

action to be taken (hereinafter "written notification").

(f) through end. No change.

#### Allocations Committee

Rule 27. (a) through (i) No change.

\* \* \* Commentary

.01 No change.

.02 Contacts with Unlisted

Companies. [Specialists and other members must submit a "Notice of Marketing Interest" ("NOMI") (1) prior to contacting an unlisted company, or (2) within five business days of any unanticipated contact with an unlisted company where discussions regarding listing occur or are contemplated by the specialist or other member. The NOMI must identify the company that the specialist or other member would like to contact and is valid for no more than 12 months after Amex staff has given written approval to the request (the "contact period"). Amex staff may decline to approve a specialist's or other member's request to contact an unlisted company where it is felt that such activity could hinder the Exchange's overall listing efforts. For example, a request to contact an unlisted company generally will not be granted where Amex staff have begun discussions with the company.]

[A specialist or other member may request one extension of the contact period. The request must be in writing and must describe the specific activities that the specialist or other member has undertaken which it believes will result in a favorable listing decision. If the request is deemed sufficient by Amex staff, the contact period may be extended up to an additional six months. After the expiration of the contact period and any extension, a specialist or other member may not request permission to again contact the company until six months have elapsed from the expiration of the contact period or extension as applicable. Amex staff may contact an unlisted company as to which there is an approved NOMI, provided the staff notify the subject specialist or other member prior to contacting the company.]

[Only one NOMI can be on file for any company. A designated senior officer of the Exchange, however, may approve a second NOMI with respect to a particular company when (1) sufficient evidence warrants a determination that the second NOMI would assist the Exchange's listing program, and (2) the second NOMI includes the written consent of the first specialist or other member to the approval of the second NOMI.]

Once an unlisted company has requested a listing qualification review,

specialists and other members are prohibited from making any direct or indirect contact with the company for the purpose of influencing its decision in the choice of a specialist. This prohibition includes the company's investment bankers or other advisors, or any other person in a position to influence the company's management.

The Allocations Committee only will be advised of a company's preference for a particular specialist where a specialist's or member's efforts actually have been instrumental in securing the listing as evidenced by the company filing a written preference with the Exchange for the specialist within two weeks of the Exchange initiating a listing qualification review. The Allocations Committee, however, is not obligated to honor such requests.

Once the Allocations Committee has prepared the list of six specialists to be submitted to the new listing candidate, specialists and other members may not initiate any direct or indirect communications with management, the company's investment banker or other advisors, or any person in a position to influence the company. If the company wishes to interview individual specialists, the Exchange will arrange for such interviews. The Chief Executive Officer of the Exchange or his or her designee may require a member of the Exchange staff to attend such interviews to ensure that any statements by specialists and their representatives are consistent with the Exchange's policies on communications with unlisted companies. Inappropriate communications include, but are not limited to, apparent misrepresentations as to market making capabilities or promises unrelated to the specialist's role in making a market in the issuer's stock. Specialists and their representatives also may not supply information concerning another specialist either orally or in writing, except they may refer to overall floor-wide statistics.

.03 through end. No change.

#### Market Quality Committee

Rule 29. (a) through (c) No change.

(d) The Market Quality Committee may meet with a UTP Specialist that may have failed to meet minimum performance standards with respect to UTP Securities. In such an event, the UTP Specialist shall be notified in writing of the grounds to be considered by the Market Quality Committee and afforded an opportunity to make a presentation of relevant information. Such UTP Specialist shall *deliver to the Amex staff coordinator for the Market Quality Committee copies of all*

*materials that they will provide to the Market Quality Committee and the names of any persons that they intend to present to the Market Quality Committee at least three business days prior to the meeting. Such UTP Specialist, likewise, shall be given access to all written material to be provided by the Amex staff to [reviewed by] the Market Quality Committee and the names of all persons that the staff will present to the Committee at least three business days prior to the meeting. [and a] All persons appearing before the Market Quality Committee may be represented by counsel. However, formal rules of evidence shall not apply in meetings of the Market Quality Committee. A failure to meet minimum standards relating to: (1) Quality of markets, (2) competition with other market centers, (3) administrative matters, or (4) willingness to promote the Exchange as a marketplace may form the basis for remedial action by the Market Quality Committee against a UTP Specialist. Any UTP Specialist affected by a decision of the Market Quality Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, and any remedial action to be taken (hereinafter "written notification").*

(e) through end. No change.

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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 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 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<sup>5</sup>

The Committee on Floor Member Performance and Market Quality Committee review specialist performance may take remedial action

<sup>5</sup> The Amex requested that the Commission make minor non-substantive modifications to language in the purpose section. Telephone discussions between William Floyd-Jones, Assistant General Counsel, Amex, Christopher B. Stone, Special Counsel, and Mia C. Zur, Attorney, Division, Commission (January 30 and 31, 2003).