

exception of Release No. 34-47658,¹⁷ and Release No. 34-48000.¹⁸

The Exchange believes an additional publication is necessary at 3:50 p.m. in light of the price volatility in Nasdaq stocks, particularly near the close of trading. An additional imbalance publication at 3:50 p.m. would reflect any offsetting interest as well as any legitimate cancellations entered after the 3:40 p.m. publication and would reflect any shift in the imbalance from a buy to sell imbalance or vice versa. The 3:50 p.m. publication would provide additional, more timely market information to market participants, which Amex states is intended to encourage possible buy or sell interest offsetting the imbalance after 3:50 p.m., thereby promoting greater pricing stability at the close.

Proposed Rule 118(m) provides that at 3:40 p.m. and at 3:50 p.m., or as close to these times as possible, MOC order imbalances of 25,000 shares or more would be published in a manner specified by the Exchange. That is, the Exchange would utilize a structured communication process established with major news vendors (e.g., Bloomberg and Dow Jones), utilizing, among other things, e-mail and file transfer protocol technology to permit public dissemination of order imbalance information at 3:50 p.m., or as soon thereafter as practicable.¹⁹

The imbalance calculation policy for the 3:40 p.m. calculation would be as follows: marketable LOC orders to buy (that is, LOC buy orders with limit prices above the consolidated last sale at 3:40 p.m.) would be added to MOC orders to buy. Marketable LOC orders to sell (that is, LOC sell orders including those to sell short, with limit prices below the consolidated last sale at 3:40 p.m.) would be added to MOC orders to sell. The buy orders are then matched against sell orders to calculate the imbalance and side. Procedures for the 3:50 p.m. imbalance calculation would be the same as those for the 3:40 p.m. calculation, except that the consolidated last sale at 3:50 p.m. would be used to determine whether or not a LOC order is marketable. After 3:50 p.m., no MOC or LOC orders would be permitted to be entered except to offset the latest published MOC imbalance. Between 3:40 p.m. and 3:50 p.m., MOC and LOC orders would be irrevocable, except to correct an error. Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. would not be

permitted for any reason, including in case of legitimate error.

The Exchange proposes to prohibit entry of tick-sensitive MOC or LOC orders (e.g., buy "minus" or sell "plus") in Nasdaq stocks. (Sell short orders in Nasdaq securities, which are exempt from "tick" restrictions on the Amex, would be accepted.) Such orders, (e.g., buy "minus" or sell "plus") which account for less than one percent of "at the close" orders entered in Nasdaq stocks, may impede the specialist in providing an orderly and timely close, in so far as they are processed manually, which makes such orders more difficult to process in a timely manner.

An order imbalance at 3:40 p.m. or 3:50 p.m. below 25,000 shares also would be permitted to 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 would result in a closing price which exceeds the price change parameters of Rule 154, Commentary .08 (the \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. For 3:40 p.m. imbalance disseminations, a "No Imbalance" notice would only be published at 3:40 p.m. if there had been a prior informational imbalance publication between 3:00 p.m. and 3:40 p.m. For 3:50 p.m. imbalance disseminations, if there was an imbalance publication at 3:40 p.m. and the imbalance at 3:50 p.m. were to be less than 25,000 shares, either a "No Imbalance" notice will be published, or the size and side of the imbalance may be published with Floor Official approval.

Rule 118(m)(i), like Rule 131(e) as it is proposed to be amended, provides that a MOC order must be executed in its entirety at the Exchange closing price or is to be cancelled. Rule 118(m)(v) would reference Rule 156(c) as it is proposed to be amended, and would make the broker representing a MOC order in the Trading Crowd responsible for an execution at the Exchange's closing price. 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 Nasdaq UTP stock on the Amex and does not reopen prior to the

close of the market; (2) for LOC orders, the Amex closing price is not at the limit price or better, or (3) for LOC orders 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.

Proposed Rule 118(m)(ii)(c) provides for identical MOC/LOC procedures to those in Rule 131A(a)(3) in the context of trading halts, discussed above. Rule 118(m)(iii), which references procedures in Rule 109(d) applicable to printing the close, would provide that stop orders and percentage orders elected by the execution of the MOC imbalance should be included in the close.

Procedures set forth in proposed Rule 118(m)(iv) (Order of Execution of MOC and LOC Orders) would be the same as those set forth in proposed Rule 131A(c), except that tick-sensitive orders would not be referenced in so far as entry of such orders would be prohibited for Nasdaq UTP securities.

Procedures for Reporting the Amex Official Closing Price and "M" Modifier

The Amex has received Commission approval for use of the "M" sale condition modifier on the UTP Trade Data Feed ("UTDF") to identify the Amex's Official Closing Price ("AOCP") in a Nasdaq security.²⁰ Amex represents that, as described in File No. SR-Amex-2003-18, at the close orders are subject to "pair off" procedures in Amex Rule 109(d)(1), which requires a member holding both buy and sell MOC orders to pair them off against each other and execute any imbalance against the prevailing Amex bid or offer at the close. Any imbalance at the close is executed at the current bid or offer, or as close as practicable to 4:00 p.m., and remaining buy and sell orders are stopped against each other and paired off at that same bid or offer price. Amex reports the first trade (execution of the imbalance) and second pair off trade separately at the same price, and then sends a third report with only the price of those transactions with an "M" identifier via UTDF as the Official Closing Price for the stock on the Amex.

The Exchange would disseminate an AOCP for a security only when the closing price for that security on the Amex has been determined as the result of the execution of MOC or LOC orders entered on the Exchange. If no MOC/LOC orders were to be executed, Amex would not disseminate an AOCP using the "M" modifier. The Exchange believes this is necessary in establishing an "official" close because MOC and

¹⁷ See *supra* note 7.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*