

Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540.

#### FOR INFORMATION REGARDING

#### ADMINISTRATIVE COORDINATION CONTACT:

Cyrus S. Benson, Team Leader,  
Publications Team, RIS Support  
Services, (202) 606-0623.

Office of Personnel Management.

**Kay Coles James,**

Director.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47796; File No. SR-Amex-2003-34]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC, Relating to Indications, Openings and Re-Openings

May 5, 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 April 23, 2003, the American Stock Exchange, LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II and III below, which items have been prepared by Amex. 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 adopt rule 119 to codify and revise the Exchange's policies regarding tape indications and re-openings in stocks that are subject to a trading halt (other than "circuit breaker" or "equipment changeover" halts). Below is the text of the proposed rule change. Although this text is not currently in the Amex rulebook, it was approved by the Commission as Amex policy in 1997.<sup>3</sup> Text that Amex is now proposing to add to the previously approved policy is *italicized*.

\* \* \* \* \*

#### INDICATIONS, OPENINGS AND REOPENINGS

*Rule 119. Except as provided elsewhere in the Constitution and rules of the Exchange, this rule shall govern indications, openings and (re)openings of securities traded on the Exchange.*

##### (1) Mandatory Indications: When Commencements Is Permitted

A specialist is required to disseminate indications of interest prior to (re)opening trading in a previously halted stock or in the event of a delayed opening as follows:

(a) **Regulatory Halts**—A specialist may commence disseminating indications of interest in a stock subject to a Regulatory Halt when the Exchange determines that an adequate publication or disclosure of information has occurred so as to permit the termination of the halt and a Floor Official approves the dissemination of indications of interest for the stock. In the case of an inter-day Regulatory Halt (*i.e.*, a halt which remains in effect from the preceding trading day) such approval may include disseminations of interest before the Exchange opens for business.

(b) **Non-Regulatory Halts**—A specialist may commence disseminating indications of interest in a stock subject to a Non-Regulatory Halt when an Exchange Official or Floor Governor approves such dissemination, in consultation with a Floor Official when appropriate. In the case of an inter-day Non-Regulatory Halt, such approval may include disseminations of interest before the Exchange opens for business.

(c) **Delayed Openings**—A specialist may commence disseminating indications of interest in a stock subject to delayed opening other than by reason of an inter-day Regulatory Halt, when an Exchange Official or Floor Governor approves.

(d) **"Regulatory Halt" Defined**—For the purposes of this policy, "Regulatory Halt" has the meaning that the CTA Plan assigns to it.

(e) **"Circuit Breaker" Halts**—Dissemination of an indication shall be mandatory prior to the reopening of trading following a "circuit breaker" halt under rule 117 if such reopening will result in a price change constituting the lesser of 10% or three points from the last sale reported on the AMEX, or five points if the previous reported last sale is \$100 or higher. No indications would be required if the price change is less than one point. If, on any day that rule 117 halt is in effect, trading in a security has not reopened by one-half hour after resumption of trading on the Exchange, the matter should be treated

as a delayed opening, and would require an indication as well as a Floor Official's supervision.

##### (2) Optional Indications

(a) **Spin-Offs, IPOs, Etc.**—Prior to the commencement of trading in a stock for which there has been no prior public market, the specialist in the stock may disseminate indications of interest for the stock if an Exchange Official or Floor Governor approves. In the case of a spin-off, any Floor Official may approve such dissemination which may include dissemination before the Exchange opens for business.

(b) **Other Opening Situations**—In any opening situation not specified above, the specialist in the affected stock may disseminate indications of interest for the stock before the Exchange opens for business if an Exchange Official or Floor Governor approves, and thereafter if any Floor Official approves.

##### (3) Waiting Periods Before (Re)Opening

(a) **Periods Specified**—The specialist may not (re)open a stock that has been the subject of an indication pursuant to paragraphs (1) and (2) above until:

(i) Ten minutes after an indication is displayed, except that the minimum halt period shall be five minutes after an indication is displayed in the case of an equipment change over halt condition, in each case, unless clause ii applies;

(ii) Five minutes after an indication is displayed if one or more indications preceded it. However, regardless of the number of indications disseminated, the minimum waiting period is ten minutes. For example, if only 3 minutes elapsed from the time of the first indication to the second indication, the minimum waiting period after the second indication would be 7 minutes.

(iii) *With respect to a post-opening trading halt, a minimum of five minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open three minutes after the last indication, provided that at least five minutes must have elapsed from the dissemination of the first indication.*

In the case of inter-day Non-Regulatory Halts, the Exchange Official or Floor Governor involved may dispense with the waiting period if no unusual situation exists prior to the opening of the affected stock. In the case of indications made pursuant to paragraph 2(b), the Exchange Official or Floor Governor involved may alter the applicable waiting periods to take into account the circumstances of the particular opening situation.

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

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

<sup>3</sup> See Release No. 34-38549 (April 28, 1997), 62 FR 24519 (1997).

If during an equipment changeover trading halt in a stock, a significant order imbalance develops or a regulatory condition occurs (*i.e.*, news pending or news dissemination) then the nature of the halt condition shall be changed accordingly, and notice of such change shall be disseminated. The minimum halt period prior to the resumption of trading in this case shall be ten minutes following the first indication after the new halt condition is disseminated.

“Significant Order Imbalance” Defined—For purposes of this subparagraph, a “significant order imbalance” is one which would result in a reopening at a price change constituting two points or more away from the last previous sale in a stock selling at \$20 or more, one point or more away from the last previous sale in a stock selling at \$10 or more (but less than \$20), and one-half point or more away from the last previous sale in a stock selling at less than \$10.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. 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

In 1997, the Commission approved the Exchange's policies regarding indications, openings and re-openings.<sup>4</sup> The Exchange is now proposing to codify these policies as new rule 119 to make them more accessible to members and member organizations. The Exchange also is proposing to update the Exchange's rules on re-openings to conform them to those in effect at the New York Stock Exchange (“NYSE”).

The Exchange's current policy on reopening trading in a stock that has opened and then is halted during a trading day (*i.e.*, a stock that is subject to a “post-opening” trading halt) requires a minimum of 10 minutes to

elapse between the first price indication and the reopening of the stock, and a minimum of five minutes to elapse after the last indication, provided in all cases that the minimum 10 minutes has elapsed since the first indication. The Exchange is proposing to compress these minimum time periods before reopening a stock that is subject to a post-opening trading halt to five minutes after the first indication, and three minutes after the last indication, provided that a minimum of five minutes has elapsed since the first price indication.

In developing procedures for openings and re-openings over the years, the Exchange has focused on providing a balance between timeliness and achieving a price that reflects market conditions. As the speed of communications has increased, the Exchange believes that it is important to provide the ability to react more quickly if circumstances permit a reopening of trading in a shorter period of time. Management believes that the newly approved NYSE procedures for reopening after a post-opening trading halt strike the appropriate balance between preserving the price discovery process and providing timely opportunities for investors to participate in the market.<sup>5</sup> Thus, at the end of the five-minute period, if equilibrium has been established, there would be no purpose to extending the halt for a longer period. If, however, at the end of the five minute period, more time is needed to bring supply and demand into balance, then the resumption of trading could be further delayed. Trading halts will continue to be overseen by Floor Officials who will use their judgment to see that the stock reopens at an appropriate time.

#### 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of section 6(b)(5)<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 and dealers.

<sup>5</sup> See Release No. 34–47104 (December 30, 2002), 68 FR 597 (January 6, 2003).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 Amex. All submissions should refer to File No. SR–Amex–2003–34 and should be submitted by June 2, 2003.

<sup>4</sup> See n. 3, *supra*.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47801; File No. SR-NASD-2003-76]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Restate the Certificate of Incorporation of The Nasdaq Stock Market, Inc.

May 6, 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 April 29, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the rule effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

Nasdaq is restating (but not substantively amending) its certificate of incorporation. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

#### Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

The undersigned, \_\_\_\_\_, the \_\_\_\_\_ of The Nasdaq Stock Market, Inc. ("Nasdaq"), a Delaware corporation, does hereby certify:

First: That the name of the corporation is The Nasdaq Stock Market, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which Nasdaq was originally incorporated was "NASD Market Services, Inc."

Second: That the *Restated Certificate of Incorporation of Nasdaq dated June 27, 2000, as previously amended by the Certificate of Designations, Preferences and Rights of Series A Cumulative Preferred Stock dated March 8, 2002, the Certificate of Designations, Preferences and Rights of Series B Preferred Stock dated March 8, 2002, and the Certificate of Amendment dated August 7, 2002*, is hereby [amended and] restated *and integrated* to read in its entirety as follows:

#### Article First—Article Third

No change.

#### Article Fourth

A. No change.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq (the "Board") is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:

(1) The designation of the series, which may be by distinguishing number, letter or title.

(2) The number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).

(3) The amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative.

(4) Dates at which dividends, if any, shall be payable.

(5) The redemption rights and price or prices, if any, for shares of the series.

(6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.

(7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.

(8) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made.

(9) Restrictions on the issuance of shares of the same series or of any other class or series.

(10) The voting rights, if any, of the holders of shares of the series. *Pursuant to the foregoing authority, the Board has previously authorized the issuance of (i) Series A Cumulative Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002, and (ii) Series B Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002. The number of shares included in the Series A Cumulative Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex A hereto, and the number of shares included in the Series B Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex B hereto.*

C. No change.

#### Article Fifth—Article Eleventh

No change.

Third: That such Restated Certificate of Incorporation has been duly adopted by Nasdaq in accordance with the applicable provisions of Section[s] 242 and] 245 of the General Corporation Law of the State of Delaware [and in accordance with Section 228 of the General Corporation Law of the State of Delaware (by the written consent of its sole stockholder).];

*Fourth: That such Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of Nasdaq's certificate of incorporation as heretofore amended or supplemented, and that there is no discrepancy between those provisions*

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78S(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).