

the Act, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

6. Applicants represent that the requested exemptions are necessary and appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions 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. 34-48937; File No. SR-Amex-2003-109]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Correct a Numerical Error on a Previously Approved Proposed Rule Change

December 17, 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 December 11, 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 Amex has designated this proposal as one concerned solely with the administration of the Amex pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(3)<sup>4</sup> thereunder, which renders the proposal 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 Substance of the Proposed Rule Change

The Amex proposes to change the rule number originally assigned to Amex Rule 359 (Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms) to Amex Rule 359A. The Amex proposes no substantive changes to the rule. 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 Exchange proposes to replace the rule number originally assigned to Amex Rule 359 (Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms) in SR-Amex-2003-06,<sup>5</sup> and replace it with Amex Rule 359A. The same rule number was chosen inadvertently in a subsequent proposed rule change after SR-Amex-2003-06 was filed on January 31, 2003, and Amendment No. 1 was filed on May 20, 2003. The other proposed rule change bearing a similar rule number was approved ahead of SR-Amex-2003-06.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of section 6(b)(1) of the Act<sup>7</sup> in particular in that it is designed to enforce compliance by its members and

persons associated with its members, with the rules of the Exchange.

##### 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

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(3) of Rule 19b-4 thereunder,<sup>9</sup> because it is concerned solely with the administration of the Amex.<sup>10</sup> At any 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 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Amex-2003-109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(3).

<sup>10</sup> The Commission notes that the Amex referenced section 19(b)(3)(A)(ii) of the Act as the rationale for the instant proposed rule change being effective upon filing with the Commission. 15 U.S.C. 78f(b)(3)(A)(ii). See SR-Amex-2003-109, page 6 of 7. The Amex's reference to this section of the Act is improper. The Commission assumes, however, that the error is a typographical error, and did not, in this instance, require the Amex to amend the proposed rule change to correct its mistake.

<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).

<sup>5</sup> Securities Exchange Act Release No. 48258 (July 30, 2003), 68 FR 46674 (August 6, 2003).

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

<sup>7</sup> 15 U.S.C. 78f(b)(1).

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 Amex. All submissions should refer to file number SR-Amex-2003-109 and should be submitted by January 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48935; File No. SR-NASD-2003-171]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify CAES and ITS Pricing

December 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

*Average daily share volume executed in CAES or through the ITS/CAES linkage during a month (both NYSE & AMEX listed securities):*

*0 to 499,999*

*500,000 or more*

*Average daily share volume executed in CAES or through the ITS/CAES linkage (both NYSE & AMEX listed securities):*

*1 or more*

(e) through (u) No change.

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq included statements concerning

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 24, 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 establishing or changing a due, fee, or other charge imposed by Nasdaq under section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> which renders the proposal 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 Substance of the Proposed Rule Change

Nasdaq proposes certain changes to NASD Rule 7010 ("System Services") to amend the transaction charges for users of the Computer Assisted Execution System ("CAES") and of the CAES linkage with the InterMarket Trading System ("ITS"). Nasdaq will implement the proposed rule change on December 1, 2003.

The text of the proposed rule change is below.<sup>5</sup> Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

#### 7010. System Services

(a) through (c) No change.

(d) Computer Assisted Execution Service. The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

#### (1) Service Charges

\$100 per month for each market maker terminal receiving CAES.

#### (2) Transaction Charges and Credits

[(A) \$0.003 per share executed up to a maximum of \$75 per execution shall be paid by any order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part, and \$0.0015 per share executed up to a maximum of \$50 per execution shall be credited to the CAES market maker that executes such an order.

(B) \$0.002 per share executed up to a maximum of \$75 per execution shall be paid by any member that sends a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part, and \$0.0015 per share executed up to a maximum of \$37.50 per execution shall be credited to a member that executes such an order.]

(A) *Orders to buy or sell securities listed on the New York Stock Exchange: no charge and no credit.*

(B) *Orders to buy or sell securities not listed on the New York Stock Exchange:*

*Fee per share executed for orders entered into CAES or commitments sent through the ITS/CAES linkage if such an order or commitment is executed in whole or in part:*

*\$0.0027, with a maximum of \$75 per execution*

*\$0.0025, with a maximum of \$75 per execution*

*Liquidity rebate per share executed for orders/quotes posted into CAES, if such an order/quote is executed in whole or in part:*

*\$0.002, with a maximum of \$37.50 per execution*

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. Nasdaq 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Nasdaq proposes to modify certain transaction charges for users of CAES and the CAES/ITS linkage. Nasdaq

rule change. Telephone conversation between Alex Kogan, Attorney, Nasdaq, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, dated December 5, 2003.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>27</sup> 17 CFR 240.19b-4.

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

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

<sup>5</sup> The Commission made technical changes to the rule text to address minor errors in the proposed