

Commission²⁹ and simultaneously, consented to the entry of a Final Judgment with the Department of Justice,³⁰ the options exchanges have interpreted those actions to preclude them from engaging in joint capacity planning under the current OPRA Plan. Since that time, the exchanges' peak dissemination of OPRA data has increased from approximately 3,500 messages per second to more than 15,000 messages per second, as of September 30, 2003. As the existing options exchanges modify their trading rules to permit competing market makers to independently quote, it is anticipated that each exchange's demands on capacity will increase substantially. In addition, the BSE has proposed to operate a fully electronic options exchange, which would, if approved by the Commission, place further demands on capacity. Accordingly, to permit the exchanges to commence capacity planning without the need for joint action, as required by the Settlement Order, the Commission believes it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to approve the proposed amendment to the OPRA Plan on a temporary basis not to exceed 120 days so that options market data can continue to be disseminated on a timely basis.³¹

V. Conclusion

It Is Therefore Ordered, pursuant to Section 11A of the Act,³² and Rule 11Aa3-2(c)(4) thereunder,³³ that the proposed OPRA Plan amendment, as modified by Amendments No. 1 and 2, (SR-OPRA-2003-01) is approved on a temporary basis not to exceed 120 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-29658 Filed 11-26-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48813; File No. SR-Amex-2003-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments 1, 2, and 3 thereto by the American Stock Exchange LLC Relating to At-the-Close Orders and Auxiliary Opening Procedures

November 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 27, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. On September 10, 2003, the Amex amended the proposed rule change.³ On October 20, 2003, the Amex amended the proposed rule change.⁴ On November 14, 2003, the Amex amended the proposed rule change.⁵ The Commission is publishing this notice to solicit 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 (1) to adopt new Rule 131A to set forth Exchange rules and procedures regarding "at the close" orders; (2) to amend Amex Rules 131 and 156 relating to on-close orders (also known as "at-the-close" orders); (3) to implement additional procedures, relating to daily on-close procedures and expiration day auxiliary opening procedures; and (4) to adopt new Rule 118(m) to reflect procedures applicable to "at the close" orders in Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 9, 2003 ("Amendment No. 1"). In Amendment No. 1, the Amex restated the proposed rule change in its entirety.

⁴ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 17, 2003 ("Amendment No. 2"). In Amendment No. 2, the Amex restated the proposed rule change in its entirety.

⁵ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated November 13, 2003 ("Amendment No. 3"). In Amendment No. 3, the Amex restated the proposed rule change in its entirety.

("UTP"). The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Types of Orders

Rule #131

(a) through (d) No change.

(e) [An at the close order is a market order which is to be executed at or as near to the close as practicable. The term "at the close order" shall also include a limit order that is entered for execution at the closing price, on the Exchange, of the stock named in the order pursuant to such procedures as the Exchange may from time to time establish.] *A market at the close (MOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price. If the MOC order cannot be so executed in its entirety at the Exchange closing price it will be cancelled. A limit at the close (LOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price if that closing price is at the order's limit price, or better. If the LOC order can not be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. Cancellation of MOC and LOC orders will only occur in certain circumstances such as (1) when trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the Amex closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.*

(f) through (t) No change.

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Market on Close Policy and Expiration Procedures

Rule 131A. The following procedures apply to stocks and do not apply to options or to any security the pricing of which is based on another security or an index (e.g., Exchange Traded Funds or Trust Issued Receipts, securities listed under Section 107 of the Exchange Company Guide, warrants and convertible securities).

(a) In an attempt to minimize price volatility on the close, all market-on-close (MOC) and limit-on-close (LOC)

²⁹ See Order, *supra* note 7.

³⁰ *United States v. American Stock Exchange, LLC et al.* (December 6, 2000), Civ. No. 00-CV-02174 (EGS).

³¹ 17 CFR 240.11Aa3-2(c)(4).

³² 15 U.S.C. 78k-1.

³³ 17 CFR 240.11Aa3-2(c)(4).

³⁴ 17 CFR 200.30-3(a)(29).