

stock in accordance with Exchange Rule 109, Commentary .02.

(v) See Rule 156(c), which sets forth the responsibilities of a broker accepting MOC and LOC orders.

#### *Specialist's Reports of MOC and LOC Orders*

(vi) A Nasdaq UTP specialist is required to notify an Amex Floor Supervisor between 4:00 p.m. and 4:15 p.m. whenever the specialist (1) reports a trade at or after 4:00 p.m. that does not involve the execution of an MOC or LOC order, or (2), after reporting an MOC or LOC transaction(s) at or after 4:00 p.m., reports a trade after 4:00 p.m. (e.g., report of a "sold" sale) that is not, of course, a transaction involving the execution of MOC or LOC orders. This notification will be on an Exchange-approved form, with a duplicate copy for the specialist's records.

\* \* \* \* \*

## **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 Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 Commission has previously approved rules and procedures governing market on close ("MOC") and limit on close ("LOC") orders entered on the Exchange.<sup>6</sup> The Exchange proposes to amend these rules and procedures as described below. The amended rules and procedures set forth in this proposal would supersede the procedures previously approved by the Commission as described in the releases cited above, with the exception of Rule 109 which would continue to apply. Further, the Exchange proposes to

consolidate current Exchange procedures relating to MOC and LOC orders, other than orders in Nasdaq securities traded pursuant to unlisted trading privileges, in new Rule 131A, which would include procedures previously approved by the Commission as well as the proposed procedures set forth herein. In addition, the Exchange proposes to adopt Rule 118(m) to establish MOC and LOC procedures for Nasdaq securities, which procedures would be substantially similar to those in proposed Rule 131A.<sup>7</sup>

#### *Proposed Rule 131A (Market on Close Policy and Expiration Procedures)*

In an attempt to minimize price volatility on the close, Amex procedures currently provide that all MOC and LOC orders in stocks should be entered as early in the day as possible to provide market participants an opportunity to better ascertain possible order imbalances that might exist at the close. Under these procedures, Amex represents that, at 3:40 p.m. (Eastern Time) or as close to this time as possible, MOC order imbalances of 25,000 shares or more must be published on the tape. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders on the book will result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 rule),<sup>8</sup> or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. After 3:40 p.m., no MOC or LOC orders in stocks may be entered except to offset a published MOC imbalance.

New Rule 131A would incorporate existing Amex MOC/LOC procedures for stocks during the regular trading session as well as proposed new procedures, as described herein. These procedures would not be applicable to options or any security the pricing of which is based on another security or an index,

such as Exchange-Traded Funds, Trust Issued Receipts, structured products, warrants and convertible securities. These procedures, however, would be applicable to closed-end funds.

The Exchange proposes to implement a MOC Imbalance Calculation Policy, and to adopt changes to the MOC Imbalance Publication Policy similar to those approved for the New York Stock Exchange ("NYSE") in Release No. 34-40094,<sup>9</sup> and stated in NYSE Rule 123C(5). The most salient feature of these revised policies is the additional imbalance dissemination at 3:50 p.m. The Exchange believes additional dissemination at 3:50 p.m. would provide useful information to market participants, who would be able to determine to enter offsetting buy or sell interest based on the latest imbalance information. Amex believes that this would enhance the value of imbalance publications in tempering market volatility at or near the close. In addition, the Exchange believes that implementing MOC/LOC procedures that are more similar to NYSE procedures in this area would enhance their utility for member organizations.

The Exchange proposes to require a 3:50 p.m. MOC imbalance calculation in addition to the current 3:40 p.m. calculation. For the 3:40 p.m. calculation, marketable buy LOCs (that is, LOCs with limit prices above the Exchange last sale at 3:40 p.m.) would be added to buy MOCs. Marketable sell LOCs (LOCs with limit prices below the Exchange last sale at 3:40 p.m.) would be added to sell MOCs. The buys would then be matched against the sells. If there were to be a buy imbalance, it would be offset and reduced by any tick-sensitive sell MOCs and tick-sensitive, marketable sell LOCs (including orders to sell short). If there were to be a sell imbalance, it would be offset and reduced by any tick-sensitive buy MOCs and tick-sensitive, marketable buy LOCs. A "no imbalance" notice would only be published for any stock at 3:40 p.m. if there had been a prior informational imbalance publication. Between 3 p.m. and 3:40 p.m., MOC/LOC imbalances of any size would be permitted to be published with Floor Official approval. These publications would be informational only and would not limit MOC/LOC order entry before 3:40 p.m. Amex represents that these proposed changes are similar to procedures currently in place at the NYSE and included in NYSE Rule 123C except as

<sup>6</sup> See, e.g., Securities Exchange Act Release Nos. 41877 (September 14, 1999), 64 FR 51566 (September 23, 1999) (SR-Amex-99-32); 40123 (June 24, 1998), 63 FR 36280 (July 2, 1998) (SR-Amex-98-10); 35660 (May 2, 1995), 60 FR 22592 (May 8, 1995) (SR-Amex-95-09); 29312 (June 14, 1991), 56 FR 28583 (June 21, 1991) (SR-Amex-95-09).

<sup>7</sup> The Commission approved certain procedures for "at the close" orders in Nasdaq securities in Securities Exchange Act Release 47658 (April 10, 2003), 68 FR 19041 (April 17, 2003) (SR-Amex-2003-18). The procedures and rules proposed herein are in addition to, and do not supersede, those approved in Release No. 34-47658. Auxiliary opening procedures for Nasdaq securities were filed and became effective in Securities Exchange Act Release No. 48000 (June 6, 2003), 68 FR 35469 (June 13, 2003) (SR-Amex-2003-55).

<sup>8</sup> Amex Rule 154, Commentary .08 provides that no transaction in a stock at a price of \$20 or more, \$10 or more (but less than \$20) or less than \$10 per share may be at \$2, \$1, or \$.50 or more, respectively, away from the last previous sale, without the prior approval of a Floor Official.

<sup>9</sup> See Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (SR-NYSE-97-36).