

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 parts of such statements.

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

1. Purpose

Rule 1300(a), which relates to operation of the Exchange After-Hours Trading Facility ("AHT Facility" or "Facility") (governed by Rules 1300 through 1306), currently provides that only specialists registered in specified securities—Portfolio Depositary Receipts, Index Fund Shares or unit investment trusts listed pursuant to section 118B of the Amex *Company Guide*—may participate in the AHT Facility for their dealer account in these securities. In order to help reduce volatility on the close, and to afford Amex specialists flexibility comparable to that of New York Stock Exchange ("NYSE") specialists who participate in NYSE's after-hours crossing session, while maintaining the protection of customer orders, the Exchange believes that specialists should be permitted to participate for their dealer accounts in stocks or in securities traded as equity securities on the Exchange ("equity-traded securities"). These "equity-traded securities" include, without limitation, rights; warrants; securities listed under Sections 106 (Currency and Index Warrants), 107 (Other Securities) and 118B (Investment Trusts) of the *Company Guide*; Portfolio Depositary Receipts (PDRsTM); Index Fund Shares; and Trust Issued Receipts (TIRs). Rule 1302(a)(i), therefore, would provide that a specialist in a stock or other equity-traded security may enter a closing price order in the AHT Facility for the specialist's dealer account to offset an imbalance of buy or sell orders in the Facility immediately prior to the 5 p.m. after hours trading session.

Rule 1300(e) (Definitions) would be amended to add Index Fund Shares to the securities for which the "closing price" is the last regular way sale on the Exchange prior to the official closing of the 9:30 a.m. to 4:15 p.m. trading session. This is because Index Fund Shares may also trade until 4:15 p.m. Rule 1301 (Securities to be Traded) would be amended to state that orders in Nasdaq stocks traded on the Exchange pursuant to unlisted trading privileges are not eligible for entry in the AHT Facility.

Under proposed amendments to Rule 1302(a)(i), if an open agency order to buy (sell) on the specialist's book limited to the closing price remains unexecuted after the specialist buys (sells) the security at its price in the AHT Facility, then the specialist would have to offer that execution to the open order before the opening of trading the next business day. This restriction would not apply to PDRs, Index Fund Shares, TIRs and securities listed under sections 106, 107 or 118B of the *Company Guide*. If there are multiple open agency orders, the specialist will have to offer the execution to each order in time priority until either the execution is accepted or until all such orders have rejected the execution. This restriction protects the interest of investors in having their orders on the book executed, if the investor so wishes, if the specialist has previously bought or sold the security in the AHT Facility for his or her own account.

PDRs, Index Fund Shares, TIRs and other derivatively-priced equity-traded securities would not be subject to this restriction in so far as PDRs, Index Fund Shares and section 118B securities are not currently subject to these restrictions in connection with AHT transactions. Moreover, because such securities are derivatively-priced, they may change in value based on price changes in the underlying index or portfolio securities. The Exchange believes it would be inappropriate to subject the specialist to risk of a market move from the AHT session until the opening of trading the next trading day at 9:30 a.m. for unexecuted customer orders remaining on the specialist's book.

Under current Rule 1302(a)(ii), a member or member organization may enter into the AHT Facility a closing-price order to buy coupled with a closing-price order to sell the same amount of the same security for execution against each other. However, both such orders cannot be for the accounts of members or member organizations. The provision in Rule 1302(a)(ii) that the specialist in PDRs, Index Fund Shares and section 118B securities may agree before 4:15 p.m. to take the contra side on a crowd order by entering a coupled order in the AHT Facility would be amended to add TIRs to the securities eligible for such treatment, and to separate this provision as paragraph (ii)(1) of Rule 1302(a). New paragraph (ii)(2) would be added to provide that a specialist in an Amex-listed stock or equity traded security could also take one side of a coupled order transaction after determining that no buy or sell orders in the Facility will

remain unexecuted. In order to further an important purpose of the proposed rule to help reduce volatility at the close, both sides of a coupled order could be for the accounts of members or member organizations, including the specialist. However, for any unexecuted open agency order on the specialist's book in any stock or equity traded security other than a PDR, Index Fund Share, TIR or section 118B security, after the specialist buys or sells the security at its price in the AHT Facility, the specialist must offer that execution to the open order before the opening of trading on the next business day. If there is more than one open agency order, then the specialist must offer the execution to each order in time priority either until the execution is accepted or until all such orders have rejected the execution. Acceptance must be made within a reasonable time of the offer or the offer will be deemed rejected. These procedures are comparable to those proposed for closing price orders and are intended to provide comparable investor protections. PDRs, Index Fund Shares, TIRs and section 118B securities would be exempted from this restriction for the reasons described above for closing price orders.

In addition, Rule 1302(b) would be amended to add TIRs to the securities for which specialist proprietary orders are not permitted to migrate from the specialist's book to the AHT Facility. Securities currently so restricted include PDRs, Index Fund Shares and section 118B securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)⁴ of the Act in general and furthers the objectives of 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism 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.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).