

"market at 4 p.m." orders, and where there is an imbalance between the buy and sell "market at 4 p.m." orders, the member shall, at 4 p.m. or as close as practicable to 4 p.m., execute the imbalance against the prevailing bid or offer on the Exchange, 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 member shall then pair off the remaining "market at 4 p.m." orders at the price of the immediately preceding sale described above.

(c) Where the aggregate size of buy "market at 4 p.m." orders equals the aggregate size of sell "market at 4 p.m." orders in a given security, the buy and sell orders shall be paired off at the midpoint of the then prevailing bid and offer in that security on the Exchange. In the event that that midpoint consists of a number including a fraction of a cent, then the price of the transaction shall be at the next higher one cent increment above the midpoint.

Precedence Accorded to Orders Entrusted to Specialists

Rule 155

No change

Commentary

.01 to .05 No change.

.06 Notwithstanding anything in Commentaries .03 and .04 above to the contrary, "market at 4 p.m." orders entered with the specialist in Portfolio Depositary Receipts and Index Fund Shares (see Rule 131, Commentary .02) shall be executed at one price at 4 p.m. or as close as practicable to 4 p.m. and shall have priority over limit orders priced at the execution price.

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

1. Purpose

Many ETFs traded on the Exchange trade until 4:15 p.m., Eastern Time, instead of the normal 4 p.m. equities closing time. Currently, market participants trading ETFs (including Portfolio Depositary Receipts and Index Fund Shares) can place market-on-close orders and receive an execution at the 4:15 p.m. closing price for ETFs trading until 4:15 p.m. According to the Amex, however, certain market participants, including institutions, arbitrageurs and professional traders, may wish to receive on such orders a "4 p.m. closing" price (the so called "cash close") at the close of trading in U.S.

equity markets. This is because ETF pricing may "drift" (i.e., change significantly) between 4 p.m. and 4:15 p.m., based on changes in index futures pricing (which close at 4:15 p.m.) or changes in the over-the-counter "cash" market for underlying index stocks that may occur after 4 p.m.

The Exchange proposes to add Commentary .02(a) to Amex Rule 131 ("Types of Orders") to provide that an order in ETFs traded until 4:15 p.m. may be designated as "market on 4 p.m." ("MCC") for execution at or as soon as practicable after the close of the regular equity trading session on the Exchange (normally 4 p.m.). Such orders could be entered until 4 p.m., and all MCC orders to buy and sell the same ETF would be paired off by the specialist and executed at one price. Commentary .02(b) of Amex Rule 131 would provide that when a member is holding simultaneously both buy and sell MCC orders, and where there is an imbalance of MCC buy and sell orders in a given ETF, the member entrusted with the orders would execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. This would mean that an imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid. The remaining orders would be paired off at the immediately preceding sale price. Amex further proposes in Commentary .02(c) of Amex Rule 131 that where the aggregate size of buy and sell MCC orders in a given ETF is the same, then the orders would be paired off at the midpoint of the then prevailing bid and offer in that ETF on the Exchange. If the midpoint is a fraction of a cent, then the price of the transaction would be at the next higher one-cent increment above the midpoint.

The Amex further proposed adding a new Commentary .06 to Amex Rule 155 ("Precedence Accorded to Orders Entrusted to Specialists") to make clear that "market at 4 p.m." orders would be executed at one price at 4 p.m. or as close as practicable to 4 p.m. and shall have priority over limit orders priced at the execution price. Amex states that these MCC orders would be entered either with a floor broker or through the Amex Order File ("AOF"). However, Amex states that system changes to the Common Message Switch ("CMS") would be required to accommodate orders designated as MCC, and, until these changes are made, floor brokers would provide the only way to enter MCC orders.

2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act⁴ in general, and section 6(b)(5)⁵ 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, 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, 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

Written comments were neither solicited nor 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 Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).