

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 amend Rule 109(d) Commentary .02 to accommodate reporting of "at the close" orders in securities listed on the Nasdaq Stock Market, Inc. ("Nasdaq") as "stopped stock" pursuant to Amex Rule 109(d). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### **Rule 109 Stopping Stock**

(a) through (d) No change.

#### **Commentary**

.01 No change.

.02 Paragraph (d) of this rule shall apply to at-the-close orders entered on the Exchange in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, except that the Exchange shall [not] disseminate information regarding "pair off" transactions reported pursuant to paragraph (d) as *stopped stock* [, pending implementation of systems changes by] to the Nasdaq Unlisted Trading Privileges Plan Processor [to permit dissemination of "pair off" transactions as "stopped stock"].

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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 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**

Amex Rule 109(d) requires that a member holding both buy and sell market on close ("MOC") orders simultaneously must execute any imbalance against the prevailing Exchange bid or offer at the close, and

then must "pair off" remaining buy and sell orders at the price of the immediately preceding sale. Amex Rule 109(d)(1) provides that the "pair off" transaction must be reported to the consolidated last sale reporting system as "stopped stock," to inform the public that limit and limit on close ("LOC") orders entered before the close may remain unexecuted.

The Commission previously approved the Exchange's proposal to exempt reporting "pair off" transactions as "stopped stock" on a pilot basis until the Nasdaq Unlisted Trading Privileges ("UTP") Plan Securities Information Processor ("SIP") could accommodate Amex's request to print a transaction in Nasdaq security as "stopped stock."<sup>4</sup> Nasdaq has stated that, as of September 15, 2003, the Nasdaq UTP SIP will be able to accommodate Amex's reporting of transactions as "stopped stock," which would include "pair off" transactions under Rule 109(d).<sup>5</sup>

The Exchange, therefore, is proposing to amend Commentary .02 to Rule 109 ("Stopping Stock") to delete the reference to the exemption from disseminating information regarding "pair off" transactions as "stopped stock" pursuant to Rule 109(d). Following the enhancement to the Nasdaq UTP SIP on September 15, 2003, a "pair off" transaction would be printed as "stopped stock" for dissemination by the Nasdaq UTP SIP, in compliance with Rule 109(d).

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>8</sup>

<sup>4</sup> See Securities Exchange Act Release No. 47658 (April 10, 2003), 68 FR 19041 (April 17, 2003).

<sup>5</sup> See UTP Vendor Alert #2003-42, July 18, 2003.

<sup>6</sup> 15 U.S.C. 78(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> At the request of the Exchange, Commission staff has revised the statutory basis for the proposed rule change to cite to Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5). Telephone conversation among Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, Marija Willen,

#### **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.

#### **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 with respect to the proposed rule change.

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

Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of 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

Associate General Counsel, Amex, Christopher Stone, Special Counsel, Division, Commission, and Ann E. Leddy, Attorney, Division, Commission (October 7, 2003).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).