

123C procedures, and believes that they set forth more specifically members' responsibilities in executing or canceling MOC/LOC orders.

Rule 156(c), which relates to broker representation of an "at the close order," currently provides that a broker is not responsible for executing at the closing price an "at the close order" that the broker accepts. The Exchange believes that it is appropriate for the broker to be responsible for execution at the Amex closing price of a MOC order he or she accepts, and amended Rule 156(c) would so state. Rule 156(c) would further specify that a broker handling a LOC would have to use due diligence to execute the order at the Amex closing price if at the limit price or better, and to cancel the portion of the order that cannot be so executed.

Aside from the customer ordering the cancellation of an MOC or LOC order before 3:40 p.m. or for a legitimate error between 3:40 and 3:50 p.m., it should be noted with respect to both MOC and LOC orders that are to be cancelled if not executed in whole or in part, that such cancellations would occur only in the following circumstances and not at the discretion of either the specialist or floor broker. Cancellation of MOC and LOC orders would occur when (1) trading has been halted in the security and does not reopen prior to the close of the market; (2) tick sensitive orders, as described above, 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 Amex Rule 7; (3) for LOC orders, 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.

#### *Auxiliary Opening Procedures*

The Exchange proposes to adopt Rule 131A(d) implementing the following auxiliary opening procedures for index options/futures expiration settlement value days.<sup>13</sup> Amex represents that these procedures are similar to NYSE

Expiration Friday auxiliary opening procedures contained in NYSE Rule 123C(6). Amex represents that for each expiration day on which derivative, index—related products expire against opening prices, several auxiliary procedures are necessary to integrate stock orders relating to expiring contracts into Amex's opening procedures in a manner that assures an efficient market opening in each stock as close to 9:30 a.m. as possible. The index products include, but are not limited to the following: S&P 500 Index options and futures, Nasdaq 100 Index options, S&P MidCap 400 Index options and futures, Russell 1000 Index options and futures and Russell 2000 Index options and futures.

Amex represents that stock orders relating to index contracts whose settlement pricing is based upon opening prices would have to be received by the Amex Order File (AOF) or by the specialist by 9:00 a.m. These orders would be permitted to 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 would be required to preserve it as Rule 153 provides.) All other orders would be permitted to be entered before or after 9 a.m.

To facilitate early order entry, AOF would begin accepting orders at 7:30 a.m. and would accept market orders of 99,900 shares or less. "Limit-at-the-opening" ("limit OPG") orders would be permitted, including delivery through Exchange systems. Ordinary limit and market orders also would be permitted to be entered. Stock orders relating to expiring derivatives whose settlement pricing is based on opening prices would be required to be identified "OPG."

As soon as practicable after 9:00 a.m. on expiration days, the Exchange would publish market order imbalances of 25,000 shares or more in all listed stocks. In addition, imbalances of less than 25,000 shares would be permitted to be published at that time with Floor Official approval. A "no imbalance" status would not be published for any stock. Amex represents that these proposed changes are similar to procedures currently in place at the NYSE and included in NYSE Rule 123C except as follows. In view of the generally lower trading volume and different trading characteristics of Amex stocks compared to NYSE issues, the Exchange believes it is appropriate to continue to require dissemination of imbalances of 25,000 shares or more rather than 50,000 shares or more, as is

required by NYSE Rule 123C. In addition, Amex systems accept market orders of 99,900 shares or less rather than orders of 500,000 shares or less accepted by the NYSE.

#### *MOC/LOC Procedures for Nasdaq UTP Trading*

In Release No. 34-47658,<sup>14</sup> the Commission approved rules relating to execution of MOC and LOC orders in Nasdaq securities traded on the Amex pursuant to unlisted trading privileges. These procedures, with certain exceptions described in Release No. 34-47658,<sup>15</sup> continue to apply previously approved rules and procedures governing MOC and LOC orders entered on the Exchange.<sup>16</sup> The procedures include publication of order imbalances beginning at 3:40 p.m. (or as close to this time as possible) in Nasdaq securities of 25,000 shares or more, and a prohibition on entry of MOC and LOC orders after 3:40 p.m. except to offset an at the close order imbalance. After 3:40 p.m., MOC and LOC orders are irrevocable except to correct an error.

The Exchange is proposing to incorporate into new Rule 118(m) current procedures relating to the 3:40 p.m. calculation and dissemination of order imbalances and entry of MOC and LOC orders in Nasdaq securities. The Exchange also proposes to modify current MOC and LOC procedures by adding an additional publication of MOC/LOC order imbalances of 25,000 shares or more at 3:50 p.m. These modifications would also be included in Rule 118(m). Once again, Amex represents that the amended rule and procedures would supersede the rules and procedures previously approved by the Commission as described in the releases referenced above with the

<sup>14</sup> See Release No. 34-47658, *supra* note 7.

<sup>15</sup> In Release No. 34-47658, the Commission approved amendments to Amex Rule 109 (Stopping Stock), Amex Rule 118 (Trading in Nasdaq National Market Securities), Amex Rule 131 (Types of Orders) and Amex Rule 156 (Representation of Orders), relating to "at the close" orders (1) to specify that these rules apply to Amex trading in Nasdaq securities; (2) to provide for dissemination of order imbalance information to major news vendors by means of a structured communication process; and (3) to temporarily exempt from Amex Rule 109(d) information relating to "pair off" transactions under such rule, pending implementation of systems changes by the Nasdaq Unlisted Trading Privileges Plan Processor to accommodate printing of such transactions as "stopped stock." It should be noted, however, with respect to point number (3), that, effective September 15, 2003, the Nasdaq UTP Plan Processor was able to accommodate printing of pair-off transactions as "stopped stock." Thus, effective October 8, 2003, the temporary exemption from Amex Rule 109(d) was eliminated.

<sup>16</sup> See *supra*, note 6.

<sup>13</sup> The term "expiration settlement value day" refers to the days on which certain expiring index options and/or futures (see list below for examples) have settlement values determined. These index options and futures have settlement values based on the opening prices of their component securities on the trading day preceding their expiration. Index options and futures expire on the Saturday following the third Friday of each expiration month. The expiration settlement value day is the last trading day preceding expiration, which is normally a Friday.