

Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in the Replacement Portfolio will equal the value of its investments in the Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

5. Applicants state that the Section 17 Applicants will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a-7. To the extent that the In-Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a-7, the Section 17 Applicants assert that the terms of the In-Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In-Kind Transactions satisfied all of the conditions enumerated in Rule 17a-7. The Section 17 Applicants also assert that the proposed In-Kind Transactions by the Section 17 Applicants do not involve overreaching on the part of any person concerned. Furthermore, the Section 17 Applicants represent that the proposed Substitution will be consistent with the policies of the Removed Portfolio and the Replacement Portfolio, as recited in the Trust's current registration statement.

6. Applicants also assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

### Conclusion

For the reasons set forth in the Application, the Section 26 Applicants and the Section 17 Applicants each respectively state that the proposed Substitution and the related In-Kind Transactions meet the standards of Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act, respectively, and respectfully request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act.

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

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

[FR Doc. 02-20145 Filed 8-8-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 12, 2002:

A Closed Meeting will be held on Tuesday, August 13, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, August 13, 2002, will be:

Formal orders of investigation;  
Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings of an enforcement nature;  
Adjudicatory matter; and  
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: August 6, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46313; File No. S7-31-02]

### Ownership Reports and Trading by Officers, Directors and Principal Security Holders

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of Supplemental Information on Section 16(a) and Related Rules.

**SUMMARY:** The Commission today is issuing supplemental information

regarding the filing of ownership reports by officers, directors and principal security holders under Section 16 of the Securities Exchange Act of 1934. The release addresses the amendments to Section 16(a) enacted by the Sarbanes-Oxley Act of 2002 and related final rules that the Commission will consider adopting no later than the August 29, 2002 effective date of those amendments.

**DATES:** We welcome any comments on the implementation of the legislative provisions relating to Section 16(a). In light of the August 29, 2002 effective date of the amendments to Section 16(a), comments should arrive at the Commission by August 15, 2002.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

Comments also may be submitted electronically at the following electronic mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). To help us process and review your comments more efficiently, comments should be sent by one method only. All comment letters should refer to File No. S7-31-02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (<http://www.sec.gov>).<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Anne M. Krauskopf, Special Counsel, David Lee, Special Counsel, or Carol McGee, Special Counsel at (202) 942-2900, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0402.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 16<sup>2</sup> applies to every person who is the beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act,<sup>3</sup> and each officer and director (collectively, "insiders") of the issuer of such security. Upon becoming an insider, or upon the Section 12 registration of that security, Section

<sup>1</sup> We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

<sup>2</sup> 15 U.S.C. 78p.

<sup>3</sup> 15 U.S.C. 78l.

16(a)<sup>4</sup> requires an insider to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer. To keep this information current, Section 16(a) also requires insiders to report changes in such ownership, or the purchase or sale of a security-based swap agreement<sup>5</sup> involving such equity security. As currently in effect, Section 16(a) provides for such transactions to be reported on a monthly basis within 10 days after the close of each calendar month in which such a change in ownership or purchase or sale of a security-based swap agreement occurs.

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act")<sup>6</sup> was enacted. Section 403(a) of the Act amends Section 16(a) to require insiders to report such a change in ownership or purchase or sale of a security-based swap agreement "before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible."<sup>7</sup>

Section 403(b) of the Act provides that this amendment becomes effective 30 days after the date of enactment. That effective date is August 29, 2002. Thus, all transactions subject to Section 16(a) executed on or after August 29, 2002 will be reportable by insiders on Form 4<sup>8</sup> in accordance with the amended two-business day deadline, except where the rules under Section 16(a) provide otherwise.

The Act also amends Section 16(a) to require, not later than one year following enactment, electronic filing of change of beneficial ownership reports, and website posting of such reports by

both the Commission and issuers.<sup>9</sup> We have announced our intention to begin rulemaking to make the filing of Section 16(a) reports on EDGAR mandatory,<sup>10</sup> and will proceed expeditiously with that rulemaking and related system programming to assure adoption within the one-year period mandated by the Act. Meanwhile, we encourage insiders and companies filing Section 16(a) reports on their behalf to make these filings electronically. To facilitate EDGAR conversion under the current filing system, we will accept electronically-filed Section 16(a) reports that are not presented in the standard box format and omit the horizontal and vertical lines separating information items, so long as all required information is presented in the proper order.

## II. Rulemaking To Implement Amended Section 16(a)

To implement the new accelerated reporting deadline, we anticipate adopting final rules that will become effective no later than the August 29, 2002 effective date of the Section 16(a) amendments. We anticipate that these final rules will accomplish the following:

1. Adopt amendments to Form 4 to conform all references to the applicable filing deadline to the amended statutory filing deadline and to reflect that Form 4 is no longer a monthly form.

2. Adopt amendments to Rule 16a-3(f)<sup>11</sup> so that transactions between officers or directors and the issuer exempted from Section 16(b)<sup>12</sup> short-swing profit recovery by Rule 16b-3<sup>13</sup> that currently may be reported within 45 days after the issuer's fiscal year end on Form 5<sup>14</sup> will be required to be reported within two business days on Form 4.

3. Adopt one or more new rules under Section 16(a) that will provide different Form 4 due dates for narrowly defined specified transactions, if any, as to which we determine that the two-business day reporting period is not feasible.

Accelerated reporting of officers' and directors' reportable transactions with an issuer exempted by Rule 16b-3 is necessary to satisfy the Act's purpose to require immediate disclosure of insider transactions. We previously solicited

comment on this regulatory action.<sup>15</sup> In light of the Section 16(a) amendments enacted by Section 403 of the Act, we do not intend to consider further our proposed amendments discussed in that release to require companies to report directors' and executive officers' transactions in company equity securities. We continue to consider the other amendments proposed in that Release that would require companies to disclose information about (1) directors' and executive officers' arrangements intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c)<sup>16</sup> and (2) company loans and loan guarantees to directors and executive officers that are not prohibited by Section 402 of the Act.

Rule 16a-3(f) as amended would subject to two-business day reporting on Form 4 all reportable transactions with the issuer exempted by Rule 16b-3, including transactions in issuer equity securities and derivative securities. Derivative securities transactions so reportable under the amended rule would include, without limitation, issuances, exercises,<sup>17</sup> and cancellations and reprints of stock options, including repricings.

We currently do not intend to consider rules providing exemptions from the two-business day reporting deadline for Form 4 based on non-feasibility for transactions categorized by type of issuer, type of insider, or size of transaction. We are reviewing the deadlines only for narrowly specified types of transactions where objective criteria prevent the insider from controlling (and in many cases from knowing) the timing of transaction execution and where we have concluded that satisfying the two-business day period would not be feasible. The deadlines we will consider for these transactions will reflect the Act's purpose to require immediate disclosure of insider transactions. The types of transactions for which we are considering calculating the deadlines differently may include:

- A transaction pursuant to a single market order that is executed over more than one day, but not to exceed a specified number of days;
- A transaction involving a pre-existing arrangement the timing of

<sup>4</sup> 15 U.S.C. 78p(a).

<sup>5</sup> As defined in Section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c).

<sup>6</sup> Pub. L. 107-204, 116 Stat. 745.

<sup>7</sup> Section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), as amended by the Act. Section 30(h) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(h)) provides that "Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities." Accordingly, the Act's amendments also accelerate the deadline for change of beneficial ownership reports required pursuant to Section 30(h).

<sup>8</sup> 17 CFR 249.104.

<sup>9</sup> Section 16(a)(4), as amended by the Act.

<sup>10</sup> Securities Act Release No. 7803 (Feb. 25, 2000) [65 FR 11507].

<sup>11</sup> 17 CFR 240.16a-3(f).

<sup>12</sup> 15 U.S.C. 78p(b).

<sup>13</sup> 17 CFR 240.16b-3.

<sup>14</sup> 17 CFR 249.105.

<sup>15</sup> "Form 8-K Disclosure of Certain Management Transactions," Securities Act Release No. 8090, Exchange Act Release No. 45742 (Apr. 12, 2002) [67 FR 19914, at 19920].

<sup>16</sup> 17 CFR 240.10b5-1(c).

<sup>17</sup> The current requirements of Rule 16a-3(f)(1)(i)(A) to report on Form 4 exercises and conversions of derivative securities that are exempt from Section 16(b) short-swing profit recovery under either Rule 16b-3 or Rule 16b-6(b) [17 CFR 240.16b-6(b)] will continue.

which is outside the knowledge of the insider before a confirmation or other notice of the transaction is sent to the insider, with a delay not to exceed a specified number of days; and

- A discretionary transaction involving an employee benefit plan,<sup>18</sup> whether or not exempted by Rule 16b-3, where the delay would again be tied to notice of the transaction.

By the Commission.

Dated: August 6, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-20177 Filed 8-8-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46309; File No. SR-Amex-2002-58]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Pilot Program Involving Crossing Transactions in Nasdaq Securities

August 5, 2002.

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 July 18, 2002, 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,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 add Commentary .06 to Amex Rule 126(g) relating to crossing procedures on the

Amex in Nasdaq National Market securities. The text of the proposed rule change is below. Proposed new language is in italics.

#### Precedence of Bids and Offers

##### Rule 126

(a)-(f) No change.

(g) No change.

Commentary

.01 through .03 No change.

.04 *Reserved*

.05 *Reserved*

.06 *If prior to presenting a cross transaction in a Nasdaq National Market security involving 5,000 shares or more, a broker requests that the specialist and market makers at the post quote their current market for the subject security, the broker may execute a cross transaction at a price between the quoted market without interference by a specialist or market maker.*

*In no event shall an agency order in the book, having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.*

\* \* \* \* \*

#### 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 filed SR-Amex-2001-106<sup>6</sup> to accommodate trading in Nasdaq National Market ("NNM") securities. The Exchange now proposes to adopt crossing procedures under Amex Rule 126(g) to provide additional flexibility to permit brokers to effect crosses of orders of 5,000 shares or more in NNM securities. Under Amex Rule 126(g), Commentary .01, orders to cross 5,000 shares or more (where one or both sides is for the account of a member or member organization) can establish size precedence if the orders are represented

at the specialist's post when a sale removing all bids and offers from the Floor takes place. Commentary .01 has been approved on a pilot basis until September 27, 2002.<sup>7</sup>

Amex Rule 126(g), Commentary .02 provides that orders of 5,000 shares or more for the accounts of non-members or member organizations can be crossed at a price at or within the prevailing quotation. The member's bid or offer is entitled to priority at the cross price, irrespective of pre-existing bids or offers at that price. Under either Commentaries .01 or .02, a cross can be "broken-up" by the specialist or another Floor member that is willing to provide price improvement to all or a portion of one side of the proposed cross. With the advent of decimal pricing, such price improvement could be as small as \$.01. This may result in frequent interference with crosses being effected, and with minimal price betterment, notwithstanding the choice of a broker's customers that a cross be effected and the broker's assessment that such cross is in the customer's best interest. In connection with trading in Nasdaq securities, this can place the Amex and its members at a competitive disadvantage to other markets that may have crossing procedures that are less restrictive than those of the Amex. The Amex, therefore, proposes to provide additional flexibility to brokers proposing to effect crosses in Nasdaq securities.

Proposed Amex Rule 126(g), Commentary .06 provides that a floor broker would be permitted to effect cross transactions in NNM 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 requests a quote for the subject security. These requests will place the specialist and market makers on notice that the floor broker intends to cross within the bid-offer spread. The Amex believes this arrangement will ensure that a specialist or market maker retains the opportunity to better the cross price by updating their quote, but will preclude the specialist or market maker from breaking up a cross transaction after the cross transaction is presented. The floor broker will retain the ability to present both sides of the order at the post if the customers so desire.

The proposed rule change will be implemented on a pilot basis through September 30, 2002. The Exchange notes that it has filed a separate

<sup>18</sup> Such a "discretionary transaction" is defined in Rule 16b-3(b)(1).

<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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The Exchange provided the Commission with notice of its intention to file the proposed rule change on June 25, 2002. The Amex has 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).

<sup>6</sup> Securities Exchange Act Release No. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002).

<sup>7</sup> See Securities Exchange Act Release No. 45658 (March 27, 2002), 67 FR 15842 (April 3, 2002) (SR-Amex-2002-22).