SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56495; File No. SR–Amex–2007–105]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Require That the AEMI Trading Platform Function To Assure Compliance With the Exchange's Priority and Parity Rules

September 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2007, 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 substantially by the Amex. The Amex has designated the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with 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

In compliance with a Commission order in a recent administrative proceeding,[5] the Amex proposes to adopt new Commentary .06 to Amex Rule 126–AEMI, ''Precedence of Bids and Offers,'' to provide that the Amex's new hybrid trading platform for equity products and exchange-traded funds (''ETFs''), designated as AEMI℠ (''AEMI''), shall function at all times in a manner that assures compliance with the Amex's priority and parity rules. In particular, AEMI shall systemically prevent a Specialist attempting to execute his/her proprietary order from trading ahead of a customer order in the Specialist's possession or for which the Specialist otherwise has responsibility and which customer order could trade in place of some or all of the Specialist's side of the trade, *unless* the trade meets a specified exemption in the Exchange's rules.

The proposed rule change is available at the Amex, in the Commission's Public Reference Room, and on the Amex's Web site at *http://www.amex.com*.

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 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

The Exchange is proposing to add to its AEMI rules a provision requiring that the AEMI platform function at all times in a manner that assures compliance with the Exchange's priority and parity rules. More specifically, AEMI must ensure that, when a Specialist is in the process of executing his/her proprietary order while a customer order in the Specialist's possession or for which the Specialist otherwise has responsibility could trade in place of some or all of the Specialist's side of the trade, AEMI will systemically (i) prevent the reporting of the execution, and (ii) allocate the appropriate portion of the Specialist's trade to the customer order, *unless* the trade meets a specified exemption in the Exchange's rules and has thereby been programmed into the AEMI system as an allowable trade. All of the Exchange's priority and parity rules for equity products and ETFs are pre-programmed into AEMI and may not be disabled or otherwise changed by the Specialist or any other market participant. The provision with the foregoing requirements is being added as new Commentary .06 to Amex Rule 126–AEMI.[6]

The Exchange believes that the new AEMI platform, as currently operational, does in fact meet the foregoing requirements.[7] The implementation of AEMI, whose operation has been described in detail in previous filings, goes well beyond simply adding enhancements to the Amex's legacy trading systems to bring the Exchange into compliance. AEMI is an entirely new trading platform whose design and operation will, in transactions involving equity products and ETFs,[8] prevent Specialists from violating the Exchange's priority and parity rules in ways that the Amex's legacy systems could not.

Under normal circumstances, when auto-ex is enabled in AEMI, incoming orders are executed against resting orders on the AEMI Book in accordance with the Exchange's priority and parity rules that are pre-programmed into the system. The system also permits manual trades to occur when auto-ex is enabled in the form of negotiated trades (between two crowd members), crosses in the crowd (one crowd member), and auctions (between multiple crowd members). When auto-ex is disabled, only auctions performed by the Specialists may occur (*see* discussion of auctions below).

The following illustrates the steps involved in negotiated trades, which have been relatively infrequent during the first few months that AEMI has been in effect. Suppose two Floor Brokers negotiate the terms of a trade between them while standing in the crowd. They would then verbally request that the Specialist enter the trade into AEMI. Within a few seconds, the Specialist

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* In the Matter of American Stock Exchange LLC, Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions, a Censure, and a Cease-and-Desist Order Pursuant to Sections 19(h)(1) and 21C of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 55507 (March 22, 2007) (Administrative Proceeding File No. 3–12594) (''Settlement Order'').

[6] As noted above, the Amex is making this rule filing in compliance with the Settlement Order. *See* note 5, *supra*. The Amex has withdrawn its original filing with respect to this proposed rule change, SR–Amex–2007–50, which the Amex filed on May 21, 2007, and is replacing it with the current rule filing.

[7] There are two exceptions to this statement that the Amex has recently become aware of and that the Amex is working to correct in the near future. First, there are certain circumstances immediately following the opening or reopening pair-off in an equity or ETF under which the Specialist's quotation could be routed out to execute against a better priced protected quotation of another market ahead of a marketable customer order on the AEMI Book. Secondly, the Exchange's rules provide for a post-opening pair-off of marketable orders held in the message queue during the opening pair-off. This post-opening pair-off is handled by the AEMI system in such a way that it could result in the Specialist's quote being executed ahead of marketable customer orders on the AEMI Book. Although the Amex does not believe that either of these situations occurs with any frequency and the Specialist has no ability to direct their occurrence, the Exchange is currently working to implement in a timely manner the software changes necessary to correct these system flaws and will make an additional rule filing at the time that the corrections become effective.

[8] Options are not traded on AEMI at this time.

would enter the badge identifiers of both Floor Brokers along with the terms of the trade (price and number of shares) into AEMI and click the ''GO'' button, during which time the two Floor Brokers would be physically present. It would be very obvious to these Floor Brokers, and to other crowd members as well, if the Specialist were to attempt to delay the entry of the order into AEMI or take other action that would disadvantage the parties to the negotiated trade and benefit the Specialist (*e.g.*, moving his quotation). AEMI would automatically validate that the trade meets all required parameters (*e.g.*, the trade price relative to the Amex Published Quote (''APQ'')) and, if so, accepts the trade into AEMI for execution. If the price of the trade is outside the national best bid or offer (''NBBO''), then intermarket sweep orders are immediately generated as required to execute against the protected quotations of away markets, while the balance of the order prints on the Amex and is allocated based on the Exchange's priority and parity rules. In that allocation, electronic orders and quotations that already exist on the AEMI Book at the price of the verbal trade have priority over the verbal trade that has just been accepted by AEMI for execution. Following the allocation, AEMI will send a trade execution message to each Floor Broker's hand held terminal (''HHT'') with the number of shares allocated to the Floor Broker at the trade price. Each Floor Broker would then further allocate those shares among the customer orders in his/her HHT.

The following example illustrates the automatic application of the priority and parity rules by AEMI in a situation involving a manual trade with auto-ex enabled. As provided in Rule 128B—AEMI, ''Auction Trades,'' a negotiated trade may take place only at or inside the APQ. A negotiated trade that takes place at the APQ automatically incorporates electronic orders and quotes already resident on the AEMI Book at the time of the print, because these orders and quotes have priority and standing over the verbal trade. For example, assume that the APQ for an ETF is 34.55 x 35.10 and the AEMI Book has 4,000 shares on the bid side at that price, comprised of a customer order for 3,000 shares and the Specialist's bid for 1,000 shares. Assume that the customer order is a reserve order with a display size of 1,000 shares. Therefore, the size of the APQ on the bid side is 2,000 shares (the visible size of the reserve order and the Specialist's bid). Two Floor Brokers in the crowd wish to transact a negotiated trade for 5,000 shares at the price of 34.55, a price that has been agreed to verbally and that must be entered into AEMI by the Specialist in order for the trade to represent a valid contract. When the Specialist prints the trade for the two Floor Brokers, the electronic orders at the price take priority and the seller will sell 3,000 shares to the customer reserve order (displayed and non-displayed liquidity), 1,000 shares to the Specialist's quote, and 1,000 shares to the contra party in the negotiated trade. The remaining 4,000 shares on the buy side of the negotiated trade expire. The 4,000 shares on the AEMI Book, including the Specialist's quote, take priority at the price because they represent passive liquidity already resident on the AEMI Book and the Specialist is not agent to the negotiated trade in the crowd. Similarly, a cross from a crowd member must interact with orders on the AEMI Book, with the exception of crosses that meet the size and value requirements outlined in Commentary .01 and .02 of Rule 126—AEMI, in which case they do not interact with orders already on the AEMI Book.

Next, suppose that the negotiated trade in the crowd in the foregoing example is for only 1,000 shares. The priority and parity rules for ETFs in AEMI will automatically result in the seller executing all 1,000 shares against the displayed size of the customer reserve order, which has a higher priority than the Specialist's quote. On the other hand, if the negotiated trade had been for 2,000 shares, 1,000 shares would have executed against the displayed size of the customer reserve order and 1,000 shares would have executed against the Specialist's quote, because the latter has a higher priority than the replenished reserve size (which is not visible liquidity). This is an example of a specified exemption in the Exchange's priority and parity rules that allows the Specialist to have a higher priority than part of a customer order.[9]

Finally, a Specialist may conduct an auction when auto-ex is either enabled or disabled. In both circumstances, resting orders on the AEMI Book are automatically incorporated into the pair-off, and the parity and priority rules referred to above are systematically applied. When conducting a pair-off, the Specialist has agency responsibility to orders on the AEMI Book and may participate at the pair-off price but only after all other orders at the pair-off price trade first.

In the circumstance when auto-ex is disabled, an auction pair-off would be conducted to resolve any imbalance and re-enable auto-ex. (If there were no imbalance, auto-ex could be re-enabled based simply on a quotation.) The only auction trade that can take place in this situation is one to resolve the imbalance. During the time that auto-ex is disabled, incoming orders, amendments, and cancellations continue to enter the AEMI Book and members may *not* trade in the open-outcry market except as part of the auction trade that re-enables AEMI. Any verbal involvement by crowd members would take place during the post-trade allocation process as follows. The Specialist would set the price of the pair-off, with the contra interest that is applied against the imbalance coming from marketable orders on the contra side of the AEMI Book (and with intermarket sweep orders being generated to away markets as necessary).[10] Once the Specialist has set the auction price, he does not exercise any additional discretion that would influence the number of shares of the imbalance that he is allocated vis-à-vis the other members of the crowd. He must announce the price of the trade to the crowd before it is printed to the tape, so crowd members will know whether they are entitled to be part of the trade. Any remainder of the imbalance will be parity-allocated against the Specialist and/or eligible crowd participants represented electronically on the contra side of the AEMI Book. Each active crowd participant with a bid, offer, or order on the contra side of the aggressing order will receive a message from AEMI with the initial allocation that AEMI has automatically calculated for that crowd member. Following this initial post-trade allocation, those crowd participants who receive an initial allocation will verbally confirm their

[9] In addition to executing ahead of the replenished reserve size of customer reserve orders for both ETFs and equities, as provided by the Amex's priority and parity rules, the Specialist's quotation may also be executed, for both ETFs and equities under those rules, ahead of a percentage order that is a customer order and is elected by a trade event. In addition, for equities only, the Specialist's quotation may be executed ahead of some customer orders pursuant to the Amex priority and parity rules (and depending on whether public orders are also involved) under the following circumstances: (i) Parity allocation takes place among the Specialist's quotation in parity and the visible size of crowd customer orders in parity; and (ii) the Specialist's quotation and the visible size of certain crowd customer orders not in parity are executed based on time priority. *See* Amex Rule 126—AEMI (b) and (d).

[10] The Specialist may not be part of the pair-off at that price; he participates only in the absorption of the imbalance.

participation or non-participation to the Specialist.[11] The Specialist enters the necessary adjustments into AEMI, and AEMI will compute the revised individual allocations for each crowd member. AEMI will then immediately send a message to each of these crowd participants with their respective individual final trade allocations, with Floor Brokers completing an additional allocation of their individual trades to existing orders in their HHTs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Regulation NMS, as well as Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] 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, and, in general, to protect investors and the public interest.

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

The Amex believes that the proposed rule change does not impose any 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 either solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to section 19(b)(3)(A)(i) of the Act[14] and Rule 19b–4(f)(1) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–2007–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–105. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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–2007–105 and should be submitted on or before October 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

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[11] If the Specialist were to ignore a particular crowd member's confirmation of participation (arguably so that the Specialist could execute more of the imbalance himself), this would be very obvious to the disadvantaged crowd member (because his allocation would go to zero from the number that he initially was assigned by AEMI), who could challenge the result. The Amex believes, in other words, that it is highly unlikely that the Specialist could get away with such a blatant act.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(i).

[15] 17 CFR 240.19b–4(f)(1).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56494; File No. SR–CBOE–2007–110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Obvious Error Rules

September 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 substantially prepared by the Exchange. CBOE has designated this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with 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

The Exchange proposes to amend CBOE Rules 6.25 and 24.16, which are the Exchange's rules applicable to the nullification and adjustment of transactions. The text of the proposed rule change is available at the Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(2).