

wholly owned subsidiaries. Vermont expects to be able to satisfy its needs for cash with revenues paid to it under the Power Contracts. Accordingly, Vermont believes that the amount of capital that will remain after consummation of the transactions proposed will be sufficient to meet its ongoing business needs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47658; File No. SR-Amex-2003-18]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to "At the Close" Orders in Nasdaq Securities

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 21, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to amend Amex Rule 109, "Stopping Stock," Rule 118, Trading in Nasdaq National Market Securities, Rule 131, Types of Orders, and Rule 156, Representation of Orders, relating to "at the close" orders (1) to specify that these rules apply to Amex trading in Nasdaq National Market System securities ("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 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 (the "Nasdaq UTP Processor") to accommodate printing of such transactions as "stopped stock." The text of the proposed rule change is set forth below in its entirety. Proposed new language is in *italics*.<sup>3</sup>

\* \* \* \* \*

#### Rule 109 "Stopping Stock"

(a) through (d) No change.

#### Commentary

.01 No change

.02 *Paragraph (d) of this rule shall apply to at-the-close orders entered on the Exchange in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, except that the Exchange shall not disseminate information regarding "pair off" transactions reported pursuant to paragraph (d), pending implementation of systems changes by the Nasdaq Unlisted Trading Privileges Plan Processor to permit dissemination of "pair off" transactions as "stopped stock".*

\* \* \* \* \*

#### Trading in Nasdaq National Market Securities

#### Rule 118

(a) through (j) No change.

#### Commentary

.01 The following rules refer to trading in Nasdaq National Market securities and should be consulted by members and member organizations trading Nasdaq National Market securities on the Floor: Rule 1 (Commentary .05); Rule 3; Rule 7 (Commentary .02); Rule 24 (b); *Rule 109 (Commentary .02)*; Rule 115 (Commentary .01); *Rule 131 (Commentary .02)*; *Rule 156 (Commentary .01)*; Rule 170 (Commentary .11); Rule 175; Rule 190 (Commentary .06); and Rule 205 (Commentary .05).

\* \* \* \* \*

#### Types of Orders

#### Rule 131

(a) through (t) No change.

#### Commentary

.01 No change

<sup>3</sup> At the Exchange's request, the Commission made two non-substantive formatting corrections to the Exchange's proposed rule text. Telephone conference among Michael Cavalier, Associate General Counsel, Amex; David Fisch, Managing Director, Rulings, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, SEC; and Ann E. Leddy, Attorney, Division of Market Regulation, SEC (April 8, 2003).

.02 *Paragraph (e) of this rule shall apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.*

\* \* \* \* \*

#### Representation of Orders

#### Rule 156

(a) through (e) No change.

#### Commentary

.01 *Paragraph (c) of this rule shall apply to at-the-close orders entered on the Exchange in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.*

\* \* \* \* \*

### 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 Exchange included statements concerning the purpose of and basis for the proposed rule change, 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 Exchange 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 Exchange is proposing to amend its rules relating to execution of market on close ("MOC") and limit on close ("LOC") orders in Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges ("UTP"). The Commission has previously approved rules and procedures governing MOC and LOC orders entered on the Exchange.<sup>4</sup> The procedures include publication of order imbalances beginning at 3:40 p.m. (or as close to this time as possible) in listed securities of 25,000 shares or more on the consolidated tape (Network B), and a prohibition on entry of MOC or 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 proposes to amend Amex

<sup>4</sup> See, e.g., Release No. 34-41877 (September 23, 1999), SR-Amex-99-32 (September 14, 1999); Release No. 34-40123 (July 2, 1998), SR-Amex-98-10 (June 24, 1998); Release No. 34-35660 (May 8, 1995), SR-Amex-95-09 (May 2, 1995); Release No. 34-29312 (June 21, 1991), SR-Amex-90-32 (June 15, 1991).

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

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

Rules 109(d) ("Stopping Stock"), 131(e) ("Types of Orders") and 156(c) ("Representation of Orders"), which apply to handling "at the close" orders, including MOC and LOC orders in Nasdaq securities, as described below.

Currently there is no publication of order imbalances in Nasdaq securities traded pursuant to UTP. Because certain Exchange MOC procedures are predicated on those publications, the Exchange intends to institute a procedure for publishing imbalances of orders entered on the Exchange in Nasdaq UTP securities at 3:40 p.m. Because the Nasdaq UTP Processor (currently operated by the Nasdaq Stock Market, Inc. ("Nasdaq")) for disseminating consolidated quotation and last sale information does not accommodate publication of order imbalances, the Exchange will utilize a structured communication process established with major news vendors (e.g., Bloomberg and Dow Jones) utilizing, among other things, e-mail technology to permit public dissemination of order imbalance information at 3:40 p.m., or as soon thereafter as practicable. In addition, this information will be disseminated on the Amex website. Following an imbalance dissemination, all regular Exchange procedures for executing MOC and LOC orders will apply, subject to temporary modifications to Exchange "stopped stock" reporting procedures, noted below.

Rule 109(d) requires that a member holding both buy and sell MOC orders simultaneously must execute any imbalance against the prevailing Exchange bid or offer at the close, and then must "pair off" remaining buy and sell orders at the price of the immediately preceding sale. Rule 109(d)(1) provides that the "pair off" transaction must be reported to the consolidated last sale reporting system as "stopped stock", to inform the public that limit and LOC orders entered before the close may remain unexecuted. Insofar as it would be impermissible to report "pair off" transactions in Nasdaq securities as "stopped stock" to the consolidated tape for Amex-listed securities (Tape B), and because the Nasdaq UTP Processor does not currently support any sale condition code for reporting "stopped stock" transactions in its UTP Trade Data Feed ("UTDF"), the Exchange, as an interim measure, is proposing to temporarily exempt "pair-off" transactions in Nasdaq securities under Rule 109(d) from reporting on the consolidated tape, pending the Nasdaq UTP Processor's ability to accommodate Amex's need to print these transactions as "stopped

stock". On February 28, 2003, the Amex made a formal Change Request to the Nasdaq UTP Processor to facilitate reporting of "stopped stock" transactions, including "pair off" transactions under Rule 109(d).

According to a memo sent to the UTP Operating Committee by the Nasdaq UTP Processor on February 7, 2003, Nasdaq would consider all enhancements requested by February 28, 2003, and expects that the Nasdaq UTP Processor will implement approved enhancements by September 2003.

Prior to implementation of this change by the Nasdaq UTP Processor, "pair off" transactions will be executed at the closing price on the Amex and will be reported to the Nasdaq UTP Processor regular way. Another trade report consisting of the price of the preceding imbalance and "pair-off" transactions, with no associated volume, will be transmitted to the Processor utilizing the new "M" sale condition modifier on UTDF to identify the Amex's Official Closing Price in that stock. Nasdaq has announced that the "M" sale condition is expected to go into production on April 14, 2003.<sup>5</sup> An Amex transaction report with a "M" modifier will represent the Official Closing Price for a Nasdaq security traded on the Amex.

The following example illustrates how a "pair off" in a Nasdaq security would be reported:

Assume "at the close" orders in ABCD to buy 35,000 shares and to sell 5,000 shares. At 3:40 p.m., a buy imbalance of 30,000 shares would be disseminated to vendors as described above. At 3:55 p.m., an order to sell 35,000 shares is entered, offsetting the imbalance. At or as close as practicable to 4:00 p.m., with a current bid/ask of \$10.12-\$10.14 (35,000 by 40,000), the sell imbalance of 5,000 shares is executed against the bid with 5,000 shares from the specialist or orders on the specialist's book. At or as close as practicable to 4:00 p.m., the remaining buy and sell orders are stopped against each other and paired off at the bid price (under Rule 109(d)); Amex will report a 5,000 share regular trade for ABCD to the Nasdaq UTP Processor at \$10.12. Amex will immediately report a second trade for ABCD for 35,000 shares at \$10.12. Amex would then send a third report with a "M" modifier to establish \$10.12 as the official closing price for this stock on the Amex.

The Exchange intends to implement the proposed exemption from reporting

"pair off" transactions as "stopped stock" on a pilot basis until the Nasdaq UTP Processor can accommodate the Amex's request to print a transaction "stopped stock" (expected to be by September 2003).

Rule 131(e) defines "at the close order" as a market order which is to be executed at or as near to the close as practicable, as well as a limit order that is entered for execution at the closing price on the Exchange. Proposed Commentary .02 would apply Rule 131(e) to trading in Nasdaq securities. The Exchange also proposes to add Commentary .01 to Rule 156 (Representation of Orders) to make clear that Rule 156(c) applies to at the close orders in Nasdaq securities. Rule 156(c) provides that the acceptance of an "at the close order" by a broker does not make the broker responsible for an execution at the closing price.

Rule 118, Commentary .01, which specifies Exchange rule referencing trading in Nasdaq securities, would also be amended to add references to Rules 109, 131, and 156.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(5),<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *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.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and

<sup>5</sup> See Release No. 34-47517 (March 25, 2003), SR-NASD-2002-158 (March 18, 2003).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. 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 the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-18 and should be submitted by May 8, 2003.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> in that it will provide market participants with a source of closing price information for Nasdaq securities in addition to that disseminated by Nasdaq, which will enhance intermarket competition by providing an additional information source for market participants to assess and compare pricing and execution quality among different markets trading Nasdaq securities.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to accommodate trading in Nasdaq securities on the Amex in accordance with existing Amex rules governing "at the close" transactions. The Commission believes that the establishment of MOC and LOC procedures for Nasdaq securities by the Exchange should benefit investors, generally, and that the proposal's

temporary exception regarding "pair off" transactions should prevent the Exchange from being unfairly disadvantaged until such time as the Nasdaq UTP Processor can complete the necessary technical enhancements.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>10</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because it will permit the Amex to disseminate its Official Closing Price for Nasdaq securities traded on the Amex utilizing the "M" sale condition at or about the time such condition is utilized by Nasdaq.<sup>11</sup> In addition, the proposed rule change regarding the exemption from reporting "pair off" transactions as "stopped stock" will be implemented on a pilot basis, pending the Nasdaq UTP Processor's implementation of necessary systems changes.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-Amex-2003-18), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47663; File No. SR-NASD-2003-67]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Extend Operation of NASD's Alternative Display Facility on a Pilot Basis

April 10, 2003.

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 April 7,

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> Nasdaq has announced that it expects to place the "M" sale condition into production on April 14, 2003. The "M" sale condition will be utilized to disseminate the Nasdaq Official Closing Price on the Nasdaq market. See Release No. 34-47517, *supra* note 5.

<sup>12</sup> See *supra* note 10.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which NASD has prepared. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under Rule 19b-4(f)(6),<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to extend for nine months the operation of its Alternative Display Facility ("ADF") on a pilot basis. The current ADF pilot program, which the SEC approved on July 24, 2002, is due to expire on April 24, 2003. The pilot program permits members to quote and trade only Nasdaq-listed securities on or through the ADF. In addition, the proposed rule change would amend NASD Rule 4613A to clarify that ADF market participants must have in close proximity to their ADF Facility terminal at which they make a market in a Nasdaq security quotation data from all markets trading Nasdaq securities.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

4000A. NASD Alternative Display Facility

4100A. General

NASD Alternative Display Facility ("ADF") is the facility to be operated by NASD on a nine-month pilot basis for members that choose to quote or effect trades in Nasdaq securities ("ADF-eligible securities") otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [April 24, 2003] *January 26, 2004*.

\* \* \* \* \*

4613A. Character of Quotations

(a) through (d) No change.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).