

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-51423; File No. SR-Amex-2005-020)

March 23, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Dissemination of Order Imbalances in Tape A and Tape B Securities Admitted to Unlisted Trading Privileges in the Same Manner as Order Imbalances in Tape C Securities Admitted to Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 11, 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 and II below, which Items have been prepared by the Exchange. On March 18, 2005, the Exchange filed Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

The Amex proposes to amend Amex Rule 131A to provide for the dissemination of order imbalances in Tape A and Tape B securities admitted to unlisted trading privileges (“UTP”) in the same manner as order imbalances in Tape C (NASDAQ) securities admitted to UTP.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240. 19b-4.

³ Amendment No. 1 replaces and supersedes the Amex’s original 19b-4 filing in its entirety.

The text of the proposed rule change, as amended, is available on the Amex's Web site <http://www.amex.com>, at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

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 III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's rules provide for mandatory and discretionary publication of imbalances of market-on-close ("MOC") and limit-on-close ("LOC") orders for listed and unlisted stocks. Currently, Amex order imbalances in listed stocks⁴ are published over the Tape B high speed line. Order imbalances in NASDAQ stocks admitted to UTP on the Amex are disseminated in a different manner since the NASDAQ Securities Information Processor ("SIP") does not support order imbalance dissemination by NASDAQ UTP Plan Participants. Amex specialists in NASDAQ stocks, as the result, currently enter their order imbalances into a PC at the post and this information is transferred to an Amex server that uploads the information at 3:40 and 3:50

⁴ There are nine stocks that were admitted to unlisted trading privileges on the Exchange prior to February 28, 1950. These nine stocks are treated by the Securities Industry Automation Corporation ("SIAC") as if they were listed on the Amex for purposes of publishing order imbalances.

PM by means of FTP file transfer protocol to market data vendors, firms that have requested the information, and the Amex Web site.⁵

The Exchange recently admitted to UTP the common stock of a particular security reported and quoted over Tape B. On the first day of trading this particular Tape B listed security, the Exchange attempted to disseminate an imbalance of on-close orders but was unable to do so because SIAC, the SIP for Tape A and B, would not permit it. The Amex represents that it currently accounts for more than 50% of trade market share in this Tape B listed security, but temporarily does not accept MOC and LOC orders because of its inability to publish order imbalances as required under Amex Rule 131A. The Amex believes that implementing this rule change would enable the Amex to accept MOC/LOC orders, and conduct robust closings.

The Amex represents that SIAC is of the view that its systems prohibit it from disseminating order imbalances for markets other than the listing market. Because SIAC believes that a Consolidated Tape Association (“CTA”) Plan (“CTA Plan”) amendment and technical systems changes are necessary for it to disseminate order imbalances in stocks where the Exchange is not the listing market, and because the Exchange believes that it would be time consuming and futile to seek a CTA Plan amendment due to the requirement of unanimous approval of such changes, the Exchange is instead proposing an amendment to Amex Rule 131A to permit the dissemination of order imbalances in Tape A and B securities admitted to UTP in the same manner as order imbalances in NASDAQ securities admitted to UTP. The proposed rule change, as amended, would exempt equity derivatives and options from the proposed change, because the Amex does not now disseminate order imbalances in these securities. The proposed rule also would exempt the handful of stocks traded on the Exchange that were

⁵ See Amex Rule 118.

admitted to UTP more than half a century ago because, according to the Amex, SIAC has no objection to disseminating order imbalances in these securities over Tape B.

2. Statutory Basis

The proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ 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 will impose no burden on competition that is 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 by the Exchange on this proposal.

III. 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. Please include File Number SR-Amex-2005-020 on the subject line.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-020. 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 Section. Copies of such filing also will be available for inspection and copying at the principal offices of 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-2005-020 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of Section

6(b)(5) of the Act,⁸ which requires, among other things, that the Exchange's rules promote just and equitable principles of trade and facilitate transactions in securities, and, in general, protect investors and the public interest. The proposed rule change will enable the dissemination of order imbalances before the close in stocks for which Amex is not the listing market adding transparency to the closing process.

The Exchange has requested that the Commission approve the proposed rule change, as amended, on an accelerated basis, stating that this may eliminate inconsistencies in the marketplace and avoid confusion among its members and member organizations regarding the dissemination of MOC/LOC orders. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁹ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission notes that the proposed rule change, as amended, would facilitate the dissemination of order imbalances for MOC/LOC orders, which, according to the Amex, SIAC cannot disseminate for secondary markets. The Commission further notes that order imbalance information for listed securities (Tape A and B) admitted to UTP would be disseminated in a manner similar to how the Amex currently disseminates order imbalance information for NASDAQ UTP securities (Tape C) pursuant to Amex Rule 118. The Commission believes that the dissemination of order imbalances for listed UTP securities could be beneficial to investors, contribute to the information flow necessary to make informed investment decisions, and should enable the Amex to conduct more efficient closings. The Commission believes that accelerating approval of this proposal would allow the Exchange to immediately begin dissemination of MOC/LOC order imbalance information for listed securities admitted to UTP on the Amex. Accordingly, the

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

Commission finds that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,¹⁰ to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change, as amended, (SR-Amex-2005-020) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary

¹⁰ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).