

automatically executed in the following situations:

(i) Auto-Ex will be turned-off for one or more securities when the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange or the Nasdaq Stock Market is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes.

(ii) Auto-Ex will not occur if it would cause the election of a stop or stop limit order on the book, or it would cause a trade to occur through the price of an all or none order on the book.

(iii) Auto-Ex will not occur in a stock for 10 seconds after there has been an Auto-Ex trade in that security.

(iv) Auto-Ex will not occur in a stock when the spread in the APQ in that security is equal to or greater than thirty cents.

(v) Auto-Ex will not occur in a stock when the APQ on the opposite side of an incoming order is not at the NBBO for that security.

(vi) Auto-Ex will not occur when the size displayed in the APQ on the opposite side of an incoming order is less than the size of the incoming order.

(vii) Auto-Ex will not occur when an incoming order is larger than the applicable Tier 1 or Tier 2 size parameter for that stock.

(e) The Auto-Ex Enhancements Committee ("Committee") will review a request from a specialist with respect to one or more securities to:

(i) Increase the size of Auto-Ex eligible orders above 1,000 share Tier 1 or 500 share Tier 2 parameters,

(ii) Reduce the duration of the 10-second pause between Auto-Ex executions, and/or

(iii) Increase the number of trades before the implementation of the 10-second pause in Auto-Ex described in paragraph (d)(iii) above.

The Committee may approve, disapprove or conditionally approve such requests. The Committee will balance the interests of investors, the specialist, and the Exchange in determining whether to grant a specialist's request to modify the Auto-Ex parameters specified in (i) through (iii) of paragraph (e) of this Rule. The Committee also will consider a request from a specialist to reduce Auto-Ex parameters that previously had been increased, provided, however, that the Committee may not reduce the Auto-Ex parameters below the floors stated in paragraphs (b) and (d) of this Rule. The Committee may delegate its authority to one or more Floor Governors. The Committee will meet promptly to review a Governor's decision to modify Auto-Ex

parameters in the event that a Governor acts pursuant to delegated authority.

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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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to extend its existing Auto-Ex technology to Nasdaq stocks trading pursuant to the OTC/UTP Plan to permit automatic execution of small orders to accommodate the needs of some investors who desire such executions.⁵ The Amex proposes to implement the proposed rule change prior to the end of May 2003 on a temporary basis until it can implement the enhanced Auto-Ex technology that it currently is developing. The Exchange anticipates that it will implement its enhanced Auto-Ex technology in the fourth quarter of 2003.

Under the proposed rule change, the Amex would automatically execute a market or marketable limit order received by the Exchange electronically when (1) the order is equal to or less than the size displayed in the Amex Published Quote ("APQ"),⁶ (2) the APQ is at the National Best Bid or Offer ("NBBO") for the security, and (3) the order is for 1,000 shares or less for a "Tier 1" Nasdaq stock, or 500 shares or less for a "Tier 2" Nasdaq stock.⁷ For

⁵ The Commission previously has approved the extension of the Exchange's Auto-Ex technology to exchange traded funds ("ETFs"). See, Securities Exchange Act Release No. 47105 (December 30, 2002), 68 FR 592 (January 6, 2003).

⁶ The APQ is the quote that the Amex, pursuant to the OTC/UTP Plan, disseminates to investors by means of the plan securities information processor for last sale and quotation information.

⁷ A "Tier 1" Nasdaq stock is a Nasdaq stock that has an average daily consolidated trading volume of more than 10 million shares during the preceding calendar quarter. A Tier 2 Nasdaq stock is a Nasdaq stock that has an average daily consolidated trading volume of 10 million shares or less during the preceding calendar quarter. At the end of each

example, assume that the NBBO for a stock is .03 to .05, and the APQ is .03 to .06. In this case, the Amex would automatically execute an eligible market sell order but would not automatically execute an eligible market buy order because the Amex is not at the NBBO for the stock on the offer side of the market. The Amex would automatically execute eligible orders when it is on the NBBO even where the NBBO is locked or crossed. Orders that are ineligible for Auto-Ex will be routed automatically to the book for execution by the specialist. The enhancements that the Exchange intends to implement to Auto-Ex in the fourth quarter of 2003 will allow Auto-Ex eligible orders to trade directly with orders on the book. This enhancement, accordingly, will eliminate the need for specialists to separately execute orders on the book that would have been executed by incoming Auto-Ex eligible orders by allowing incoming orders to automatically trade with orders on the book.

The specialist would be the contra side to every Auto-Ex trade. To protect limit orders on the book, in the event that an automatic execution results in the specialist buying or selling stock at a price at which the specialist could have executed an order on the book in whole or part, the specialist would be required to immediately execute the limit order at the price of the Auto-Ex trade to the extent that the limit order would have been executed had the incoming order not been automatically executed against the specialist.

Auto-Ex would be unavailable in one or more securities where the specialist in conjunction with a Floor Governor or two Floor Officials determines that quotes are not reliable and the Exchange or the Nasdaq National Market System is experiencing communications or systems problems, "fast markets,"⁸ or delays in the dissemination of quotes. The Exchange believes that any quote disseminated in these circumstances may be unreliable and, hence, should not be available for automatic execution. This is consistent with disengagement of Auto-Ex for EFTs when quotes are

calendar quarter, the Amex would determine whether a particular Nasdaq stock admitted to trading pursuant to the OTC/UTP Plan would be considered a Tier 1 or Tier 2 Nasdaq stock for the following quarter.

⁸ The Exchange represents that "fast markets" means the unusual market conditions that give rise to the unusual market exception pursuant to Amex Rule 115. Telephone conversation among William Floyd-Jones, Associate General Counsel, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission; and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (April 23, 2003).