

process in Nasdaq securities on expiration days.

Under current Amex procedures applicable to all securities traded on the Amex, including Nasdaq securities, an order imbalance before the opening may result in a delayed opening, with price indications disseminated where a substantial price change is anticipated. The Exchange believes that providing auxiliary opening procedures for Nasdaq securities traded on the Exchange will provide a valuable additional service for market participants engaging in index-related trading on expiration days, by allowing them to better gauge trading interest in Nasdaq stocks traded on the Exchange on days when there is the potential for additional market pressure resulting from index trading. The Nasdaq National Market stocks traded on the Amex are among the largest Nasdaq stocks and the ones most likely to be the subject of index-related trading on expiration days.

Proposed Amex Rule 118(k) will provide for acceptance on expiration days of opening price orders of 99,900 shares or less in Nasdaq stocks through the Amex Order File ("AOF") beginning at 7:30 a.m. (Eastern Time). 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 would be required to be received by the AOF or by the specialist by 9 a.m. These orders could be cancelled or reduced in size. Firms canceling these orders or reducing them in size would be required to prepare contemporaneously a written record describing the rationale for the change and to preserve it as Amex Rule 153 provides.

On expiration days, for Nasdaq stocks having a market order imbalance on the Amex of 25,000 shares or more, the Exchange will disseminate the size of the order imbalance as promptly as practicable after 9 a.m. Stock orders on expiration days relating to opening-price settling contracts would have to 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. Imbalance information would be disseminated by means of a structured communication process established with major news vendors (e.g., Bloomberg, Dow Jones) utilizing, among other things, File

Transfer Protocol to permit public dissemination of order imbalance information at 9 a.m. or as soon thereafter as practicable. With Floor Official approval, imbalances of less than 25,000 shares may be disseminated as soon as practicable after 9 a.m.

With the exception of these auxiliary procedures for expiration days, regular Amex opening procedures for all trading days (not only expiration days) would apply, including price indications where a substantial price change is anticipated. Indications, as well as messages for "opening delay" and "trading resumed," will also be communicated by means of the structured communication process referenced above. Ten minutes would be required to elapse between a first indication and the stock's opening. 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 before the opening would have to be disseminated at 9:15 a.m., if possible. An indication disseminated before 9:30 a.m. would require Floor Governor or Exchange Official approval, or Floor Official approval if it relates to a spin-off or if trading had been halted and not resumed the prior day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁸ in general, and furthers the objectives of section 6(b)(5) of the Act,⁹ 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, and to remove impediments to and perfect the mechanisms 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 in response to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has stated that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), and because Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).