

Rules 109(d) ("Stopping Stock"), 131(e) ("Types of Orders") and 156(c) ("Representation of Orders"), which apply to handling "at the close" orders, including MOC and LOC orders in Nasdaq securities, as described below.

Currently there is no publication of order imbalances in Nasdaq securities traded pursuant to UTP. Because certain Exchange MOC procedures are predicated on those publications, the Exchange intends to institute a procedure for publishing imbalances of orders entered on the Exchange in Nasdaq UTP securities at 3:40 p.m. Because the Nasdaq UTP Processor (currently operated by the Nasdaq Stock Market, Inc. ("Nasdaq")) for disseminating consolidated quotation and last sale information does not accommodate publication of order imbalances, the Exchange will utilize a structured communication process established with major news vendors (e.g., Bloomberg and Dow Jones) utilizing, among other things, e-mail technology to permit public dissemination of order imbalance information at 3:40 p.m., or as soon thereafter as practicable. In addition, this information will be disseminated on the Amex website. Following an imbalance dissemination, all regular Exchange procedures for executing MOC and LOC orders will apply, subject to temporary modifications to Exchange "stopped stock" reporting procedures, noted below.

Rule 109(d) requires that a member holding both buy and sell MOC orders simultaneously must execute any imbalance against the prevailing Exchange bid or offer at the close, and then must "pair off" remaining buy and sell orders at the price of the immediately preceding sale. Rule 109(d)(1) provides that the "pair off" transaction must be reported to the consolidated last sale reporting system as "stopped stock", to inform the public that limit and LOC orders entered before the close may remain unexecuted. Insofar as it would be impermissible to report "pair off" transactions in Nasdaq securities as "stopped stock" to the consolidated tape for Amex-listed securities (Tape B), and because the Nasdaq UTP Processor does not currently support any sale condition code for reporting "stopped stock" transactions in its UTP Trade Data Feed ("UTDF"), the Exchange, as an interim measure, is proposing to temporarily exempt "pair-off" transactions in Nasdaq securities under Rule 109(d) from reporting on the consolidated tape, pending the Nasdaq UTP Processor's ability to accommodate Amex's need to print these transactions as "stopped

stock". On February 28, 2003, the Amex made a formal Change Request to the Nasdaq UTP Processor to facilitate reporting of "stopped stock" transactions, including "pair off" transactions under Rule 109(d).

According to a memo sent to the UTP Operating Committee by the Nasdaq UTP Processor on February 7, 2003, Nasdaq would consider all enhancements requested by February 28, 2003, and expects that the Nasdaq UTP Processor will implement approved enhancements by September 2003.

Prior to implementation of this change by the Nasdaq UTP Processor, "pair off" transactions will be executed at the closing price on the Amex and will be reported to the Nasdaq UTP Processor regular way. Another trade report consisting of the price of the preceding imbalance and "pair-off" transactions, with no associated volume, will be transmitted to the Processor utilizing the new "M" sale condition modifier on UTDF to identify the Amex's Official Closing Price in that stock. Nasdaq has announced that the "M" sale condition is expected to go into production on April 14, 2003.⁵ An Amex transaction report with a "M" modifier will represent the Official Closing Price for a Nasdaq security traded on the Amex.

The following example illustrates how a "pair off" in a Nasdaq security would be reported:

Assume "at the close" orders in ABCD to buy 35,000 shares and to sell 5,000 shares. At 3:40 p.m., a buy imbalance of 30,000 shares would be disseminated to vendors as described above. At 3:55 p.m., an order to sell 35,000 shares is entered, offsetting the imbalance. At or as close as practicable to 4:00 p.m., with a current bid/ask of \$10.12-\$10.14 (35,000 by 40,000), the sell imbalance of 5,000 shares is executed against the bid with 5,000 shares from the specialist or orders on the specialist's book. At or as close as practicable to 4:00 p.m., the remaining buy and sell orders are stopped against each other and paired off at the bid price (under Rule 109(d)); Amex will report a 5,000 share regular trade for ABCD to the Nasdaq UTP Processor at \$10.12. Amex will immediately report a second trade for ABCD for 35,000 shares at \$10.12. Amex would then send a third report with a "M" modifier to establish \$10.12 as the official closing price for this stock on the Amex.

The Exchange intends to implement the proposed exemption from reporting

"pair off" transactions as "stopped stock" on a pilot basis until the Nasdaq UTP Processor can accommodate the Amex's request to print a transaction "stopped stock" (expected to be by September 2003).

Rule 131(e) defines "at the close order" as a market order which is to be executed at or as near to the close as practicable, as well as a limit order that is entered for execution at the closing price on the Exchange. Proposed Commentary .02 would apply Rule 131(e) to trading in Nasdaq securities. The Exchange also proposes to add Commentary .01 to Rule 156 (Representation of Orders) to make clear that Rule 156(c) applies to at the close orders in Nasdaq securities. Rule 156(c) provides that the acceptance of an "at the close order" by a broker does not make the broker responsible for an execution at the closing price.

Rule 118, Commentary .01, which specifies Exchange rule referencing trading in Nasdaq securities, would also be amended to add references to Rules 109, 131, and 156.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁶ in general, and furthers the objectives of section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change 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. Solicitation of Comments

Interested persons are invited to submit written data, views and

⁵ See Release No. 34-47517 (March 25, 2003), SR-NASD-2002-158 (March 18, 2003).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).