

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51834; File No. SR-Amex-2005-026)

June 13, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 thereto Relating to Quotes in Nasdaq UTP Stocks to be Disseminated by Amex Specialists before 9:30 a.m.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 24, 2005, 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 April 14, 2005, the Amex amended the proposed rule change (“Amendment No. 1”). On May 26, 2005, the Amex amended the proposed rule change (“Amendment No. 2”). The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks to amend Rule 1, Commentary .05 to allow indicative quotes in Nasdaq stocks traded pursuant to unlisted trading privileges (“UTP”) to be disseminated by Amex specialists before 9:30 a.m. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in italics.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## General Rules

### Hours of Business

Rule 1 No change

Commentary

.01 - .04 No change

.05 The hours of business for a security traded on the Exchange pursuant to unlisted trading privileges shall be the same as the hours during which the security is traded in the primary market for such security, provided, however, that Exchange specialists in Nasdaq securities may send quotations to the SIP between 9:25 and 9:30 a.m., and such quotations shall be for test purposes only. Notwithstanding the foregoing, in accordance with Rules 1000 and 1000A, Portfolio Depositary Receipts and Index Fund Shares trading on the Exchange pursuant to unlisted trading privileges may trade until 4:00 p.m. or 4:15 p.m. as specified by the Exchange.

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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 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

Amex Rule 1 provides that the Exchange is not open for the transaction of business before 9:30 a.m. except as otherwise determined by the Board of Governors. Exceptions to this general rule include the transmission of required pre-opening notifications to Intermarket Trading System participants and the publication of “indications” of the anticipated opening price range in a given security. The proposed rule change would codify this existing practice of the Exchange.

Quotations by Amex specialists in Nasdaq UTP securities are transmitted to the Nasdaq Securities Information Processor (“SIP”) through the UTP Quotation Data Feed (“UQDF”). The SIP will not accept pre-opening indications. It will only accept standard quotations (i.e., a bid and offer composed of both price and size). These quotations are collected, consolidated and disseminated by the SIP to quotation vendors through UQDF. While the hours of operation of the UTP Plan are 8:00 a.m. to 6:30 p.m., the SIP opens at 7:30 a.m. to handle pre-opening quotes from UTP participants as necessary. Amex believes that its specialists should be able to send Nasdaq UTP quotations to the SIP before 9:30 a.m. in order to ensure that their quotations are being accurately received by SIP and that they are, in turn, receiving quotations from the other market centers.<sup>3</sup> Bids and offers in these Amex quotations sent to the SIP before 9:30 a.m. (or, in the case of a delayed opening, when a given Nasdaq security opens on the Amex) are not eligible to be hit or taken, but rather, are for test purposes only. Accordingly, Amex believes that it

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<sup>3</sup> The proposed amendment to Rule 1, Commentary .05 would codify this current practice of the Exchange.

should amend its rules to codify its existing practice of allowing indicative quotes in Nasdaq UTP stocks to be disseminated by specialists between 9:25 and 9:30 a.m. for testing purposes and that that any such pre-opening quotations should not be available to create a binding contract.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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, as amended.

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<sup>4</sup> 15 U.S.C. 78f(b).

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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, as amended, or
- B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-026 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-Amex-2005-026 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).