit Facility Committee will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board concerning the participation of the Funds in the facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Board of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the

Credit Facility Committee will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of the Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.² The arbitrator will resolve any problems promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the rate of return available from investments in overnight repurchase agreements and such other information presented to the Board in connection with the review required by conditions 13 and 14.

17. PBA will prepare and submit to the Board for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Credit Facility Committee will report on the operations of the credit facility to the Board quarterly. In addition, for two years following the commencement of the credit facility, the independent public accountants for each Fund shall prepare an annual report that evaluates PBA's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and filed pursuant to Item 77Q3 of Form N-SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the Application; (c) compliance with the percentage limitations on interfund

borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus or its SAI all material facts about its intended participation.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48173; File No. SR-Amex-2003-59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Renumber Commentary .02 to Rule 131 and Amend a Reference Thereto in Commentary .06 to Rule 155

July 14, 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 June 10, 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 Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon filing with the Commission. On June 12, 2003, the

² If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

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)(3).

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].

* * * * *

Types of Orders

Rule 131

* * * * *

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.

* * * * *

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.*

time within 60 days of the filing of the proposed rule change, 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 purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-Amex-2003-59 and should be submitted by August 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48174; File No. SR-Amex-2003-56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Reestablish on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable to Trading in Nasdaq Securities

July 14, 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 June 2, 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. On June 27, 2003, the Exchange amended the proposal.³ The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ 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 reestablish on a six-month pilot basis paragraph (j) to Amex Rule 118 (Trading in Nasdaq National Market Securities) and Commentary .05 to Rule 205 (Manner of Executing Odd-Lot Orders) to describe odd-lot execution procedures applicable to trading Nasdaq securities. The previous six-month pilot lapsed as of February 3, 2003, due to Amex's failure to request an extension before the previous pilot program expired. Amex is making no substantive changes to the pilot program, other than to reestablish it and extend its operation through December 27, 2003. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Trading in Nasdaq National Market Securities

Rule 118. (a) through (i) No change.
(j) *Odd-Lot Orders—Odd-lot orders in Nasdaq National Market securities shall be executed in the following manner:*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter dated June 27, 2003, from Geraldine M. Brindisi, Vice President and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Amex added language to clarify the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The Amex provided the Commission with written notice of its intent to file the proposed rule change on May 27, 2003. The Exchange 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). 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 the period to have commenced on June 27, 2003, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

(i) *Market and Executable Limit Orders—A market or executable limit order shall receive automatic execution, unless otherwise provided herein, at the price of the qualified national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the Amex Order File.*

All market and executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall receive automatic execution at the price of the first round-lot or Part of Round Lot (PRL) transaction on the Exchange.

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating 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 ("Plan"); provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

(ii) Limit Orders; Stop Orders; Stop-Limit Orders; Other Order Types—Unless otherwise provided herein, non-executable limit, stop, and stop-limit orders shall be executed in accordance with Rule 205, Parts A (2), A(3), and A(4), respectively. Orders to buy or sell "at the close" shall be filled at the price of the closing round-lot sale on the Exchange. An odd-lot order received prior to the close but not filled either before the close or on the close may be filled after the close in accordance with the provisions of Rule 205, Part C (1).

(iii) Non-Regular Way Trades—Non-regular way trades shall be effected in accordance with the provisions of Rule 205, Part C (2).

¹⁴ 17 CFR 200.30-3(a)(12).