

Commission²⁹ and simultaneously, consented to the entry of a Final Judgment with the Department of Justice,³⁰ the options exchanges have interpreted those actions to preclude them from engaging in joint capacity planning under the current OPRA Plan. Since that time, the exchanges' peak dissemination of OPRA data has increased from approximately 3,500 messages per second to more than 15,000 messages per second, as of September 30, 2003. As the existing options exchanges modify their trading rules to permit competing market makers to independently quote, it is anticipated that each exchange's demands on capacity will increase substantially. In addition, the BSE has proposed to operate a fully electronic options exchange, which would, if approved by the Commission, place further demands on capacity. Accordingly, to permit the exchanges to commence capacity planning without the need for joint action, as required by the Settlement Order, the Commission believes it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to approve the proposed amendment to the OPRA Plan on a temporary basis not to exceed 120 days so that options market data can continue to be disseminated on a timely basis.³¹

V. Conclusion

It Is Therefore Ordered, pursuant to Section 11A of the Act,³² and Rule 11Aa3-2(c)(4) thereunder,³³ that the proposed OPRA Plan amendment, as modified by Amendments No. 1 and 2, (SR-OPRA-2003-01) is approved on a temporary basis not to exceed 120 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁴

Margaret H. McFarland,

Deputy Secretary.

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²⁹ See Order, *supra* note 7.

³⁰ *United States v. American Stock Exchange, LLC et al.* (December 6, 2000), Civ. No. 00-CV-02174 (EGS).

³¹ 17 CFR 240.11Aa3-2(c)(4).

³² 15 U.S.C. 78k-1.

³³ 17 CFR 240.11Aa3-2(c)(4).

³⁴ 17 CFR 200.30-3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48813; File No. SR-Amex-2003-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments 1, 2, and 3 thereto by the American Stock Exchange LLC Relating to At-the-Close Orders and Auxiliary Opening Procedures

November 20, 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 March 27, 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 Amex. On September 10, 2003, the Amex amended the proposed rule change.³ On October 20, 2003, the Amex amended the proposed rule change.⁴ On November 14, 2003, the Amex amended the proposed rule change.⁵ 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 (1) to adopt new Rule 131A to set forth Exchange rules and procedures regarding "at the close" orders; (2) to amend Amex Rules 131 and 156 relating to on-close orders (also known as "at-the-close" orders); (3) to implement additional procedures, relating to daily on-close procedures and expiration day auxiliary opening procedures; and (4) to adopt new Rule 118(m) to reflect procedures applicable to "at the close" orders in Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 9, 2003 ("Amendment No. 1"). In Amendment No. 1, the Amex restated the proposed rule change in its entirety.

⁴ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 17, 2003 ("Amendment No. 2"). In Amendment No. 2, the Amex restated the proposed rule change in its entirety.

⁵ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated November 13, 2003 ("Amendment No. 3"). In Amendment No. 3, the Amex restated the proposed rule change in its entirety.

("UTP"). 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

(a) through (d) No change.

(e) [An at the close order is a market order which is to be executed at or as near to the close as practicable. The term "at the close order" shall also include a limit order that is entered for execution at the closing price, on the Exchange, of the stock named in the order pursuant to such procedures as the Exchange may from time to time establish.] *A market at the close (MOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price. If the MOC order cannot be so executed in its entirety at the Exchange closing price it will be cancelled. A limit at the close (LOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price if that closing price is at the order's limit price, or better. If the LOC order can not be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. Cancellation of MOC and LOC orders will only occur in certain circumstances such as (1) when trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the Amex closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.*

(f) through (t) No change.

* * * * *

Market on Close Policy and Expiration Procedures

Rule 131A. The following procedures apply to stocks and do not apply to options or to any security the pricing of which is based on another security or an index (e.g., Exchange Traded Funds or Trust Issued Receipts, securities listed under Section 107 of the Exchange Company Guide, warrants and convertible securities).

(a) In an attempt to minimize price volatility on the close, all market-on-close (MOC) and limit-on-close (LOC)

orders should be entered as early in the day as possible to provide market participants an opportunity to better ascertain possible order imbalances that might exist at the close.

Between 3:00 and 3:40 p.m. (Eastern Time), imbalances of any size may be published with Floor Official approval. These are informational only and do not limit MOC/LOC order entry before 3:40 p.m.

At 3:40 p.m. or as close to this time as possible, MOC order imbalances of 25,000 shares or more must be published on the consolidated tape. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders will result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. A "No Imbalance" notice will only be published for any stock at 3:40 p.m. if there had been a prior informational imbalance publication.

(1) MOC Imbalance Calculation Policy (3:40 p.m. calculation): Marketable LOC orders to buy (that is, LOC buy orders with limit prices above the last sale at 3:40 p.m.) are added to MOC orders to buy. Marketable LOC orders to sell (that is, LOC orders with limit prices below the last sale at 3:40 p.m.) are added to MOC orders to sell. The buy orders are then matched against sell orders. If there is a buy imbalance, it is offset and reduced by any tick-sensitive MOC orders to sell and tick-sensitive, marketable LOC orders to sell (including orders to sell short). If there is a sell imbalance it is offset and reduced by any tick-sensitive MOC orders to buy and tick-sensitive, marketable LOC orders to buy.

At 3:50 p.m. or as close to this time as possible, MOC order imbalances of 25,000 shares or more must be published on the consolidated tape. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders will result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. If there had been an imbalance publication at 3:40 p.m. and the imbalance at 3:50 p.m. is less than

25,000 shares, either a "No Imbalance" notice will be published, or the size and side of the imbalance may be published with Floor Official approval.

MOC Imbalance Calculation Policy (3:50 p.m. calculation): Procedures for the 3:50 p.m. calculation are the same as the 3:40 p.m. calculation, except that the Exchange last sale at 3:50 p.m. would be used to determine whether or not a LOC order is marketable.

(2) Between 3:40 p.m. and 3:50 p.m., no MOC or LOC orders may be entered except to offset a published MOC imbalance at 3:40 p.m. A broker may represent an MOC or LOC order in the crowd, but must state irrevocable MOC interest by 3:40:00 p.m. After 3:40:00 p.m., an MOC order may not be taken from the book to be represented by a broker in the crowd.

Between 3:40 p.m. and 3:50 p.m., MOC and LOC orders are irrevocable, except to correct an error (e.g., incorrect stock, side, size, or price, or a duplication of a previously entered order). Properly cancelled MOC and LOC orders may not be replaced after 3:40 p.m. unless the replacement order offsets a published MOC imbalance.

After 3:50 p.m., no MOC or LOC orders may be entered except to offset a published MOC imbalance at 3:50 p.m.

Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. will not be permitted for any reason, including in case of legitimate error.

(3) Publication of Imbalances Following Trading Halt of Any Type: MOC order imbalances of 25,000 shares or more are required to be published by the specialist, if practicable, in the event a stock reopens after 3:50 p.m. following a trading halt of any type. An imbalance of less than 25,000 shares may be published with the concurrence of a Floor Official. Trading will not resume in the event a trading halt in a stock occurs after 3:55 p.m., and MOC/LOC orders in that stock will not be executed.

(4) Entry of MOC/LOC Orders During a Regulatory Halt. If a regulatory halt is in effect at 3:40 p.m. or occurs after that time, the entry of MOC/LOC orders is permitted until 3:50 p.m. or until the security reopens, whichever occurs first. If an order imbalance is published following a regulatory halt and reopening after 3:40 p.m., the entry of MOC/LOC orders is permitted only to offset the published imbalance.

(5) Cancellation of MOC/LOC Orders During a Regulatory Halt. When a regulatory halt (news pending or news dissemination) is in effect at 3:40 p.m. or occurs after that time, cancellation of MOC/LOC orders is permitted until 3:50 p.m. or the reopening of the security,

whichever occurs first. This policy does not apply to non-regulatory (e.g., order imbalance or equipment changeover) halts, and cancellation of orders in such cases is prohibited after 3:40 p.m. except to correct an error. Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. will not be permitted for any reason, including in case of legitimate error.

(b) Printing the Close: In accordance with Rule 109(d), the imbalance of MOC and marketable LOC orders are printed against the bid or the offer as the case may be.

Following the printing of the imbalance, and in accordance with Rule 109, the specialist shall stop the remaining buy and sell orders against each other and pair them off at the price of the immediately preceding sale described above. The "pair off" transaction shall be reported to the tape as "stopped stock". Where the aggregate size of the MOC (and marketable LOC, i.e., orders with limits above the closing price) orders to buy equals the aggregate size of the MOC (and marketable LOC, i.e., orders with limits below the closing price) orders to sell, the buy orders and sell orders shall be stopped against each other and paired-off at the price of the last sale regular-way on the Exchange prior to the close of trading in that stock on that day. The transaction shall be reported to the consolidated last sale reporting system as "stopped stock". Any stop orders and percentage orders that would be elected and become executable as a result of the closing transaction should also be included in the close.

(c) Order of Execution of MOC and LOC Orders.

On the close orders are to be executed in the following order.

1. MOC orders (including "G");
2. Tick-sensitive, marketable (as defined in Rule 131A(b) above) MOC orders (not including sell short "G");
3. Tick-sensitive, marketable (as defined in Rule 131A(b) above) market orders and marketable (as defined in Rule 131A(b) above) limit orders;
4. Marketable (as defined in Rule 131A(b) above) LOC orders (including "G");
5. Tick-sensitive, marketable (as defined in Rule 131A(b) above) LOC orders (not including sell short "G");
6. Limit orders on the book and in the crowd limited to the closing price;
7. LOC orders limited to the closing price;
8. Tick-sensitive MOC orders limited to the closing price (not including sell short "G");

9. Tick-sensitive LOC orders limited to the closing price (not including sell short "G");

10. All other "G" orders on book and in the crowd.

Item numbers 1-5 above (Order of Execution of MOC Orders) are treated like MOC orders. Accordingly, the buy side is matched against the sell side to determine the imbalance. That imbalance will be executed against the prevailing bid or offer, 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 order of execution of the orders limited to that bid or offer (i.e., the orders that the imbalance will trade against) is set forth above in item numbers 6 through 10. The specialist then stops the remaining buy and sell "MOC" orders (i.e., those not part of the imbalance) against each other and pairs them off at the price of the imbalance trade. The "pair off" transaction is to be reported as a "stopped stock" transaction.

(d) Auxiliary Opening Procedures.

For each expiration settlement value day on which derivative, index-related products (e.g., options, futures, options on futures) settle against opening prices, several auxiliary procedures are necessary to integrate stock orders relating to expiring contracts into Amex's opening procedures in a manner that assures an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration settlement value day is a trading day prior to the expiration of index-related derivative products whose settlement value is based upon opening prices on the Exchange, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation). The twelve expiration days are "Expiration Fridays" which generally fall on the third Fridays in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month.

Order Entry

Stock orders relating to index-related derivative contracts whose settlement pricing is based upon opening prices must be received by the Amex Order File (AOF) or by the specialist by 9 a.m. These orders may be cancelled or reduced in size. (Firms canceling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 153 provides.) All other orders may be entered before or after 9 a.m.

To facilitate early order entry, AOF will begin accepting orders at 7:30 a.m.

and will accept market orders of 99,900 shares or less. "Limit-at-the-opening" ("limit OPG") orders are permitted, including delivery through Exchange systems. Ordinary limit and market orders may also be entered.

Order Identification

Stock orders relating to expiring derivatives whose settlement pricing is based on opening prices must be identified "OPG".

Firms entering these orders through AOF, but unable to use "OPG" in the order instructions, may use a unique AOF branch code or a separate AOF subscription mnemonic to identify these orders. The Amex Market Surveillance Department must be advised in writing of the branch code or subscription mnemonics by the business day following the expiration trade date.

Firms unable to identify these orders in any of the above three ways, and firms not using AOF, must submit a list of all these orders and related details to the Amex Market Surveillance Department by the business day following the expiration trade date.

Dissemination of Order Imbalances

As soon as practicable after 9:00 a.m. on expiration days, the Exchange will publish market order imbalances of 25,000 shares or more in all stocks. In addition, imbalances of less than 25,000 shares may be published at that time with Floor Official approval. A "no imbalance" status will not be published for any stock.

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Representation of Orders

Rule 156 (a) through (b) No change.

(c) The acceptance of a market [an] at the close (MOC) order by a broker [does not make him] makes the broker responsible for an execution at the Exchange's closing price, and if the order can not be so executed, it is to be cancelled. A broker handling a limit at the close (LOC) order is to use due diligence to execute the order at the Exchange's closing price if that closing price is at the order's limit price, or better, and if the order can not be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. [Bids or offers qualified as at the close cannot be publicly made in the Trading Crowd.] Cancellation of MOC and LOC orders will only occur in certain circumstances such as (1) when trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only

on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the Amex closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

(d) through (e) No change.

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Trading in Nasdaq National Market Securities

Rule 118

(a) through (k) No change.

(l) Reserved.

(m) Market-on-Close and Limit-on-Close Orders "The following procedures apply to market-on-close (MOC) and limit-on-close (LOC) orders in Nasdaq National Market securities

(i) A market at the close (MOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price. If the MOC order cannot be so executed in its entirety at the Exchange closing price it will be cancelled. A limit at the close (LOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price if that closing price is at the order's limit price, or better. If the LOC order can not be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. Cancellation of MOC and LOC orders will only occur in certain circumstances such as (1) When trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the Amex closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

(ii) In an attempt to minimize price volatility on the close, all market-on-close (MOC) and limit-on-close (LOC) orders should be entered as early in the day as possible to provide market participants an opportunity to better ascertain possible order imbalances that might exist at the close.

Between 3:00 and 3:40 p.m. (Eastern Time), imbalances of any size may be

published with Floor Official approval. These are informational only and do not limit MOC/LOC order entry before 3:40 p.m.

(a) At 3:40 p.m. or as close to this time as possible, MOC order imbalances of 25,000 shares or more must be published in a manner specified by the Exchange. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders will result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. A "No Imbalance" notice will only be published for any stock at 3:40 p.m. if there had been a prior informational imbalance publication.

(1) MOC Imbalance Calculation Policy (3:40 p.m. calculation): Marketable LOC orders to buy (that is, LOC buy orders with limit prices above the consolidated last sale at 3:40 p.m.) are added to MOC orders to buy. Marketable LOC orders to sell, (that is, LOC orders with limit prices below the last sale at 3:40 p.m.) are added to MOC orders to sell. The buy orders are then matched against sell orders to calculate the imbalance.

At 3:50 p.m. or as close to this time as possible, MOC order imbalances of 25,000 shares or more must be published in a manner specified by the Exchange. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders will result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. If there had been an imbalance publication at 3:40 p.m. and the imbalance at 3:50 p.m. is less than 25,000 shares, either a "No Imbalance" notice will be published, or the size and side of the imbalance may be published with Floor Official approval.

MOC Imbalance Calculation Policy (3:50 p.m. calculation): Procedures for the 3:50 p.m. calculation are the same as the 3:40 p.m. calculation, except that the consolidated last sale at 3:50 p.m. would be used to determine whether or not a LOC order is marketable.

(2) Between 3:40 p.m. and 3:50 p.m., no MOC or LOC orders may be entered except to offset a published MOC imbalance at 3:40 p.m. A broker may

represent an MOC or LOC order in the crowd, but must state irrevocable MOC interest by 3:40 p.m. After 3:40 p.m., an MOC order may not be taken from the book to be represented by a broker in the crowd.

Between 3:40 p.m. and 3:50 p.m., MOC and LOC orders are irrevocable, except to correct an error (e.g., incorrect stock, side, size, or price, or a duplication of a previously entered order). Properly cancelled MOC and LOC orders may not be replaced after 3:40 p.m. unless the replacement order offsets a published MOC imbalance.

After 3:50 p.m., no MOC or LOC orders may be entered except to offset a published MOC imbalance at 3:50 p.m.

Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. will not be permitted for any reason, including in case of legitimate error.

(b) Prohibition of Tick-Sensitive Orders—Tick-sensitive MOC and LOC orders (e.g., buy "minus" or sell "plus") shall not be entered. (Sell short MOC and LOC orders in Nasdaq securities are exempt from tick restrictions on the Amex and may be entered.)

(c) Publication of Imbalances Following Trading Halt of Any Type: MOC order imbalances of 25,000 shares or more are required to be published by the specialist, if practicable, in the event a stock reopens after 3:50 p.m. following a trading halt of any type. An imbalance of less than 25,000 shares may be published with the concurrence of a Floor Official. Trading will not resume in the event a trading halt in a stock occurs after 3:55 p.m., and MOC/LOC orders in that stock will not be executed.

(d) Entry of MOC/LOC Orders During a Regulatory Halt. If a regulatory halt is in effect at 3:40 p.m. or occurs after that time, the entry of MOC/LOC orders is permitted until 3:50 p.m. or until the security reopens, whichever occurs first. If an order imbalance is published following a regulatory halt and reopening after 3:40 p.m., the entry of MOC/LOC orders is permitted only to offset the published imbalance.

(e) Cancellation of MOC/LOC Orders During a Regulatory Halt. When a regulatory halt (news pending or news dissemination) is in effect at 3:40 p.m. or occurs after that time, cancellation of MOC/LOC orders is permitted until 3:50 p.m. or the reopening of the security, whichever occurs first. This policy does not apply to non-regulatory (e.g., order imbalance or equipment changeover) halts, and cancellation of orders in such cases is prohibited after 3:40 p.m. except to correct an error. Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. will not be

permitted for any reason, including in case of legitimate error.

(iii) Printing the Close: In accordance with Rule 109(d), the imbalance of MOC and marketable LOC orders are printed against the Exchange bid or the Exchange offer as the case may be.

Following the printing of the imbalance, and in accordance with Rule 109, the specialist shall stop the remaining buy and sell orders against each other and pair them off at the price of the immediately preceding sale described above. The "pair off" transaction shall be reported as stopped stock in accordance with Exchange Rule 109, Commentary .02. Where the aggregate size of the MOC (and marketable LOC, i.e., orders with limits above the closing price) orders to buy equals the aggregate size of the MOC (and marketable LOC, i.e., orders with limits below the closing price) orders to sell, the buy orders and sell orders shall be stopped against each other and paired-off at the price of the last regular-way consolidated sale prior to the close of trading in that stock on that day. The transaction shall be reported as stopped stock in accordance with Exchange Rule 109, Commentary .02. Stop orders and percentage orders elected by the execution of the MOC imbalance should be included in the close.

(iv) Order of Execution of MOC and LOC Orders.

On the close orders are to be executed in the following order.

1. MOC orders (including "G");
2. Marketable (as defined in Rule 118(m)(iii) above) LOC orders (including "G");
3. Limit orders on the book and in the crowd limited to the closing price;
4. LOC orders limited to the closing price;
5. All other "G" orders on book and in the crowd.

Item numbers 1 and 2 above (Order of Execution of MOC Orders) are treated like MOC orders. Accordingly, the buy side is matched against the sell side to determine the imbalance. That imbalance will be executed against the prevailing bid or offer, 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 order of execution of the orders limited to that bid or offer (i.e., the orders that the imbalance will trade against) is set forth above in item numbers 3 through 5. The specialist then stops the remaining buy and sell "MOC" orders (i.e., those not part of the imbalance) against each other and pairs them off at the price of the imbalance trade. The "pair off" transaction is to be reported as stopped

stock in accordance with Exchange Rule 109, Commentary .02.

(v) See Rule 156(c), which sets forth the responsibilities of a broker accepting MOC and LOC orders.

Specialist's Reports of MOC and LOC Orders

(vi) A Nasdaq UTP specialist is required to notify an Amex Floor Supervisor between 4:00 p.m. and 4:15 p.m. whenever the specialist (1) reports a trade at or after 4:00 p.m. that does not involve the execution of an MOC or LOC order, or (2), after reporting an MOC or LOC transaction(s) at or after 4:00 p.m., reports a trade after 4:00 p.m. (e.g., report of a "sold" sale) that is not, of course, a transaction involving the execution of MOC or LOC orders. This notification will be on an Exchange-approved form, with a duplicate copy for the specialist's records.

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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 Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 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 Commission has previously approved rules and procedures governing market on close ("MOC") and limit on close ("LOC") orders entered on the Exchange.⁶ The Exchange proposes to amend these rules and procedures as described below. The amended rules and procedures set forth in this proposal would supersede the procedures previously approved by the Commission as described in the releases cited above, with the exception of Rule 109 which would continue to apply. Further, the Exchange proposes to

⁶ See, e.g., Securities Exchange Act Release Nos. 41877 (September 14, 1999), 64 FR 51566 (September 23, 1999) (SR-Amex-99-32); 40123 (June 24, 1998), 63 FR 36280 (July 2, 1998) (SR-Amex-98-10); 35660 (May 2, 1995), 60 FR 22592 (May 8, 1995) (SR-Amex-95-09); 29312 (June 14, 1991), 56 FR 28583 (June 21, 1991) (SR-Amex-95-09).

consolidate current Exchange procedures relating to MOC and LOC orders, other than orders in Nasdaq securities traded pursuant to unlisted trading privileges, in new Rule 131A, which would include procedures previously approved by the Commission as well as the proposed procedures set forth herein. In addition, the Exchange proposes to adopt Rule 118(m) to establish MOC and LOC procedures for Nasdaq securities, which procedures would be substantially similar to those in proposed Rule 131A.⁷

Proposed Rule 131A (Market on Close Policy and Expiration Procedures)

In an attempt to minimize price volatility on the close, Amex procedures currently provide that all MOC and LOC orders in stocks should be entered as early in the day as possible to provide market participants an opportunity to better ascertain possible order imbalances that might exist at the close. Under these procedures, Amex represents that, at 3:40 p.m. (Eastern Time) or as close to this time as possible, MOC order imbalances of 25,000 shares or more must be published on the tape. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders on the book will result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 rule),⁸ or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. After 3:40 p.m., no MOC or LOC orders in stocks may be entered except to offset a published MOC imbalance.

New Rule 131A would incorporate existing Amex MOC/LOC procedures for stocks during the regular trading session as well as proposed new procedures, as described herein. These procedures would not be applicable to options or any security the pricing of which is based on another security or an index,

⁷ The Commission approved certain procedures for "at the close" orders in Nasdaq securities in Securities Exchange Act Release 47658 (April 10, 2003), 68 FR 19041 (April 17, 2003) (SR-Amex-2003-18). The procedures and rules proposed herein are in addition to, and do not supersede, those approved in Release No. 34-47658. Auxiliary opening procedures for Nasdaq securities were filed and became effective in Securities Exchange Act Release No. 48000 (June 6, 2003), 68 FR 35469 (June 13, 2003) (SR-Amex-2003-55).

⁸ Amex Rule 154, Commentary .08 provides that no transaction in a stock at a price of \$20 or more, \$10 or more (but less than \$20) or less than \$10 per share may be at \$2, \$1, or \$.50 or more, respectively, away from the last previous sale, without the prior approval of a Floor Official.

such as Exchange-Traded Funds, Trust Issued Receipts, structured products, warrants and convertible securities. These procedures, however, would be applicable to closed-end funds.

The Exchange proposes to implement a MOC Imbalance Calculation Policy, and to adopt changes to the MOC Imbalance Publication Policy similar to those approved for the New York Stock Exchange ("NYSE") in Release No. 34-40094,⁹ and stated in NYSE Rule 123C(5). The most salient feature of these revised policies is the additional imbalance dissemination at 3:50 p.m. The Exchange believes additional dissemination at 3:50 p.m. would provide useful information to market participants, who would be able to determine to enter offsetting buy or sell interest based on the latest imbalance information. Amex believes that this would enhance the value of imbalance publications in tempering market volatility at or near the close. In addition, the Exchange believes that implementing MOC/LOC procedures that are more similar to NYSE procedures in this area would enhance their utility for member organizations.

The Exchange proposes to require a 3:50 p.m. MOC imbalance calculation in addition to the current 3:40 p.m. calculation. For the 3:40 p.m. calculation, marketable buy LOCs (that is, LOCs with limit prices above the Exchange last sale at 3:40 p.m.) would be added to buy MOCs. Marketable sell LOCs (LOCs with limit prices below the Exchange last sale at 3:40 p.m.) would be added to sell MOCs. The buys would then be matched against the sells. If there were to be a buy imbalance, it would be offset and reduced by any tick-sensitive sell MOCs and tick-sensitive, marketable sell LOCs (including orders to sell short). If there were to be a sell imbalance, it would be offset and reduced by any tick-sensitive buy MOCs and tick-sensitive, marketable buy LOCs. A "no imbalance" notice would only be published for any stock at 3:40 p.m. if there had been a prior informational imbalance publication. Between 3 p.m. and 3:40 p.m., MOC/LOC imbalances of any size would be permitted to be published with Floor Official approval. These publications would be informational only and would not limit MOC/LOC order entry before 3:40 p.m. Amex represents that these proposed changes are similar to procedures currently in place at the NYSE and included in NYSE Rule 123C except as

⁹ See Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (SR-NYSE-97-36).

follows. In view of the generally lower trading volume and different trading characteristics of Amex stocks compared to NYSE issues, the Exchange believes it would be appropriate to continue to require dissemination of imbalances of 25,000 shares or more rather than 50,000 shares or more, as is required by NYSE Rule 123C.

At 3:50 p.m., or as close to this time as possible, any MOC order imbalances of 25,000 shares or more would be required by the Exchange to be published on the consolidated tape (Tape B). In addition, as with current 3:40 p.m. imbalance procedures, an order imbalance below 25,000 shares would also be permitted to be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders on the book would result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 rule),¹⁰ or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. If there was an imbalance publication at 3:40 p.m. and the imbalance at 3:50 p.m. were to be less than 25,000 shares, either a "no imbalance" notice would be published, or the size and side of the imbalance would be permitted to be published with Floor Official approval. The 3:50 p.m. calculation policy would be the same as that applicable to the 3:40 p.m. calculation, except the Exchange last sale at 3:50 p.m. would be used to determine whether or not a LOC order is marketable.

The Exchange proposes that after 3:50 p.m., no MOC or LOC orders in stocks would be permitted to be entered except to offset a published MOC imbalance in effect after 3:50 p.m. Amex represents that this is comparable to current procedures, whereby, after 3:40 p.m., no MOC or LOC orders in stocks may be entered except to offset a published MOC imbalance in effect after 3:40 p.m. Amex states that this restriction is intended to alleviate increased pricing pressure that may occur following an imbalance dissemination of buy or sell interest. Amex represents that this restriction is also the same as that imposed by the NYSE under NYSE Rule 123C.

A broker would be permitted to represent an MOC or LOC order in the trading crowd of a stock, but would be required to state irrevocable MOC interest by 3:40 p.m. Amex represents that this requirement is the same as that

imposed by the NYSE under NYSE Rule 123C. After 3:40 p.m., no MOC or LOC order in a stock would be permitted to be taken from the book to be represented by a broker in the crowd. Amex states that these restrictions are intended to apply procedures for crowd orders consistent with MOC/LOC procedures generally. Policy regarding cancellation or reduction in size of MOC and/or LOC orders after 3:40 p.m. would remain the same (*i.e.*, between 3:40 p.m. and 3:50 p.m., MOC and LOC orders would be irrevocable, except to correct an error) except cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. would not be permitted for any reason, including in case of legitimate error. Amex represents that this restriction is the same as that imposed by the NYSE under NYSE Rule 123C.

Proposed Rule 131A(a)(3) would require that the specialist publish an MOC order imbalance of 25,000 shares or more, if practicable, if a stock reopens after 3:50 p.m. following any type of trading halt. Paragraphs (a)(4) and (a)(5) propose procedures applicable to entry or cancellation of MOC/LOC orders during a regulatory halt in effect at or after 3:40 p.m. Amex represents that this rule text reflects procedures filed and made effective in Release No. 34-41877.¹¹ Amex states that this proposed rule change would supersede that filing and approval.

Procedures regarding printing the close would be amended to provide that stop orders and percentage orders elected by the execution of the MOC imbalance should be included in the close. Amex represents that this requirement is the same as that imposed by the NYSE under NYSE Rule 123C.

In the interest of providing for an orderly and consistent execution of various MOC and LOC order types at the close, proposed Rule 131A(c), would specify that on the close orders would be executed in the following order: (1) MOC orders (including "G");¹² (2) tick-sensitive (*e.g.*, buy minus, sell plus, and

sell short, for securities subject to the "tick test" in Exchange Rule 7), MOC orders (not including sell short "G"); (3) tick-sensitive, marketable market orders and marketable limit orders; (4) marketable LOC orders (including "G"); (5) tick-sensitive, marketable LOC orders (not including sell short "G"); (6) limit orders on the specialist's book and in the crowd limited to the closing price; (7) LOC orders limited to the closing price; (8) tick-sensitive MOC orders limited to the closing price; (9) tick-sensitive LOC orders limited to the closing price; (10) all other "G" orders on the specialist's book and in the crowd. Amex represents that the requirement for sell short "G" orders to yield is the same as that imposed by the NYSE under NYSE Rule 123C.

The first five categories above would be treated like MOC orders. Accordingly, the buy side would be matched against the sell side to determine the imbalance. That imbalance would be executed against the prevailing bid or offer, 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 order of execution of the orders limited to that bid or offer (*i.e.*, the orders that the imbalance would trade against) would be as set forth in numbers 6 through 10. The specialist then would stop the remaining buy and sell "MOC" orders (*i.e.*, those not part of the imbalance) against each other and pair them off at the price of the imbalance trade. The "pair off" transaction would be reported as "stopped stock" so that those who entered orders limited to the closing price which were not executed would know that they were not entitled to participate on the "stopped stock" trade. Amex represents that the execution of the imbalance against the prevailing bid or offer followed by the printing of the "paired off" quantity as "stopped stock" is the Exchange's current procedure for executing and printing on-close orders as described in Amex Rule 109(d).

Rules 131(e) and 156(c)

Rule 131(e), which defines "at the close order," would be amended to specify that a MOC order is to be executed in its entirety at the Amex closing price or cancelled. Rule 131(e) would also be amended to specify that a limit at the close (LOC) order—an order to buy or sell a stated amount of a security at the Amex closing price if at the limit price or better "would have to be cancelled if not executed in whole or in part. Amex represents that these amendments are similar to NYSE Rule

¹¹ See Release No. 34-41877, *supra* note 6.

¹² "G" orders are entered for an account of either a member or member organization, or an associated person of a member or member organization, or for an account over which a member or member organization or associated person exercises investment discretion. Section 11(a) of the Act prohibits all orders for these accounts from being executed on the floor without an exemption. 15 U.S.C. 78k(a). The exemptions are contained in subparagraphs (1)(A) through (1)(I) of Section 11(a) of the Act. 15 U.S.C. 78k(a)(1)(A)—78k(a)(1)(I). The exemption in "G" requires that the member or member organization be primarily engaged in underwriting and/or brokerage (as opposed to effecting proprietary trades on the Floor) and that the "exempt" transaction yield priority, parity, and precedence to orders for those who are not members or associated with members.

¹⁰ See *supra* note 8 for a discussion of Amex Rule 154.

123C procedures, and believes that they set forth more specifically members' responsibilities in executing or canceling MOC/LOC orders.

Rule 156(c), which relates to broker representation of an "at the close order," currently provides that a broker is not responsible for executing at the closing price an "at the close order" that the broker accepts. The Exchange believes that it is appropriate for the broker to be responsible for execution at the Amex closing price of a MOC order he or she accepts, and amended Rule 156(c) would so state. Rule 156(c) would further specify that a broker handling a LOC would have to use due diligence to execute the order at the Amex closing price if at the limit price or better, and to cancel the portion of the order that cannot be so executed.

Aside from the customer ordering the cancellation of an MOC or LOC order before 3:40 p.m. or for a legitimate error between 3:40 and 3:50 p.m., it should be noted with respect to both MOC and LOC orders that are to be cancelled if not executed in whole or in part, that such cancellations would occur only in the following circumstances and not at the discretion of either the specialist or floor broker. Cancellation of MOC and LOC orders would occur when (1) trading has been halted in the security and does not reopen prior to the close of the market; (2) tick sensitive orders, as described above, whose execution will violate customer instructions (*i.e.*, to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Amex Rule 7; (3) for LOC orders, the Amex closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders all of which are limited to the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

Auxiliary Opening Procedures

The Exchange proposes to adopt Rule 131A(d) implementing the following auxiliary opening procedures for index options/futures expiration settlement value days.¹³ Amex represents that these procedures are similar to NYSE

¹³ The term "expiration settlement value day" refers to the days on which certain expiring index options and/or futures (see list below for examples) have settlement values determined. These index options and futures have settlement values based on the opening prices of their component securities on the trading day preceding their expiration. Index options and futures expire on the Saturday following the third Friday of each expiration month. The expiration settlement value day is the last trading day preceding expiration, which is normally a Friday.

Expiration Friday auxiliary opening procedures contained in NYSE Rule 123C(6). Amex represents that for each expiration day on which derivative, index—related products expire against opening prices, several auxiliary procedures are necessary to integrate stock orders relating to expiring contracts into Amex's opening procedures in a manner that assures an efficient market opening in each stock as close to 9:30 a.m. as possible. The index products include, but are not limited to the following: S&P 500 Index options and futures, Nasdaq 100 Index options, S&P MidCap 400 Index options and futures, Russell 1000 Index options and futures and Russell 2000 Index options and futures.

Amex represents that stock orders relating to index contracts whose settlement pricing is based upon opening prices would have to be received by the Amex Order File (AOF) or by the specialist by 9:00 a.m. These orders would be permitted to be cancelled or reduced in size. (Firms canceling these orders or reducing them in size would be required to prepare contemporaneously a written record describing the rationale for the change and would be required to preserve it as Rule 153 provides.) All other orders would be permitted to be entered before or after 9 a.m.

To facilitate early order entry, AOF would begin accepting orders at 7:30 a.m. and would accept market orders of 99,900 shares or less. "Limit-at-the-opening" ("limit OPG") orders would be permitted, including delivery through Exchange systems. Ordinary limit and market orders also would be permitted to be entered. Stock orders relating to expiring derivatives whose settlement pricing is based on opening prices would be required to be identified "OPG."

As soon as practicable after 9:00 a.m. on expiration days, the Exchange would publish market order imbalances of 25,000 shares or more in all listed stocks. In addition, imbalances of less than 25,000 shares would be permitted to be published at that time with Floor Official approval. A "no imbalance" status would not be published for any stock. Amex represents that these proposed changes are similar to procedures currently in place at the NYSE and included in NYSE Rule 123C except as follows. In view of the generally lower trading volume and different trading characteristics of Amex stocks compared to NYSE issues, the Exchange believes it is appropriate to continue to require dissemination of imbalances of 25,000 shares or more rather than 50,000 shares or more, as is

required by NYSE Rule 123C. In addition, Amex systems accept market orders of 99,900 shares or less rather than orders of 500,000 shares or less accepted by the NYSE.

MOC/LOC Procedures for Nasdaq UTP Trading

In Release No. 34-47658,¹⁴ the Commission approved rules relating to execution of MOC and LOC orders in Nasdaq securities traded on the Amex pursuant to unlisted trading privileges. These procedures, with certain exceptions described in Release No. 34-47658,¹⁵ continue to apply previously approved rules and procedures governing MOC and LOC orders entered on the Exchange.¹⁶ The procedures include publication of order imbalances beginning at 3:40 p.m. (or as close to this time as possible) in Nasdaq securities of 25,000 shares or more, and a prohibition on entry of MOC and LOC orders after 3:40 p.m. except to offset an at the close order imbalance. After 3:40 p.m., MOC and LOC orders are irrevocable except to correct an error.

The Exchange is proposing to incorporate into new Rule 118(m) current procedures relating to the 3:40 p.m. calculation and dissemination of order imbalances and entry of MOC and LOC orders in Nasdaq securities. The Exchange also proposes to modify current MOC and LOC procedures by adding an additional publication of MOC/LOC order imbalances of 25,000 shares or more at 3:50 p.m. These modifications would also be included in Rule 118(m). Once again, Amex represents that the amended rule and procedures would supersede the rules and procedures previously approved by the Commission as described in the releases referenced above with the

¹⁴ See Release No. 34-47658, *supra* note 7.

¹⁵ In Release No. 34-47658, the Commission approved amendments to Amex Rule 109 (Stopping Stock), Amex Rule 118 (Trading in Nasdaq National Market Securities), Amex Rule 131 (Types of Orders) and Amex Rule 156 (Representation of Orders), relating to "at the close" orders (1) to specify that these rules apply to Amex trading in Nasdaq securities; (2) to provide for dissemination of order imbalance information to major news vendors by means of a structured communication process; and (3) to temporarily exempt from Amex Rule 109(d) information relating to "pair off" transactions under such rule, pending implementation of systems changes by the Nasdaq Unlisted Trading Privileges Plan Processor to accommodate printing of such transactions as "stopped stock." It should be noted, however, with respect to point number (3), that, effective September 15, 2003, the Nasdaq UTP Plan Processor was able to accommodate printing of pair-off transactions as "stopped stock." Thus, effective October 8, 2003, the temporary exemption from Amex Rule 109(d) was eliminated.

¹⁶ See *supra*, note 6.

exception of Release No. 34-47658,¹⁷ and Release No. 34-48000.¹⁸

The Exchange believes an additional publication is necessary at 3:50 p.m. in light of the price volatility in Nasdaq stocks, particularly near the close of trading. An additional imbalance publication at 3:50 p.m. would reflect any offsetting interest as well as any legitimate cancellations entered after the 3:40 p.m. publication and would reflect any shift in the imbalance from a buy to sell imbalance or vice versa. The 3:50 p.m. publication would provide additional, more timely market information to market participants, which Amex states is intended to encourage possible buy or sell interest offsetting the imbalance after 3:50 p.m., thereby promoting greater pricing stability at the close.

Proposed Rule 118(m) provides that at 3:40 p.m. and at 3:50 p.m., or as close to these times as possible, MOC order imbalances of 25,000 shares or more would be published in a manner specified by the Exchange. That is, the Exchange would utilize a structured communication process established with major news vendors (e.g., Bloomberg and Dow Jones), utilizing, among other things, e-mail and file transfer protocol technology to permit public dissemination of order imbalance information at 3:50 p.m., or as soon thereafter as practicable.¹⁹

The imbalance calculation policy for the 3:40 p.m. calculation would be as follows: marketable LOC orders to buy (that is, LOC buy orders with limit prices above the consolidated last sale at 3:40 p.m.) would be added to MOC orders to buy. Marketable LOC orders to sell (that is, LOC sell orders including those to sell short, with limit prices below the consolidated last sale at 3:40 p.m.) would be added to MOC orders to sell. The buy orders are then matched against sell orders to calculate the imbalance and side. Procedures for the 3:50 p.m. imbalance calculation would be the same as those for the 3:40 p.m. calculation, except that the consolidated last sale at 3:50 p.m. would be used to determine whether or not a LOC order is marketable. After 3:50 p.m., no MOC or LOC orders would be permitted to be entered except to offset the latest published MOC imbalance. Between 3:40 p.m. and 3:50 p.m., MOC and LOC orders would be irrevocable, except to correct an error. Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. would not be

permitted for any reason, including in case of legitimate error.

The Exchange proposes to prohibit entry of tick-sensitive MOC or LOC orders (e.g., buy "minus" or sell "plus") in Nasdaq stocks. (Sell short orders in Nasdaq securities, which are exempt from "tick" restrictions on the Amex, would be accepted.) Such orders, (e.g., buy "minus" or sell "plus") which account for less than one percent of "at the close" orders entered in Nasdaq stocks, may impede the specialist in providing an orderly and timely close, in so far as they are processed manually, which makes such orders more difficult to process in a timely manner.

An order imbalance at 3:40 p.m. or 3:50 p.m. below 25,000 shares also would be permitted to be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders on the book would result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. For 3:40 p.m. imbalance disseminations, a "No Imbalance" notice would only be published at 3:40 p.m. if there had been a prior informational imbalance publication between 3:00 p.m. and 3:40 p.m. For 3:50 p.m. imbalance disseminations, if there was an imbalance publication at 3:40 p.m. and the imbalance at 3:50 p.m. were to be less than 25,000 shares, either a "No Imbalance" notice will be published, or the size and side of the imbalance may be published with Floor Official approval.

Rule 118(m)(i), like Rule 131(e) as it is proposed to be amended, provides that a MOC order must be executed in its entirety at the Exchange closing price or is to be cancelled. Rule 118(m)(v) would reference Rule 156(c) as it is proposed to be amended, and would make the broker representing a MOC order in the Trading Crowd responsible for an execution at the Exchange's closing price. Aside from the customer ordering the cancellation of an MOC or LOC order before 3:40 p.m. or for a legitimate error between 3:40 and 3:50 p.m., it should be noted with respect to both MOC and LOC orders that are to be cancelled if not executed in whole or in part, that such cancellations would occur only in the following circumstances and not at the discretion of either the specialist or floor broker. Cancellation of MOC and LOC orders would occur when (1) trading has been halted in the Nasdaq UTP stock on the Amex and does not reopen prior to the

close of the market; (2) for LOC orders, the Amex closing price is not at the limit price or better, or (3) for LOC orders which are limited to the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

Proposed Rule 118(m)(ii)(c) provides for identical MOC/LOC procedures to those in Rule 131A(a)(3) in the context of trading halts, discussed above. Rule 118(m)(iii), which references procedures in Rule 109(d) applicable to printing the close, would provide that stop orders and percentage orders elected by the execution of the MOC imbalance should be included in the close.

Procedures set forth in proposed Rule 118(m)(iv) (Order of Execution of MOC and LOC Orders) would be the same as those set forth in proposed Rule 131A(c), except that tick-sensitive orders would not be referenced in so far as entry of such orders would be prohibited for Nasdaq UTP securities.

Procedures for Reporting the Amex Official Closing Price and "M" Modifier

The Amex has received Commission approval for use of the "M" sale condition modifier on the UTP Trade Data Feed ("UTDF") to identify the Amex's Official Closing Price ("AOCP") in a Nasdaq security.²⁰ Amex represents that, as described in File No. SR-Amex-2003-18, at the close orders are subject to "pair off" procedures in Amex Rule 109(d)(1), which requires a member holding both buy and sell MOC orders to pair them off against each other and execute any imbalance against the prevailing Amex bid or offer at the close. Any imbalance at the close is executed at the current bid or offer, or as close as practicable to 4:00 p.m., and remaining buy and sell orders are stopped against each other and paired off at that same bid or offer price. Amex reports the first trade (execution of the imbalance) and second pair off trade separately at the same price, and then sends a third report with only the price of those transactions with an "M" identifier via UTDF as the Official Closing Price for the stock on the Amex.

The Exchange would disseminate an AOCP for a security only when the closing price for that security on the Amex has been determined as the result of the execution of MOC or LOC orders entered on the Exchange. If no MOC/LOC orders were to be executed, Amex would not disseminate an AOCP using the "M" modifier. The Exchange believes this is necessary in establishing an "official" close because MOC and

¹⁷ See *supra* note 7.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

LOC orders are the only order types that must be executed at the Exchange closing price or not at all. Amex believes that restricting the use of the "M" modifier to executions of MOC and LOC orders would ensure that the closing price in the Exchange auction market accurately reflects buy and sell interest at the close.

In connection with dissemination of the "M" modifier, between 4:15 p.m. and 4:25 p.m. each trading day, an Exchange Floor Supervisor would review each Nasdaq transaction appearing on the tape at or after 4:00 p.m. to determine if that trade involved the execution of MOC/LOC orders. As the Exchange's systems are programmed to capture as "M" all Nasdaq transactions which appeared on the tape at or after 4:00 p.m. the Exchange Floor Supervisor would correct the list by removing all such trades not involving the execution of MOC/LOC orders to ensure that an "M" is disseminated only when the Amex closing price is the result of execution of MOC or LOC orders. By 4:25 p.m., Amex would finalize and complete dissemination of AOCF prices with the "M" modifier to the Nasdaq UTP Processor. At 4:30 p.m., the Processor would disseminate a closing trade recap message with the final AOCF prices. The 4:30 p.m. dissemination would be implemented as part of an enhancement to the Processor implemented on September 15, 2003.

In order to ensure that transactions reported by specialists at or after 4:00 p.m. that are not the result of executions of MOC or LOC orders are not reported as the AOCF with the "M" modifier, the Exchange would require Nasdaq UTP specialists to notify an Amex Floor Supervisor between 4:00 p.m. and 4:15 p.m. whenever the specialist (1) reports a trade at or after 4:00 p.m. that does not involve the execution of MOC/LOC orders, or (2), after reporting an MOC/LOC transaction(s) at or after 4:00 p.m., reports a trade after 4:00 p.m. (e.g., report of a "sold" sale) that is, of course, not a transaction involving the execution of MOC or LOC orders. This notification would be on an Exchange-approved form, with a duplicate copy for the specialist's records.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,²¹ in general, and Section 6(b)(5),²² 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 regulating, clearing, settling, processing information with respect to, and 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.

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

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, as amended, or
- B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Amex. All submissions should refer to File No. SR-Amex-2003-21 and should be submitted by December 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-29659 Filed 11-26-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48814; File No. SR-Amex-2003-96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Revise Its Registration Fees

November 20, 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 November 13, 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 has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change 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 American Stock Exchange LLC proposes to revise its registration fees. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Floor Fees and Booth Rental Fees. No change.

Member Fees. No change.
Registration and IDC Fees

²³ 17 CFR 200.30-3(a)(12).

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)(2).

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).