

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 to adopt Rule 118(k) relating to implementation of auxiliary opening procedures on expiration days in Nasdaq National Market securities traded pursuant to unlisted trading privileges ("UTP"). Below is the text of the proposed rule change. New text is in *italics*.

\* \* \* \* \*

### **Trading in Nasdaq National Market Securities**

#### **Rule 118.**

(a) through (j) No change.

#### **(k) Expiration Day Auxiliary Procedures for the Opening**

*The Exchange has adopted auxiliary procedures for expiration days in order to integrate stock orders in Nasdaq securities relating to expiring index contracts into the Amex's opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices in the underlying security, as identified by a qualified clearing corporation e.g., the Options Clearing Corporation) and the four end-of-calendar-quarter trading days when index options expire. The twelve expiration Fridays are "Expiration Fridays" which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month. Orders relating to index contracts whose settlement pricing is based upon the "Expiration Friday's" or the end-of-calendar-quarter trading day's 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. Stock orders relating to index contracts whose settlement pricing is not based upon the "Expiration Friday's" or the end-of-calendar-quarter trading day's opening prices may be entered before or after 9 a.m. To facilitate early order entry, AOF (a) will begin accepting orders at 7:30*

*a.m. and (b) will accept orders of 99,900 shares or less.*

*"Limit at the opening" ("limit OPG") orders are permitted, including delivery through Exchange systems. Ordinary limit orders may also be entered.*

#### **Order Identification**

*Stock orders relating to opening-price settling contracts must be identified "OPG". Firms entering these orders through AOF, but unable to identify orders as "OPG," may use a unique branch code or firm identifier (mnemonic) to identify these orders. Firms unable to identify these orders in either way, and firms not using AOF, must submit a list of all these orders and related details to the Amex Market Surveillance Department.*

#### **Dissemination of Order Imbalances**

*On expiration days, for any stocks having a market order imbalance of 25,000 shares or more at 9 a.m., the Exchange will disseminate the size of the order imbalance via a structured communication process established with major news vendors as promptly as practicable after 9 a.m. Imbalances of less than 25,000 shares may be disseminated at that time with Floor Official approval. A "no imbalance" status will not be published for any stock.*

*Except for the auxiliary procedures described above, all stocks are subject to the regular Amex opening procedures, including price indications where a substantial price change is anticipated. Ten minutes must elapse between a first indication and a stock's opening. However, when more than one indication is necessary, a stock may open five minutes after the last indication provided that ten minutes must have elapsed from the dissemination of the first indication.*

#### **Indications**

*Indications before the opening should be disseminated at 9:15 a.m., if possible, but any indications disseminated prior to 9:30 a.m. require the approval of a Floor Governor or Exchange Official, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day. Indications will be disseminated via a structured communication process established with major news vendors.*

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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, 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 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 Exchange proposes to provide procedures to accommodate handling opening-price orders on expiration days in Nasdaq National Market securities. The Exchange believes that this will enhance the Exchange's Nasdaq UTP program by facilitating the handling of orders routed to the Exchange before the Exchange opening in Nasdaq stocks on expiration days. Expiration days include Expiration Fridays (when some stock index options, index futures and options on index futures expire or settle concurrently), and the four end-of-calendar-quarter trading days when index options expire.

Nasdaq stocks are not currently subject to auxiliary opening procedures in any market trading Nasdaq securities. According to the Exchange, the New York Stock Exchange ("NYSE") has long implemented such procedures for NYSE-listed issues with the expressed aims of minimizing excess volatility associated with expiration days and allowing market participants the opportunity to react to the additional market information provided under NYSE's auxiliary opening procedures as set forth in NYSE Rule 123C.<sup>6</sup> The Exchange believes similar procedures applicable to Nasdaq securities will provide market participants, including off-Floor participants, with useful information relating to the potential impact of index-related orders on opening prices of securities on expiration days.<sup>7</sup> The Exchange believes that this will provide a model that will increase transparency, reduce volatility and facilitate a fair and orderly opening

<sup>6</sup> See e.g. Securities Exchange Act Release No. 31733 (January 14, 1993), 58 FR 6034 (January 25, 1993).

<sup>7</sup> The Exchange also has filed with the Commission another proposed rule change relating to auxiliary opening procedures (SR-Amex-2003-21). Those procedures will apply to Amex-listed securities and the Exchange intends to clarify in an amendment to SR-Amex-2003-21 that auxiliary opening procedures for Nasdaq securities would be governed by Amex Rule 118(k).