

Securities as if they were equity options and not FCO Securities, with the result that during the period when subparagraph (c)(iii) of Section VIII is in effect, access to market information pertaining to New FCO Securities is not subject to the separate fees and charges that apply to OPRA's FCO service, and revenues and expenses pertaining to market information pertaining to New FCO Securities are not allocated to OPRA's FCO accounting center, but instead are allocated to its basic accounting center.

The ISE recently advised OPRA that it intends to commence trading in certain classes of FCOs, and it represented that none of the FCOs it intends to trade will be fungible with classes of FCOs traded on the Phlx. Since by its terms Section VIII(c)(iii) of the OPRA Plan currently applies only to new classes of FCOs that are listed on the Phlx, in response to the ISE's request, OPRA now proposes to amend that Section to make it apply to all classes of FCOs newly listed by any exchange that is a party to the OPRA Plan while that Section remains in effect. This will assure that all classes of newly listed FCOs will be treated the same by being included in OPRA's basic service, rather than in its FCO service regardless of the exchange on which those classes are traded.

The text of the proposed amendment to the OPRA Plan is set forth below. Text additions are in *italics*; deletions are bracketed.

\* \* \* \* \*

#### VIII. Financial Matters

(a)–(b) No Change.

(c) FCO Accounting Center Costs and Revenues

(i)–(ii) No Change.

(iii) Special Temporary Provision for Newly Traded FCO Securities.

This paragraph (c)(iii) applies only to FCO Securities that are introduced for trading *in the securities markets maintained by any of the parties to the Plan* [on the Philadelphia Stock Exchange (“PHLX”)] during the period while this paragraph is in effect. FCO Securities introduced for trading by *any of the parties* [PHLX] during this period are referred to as “New FCO Securities.”

Notwithstanding anything in the Plan to the contrary, effective during a temporary period ending on December 31, 2007, or on such earlier date as may be established by the party or parties trading New FCO Securities, written notice of which shall be given to the other parties (“period of effectiveness”), access to information and facilities pertaining to New FCO Securities shall not be subject to the separate fees and

charges that would otherwise apply to such access pertaining to FCO Securities, but instead shall be subject to those fees and charges that apply to Eligible Securities other than FCO Options and Index Options. During the period of effectiveness, revenues derived from New FCO Securities shall be allocated to OPRA's basic accounting center and shall be further allocated among the parties as described in section VIII(a)(iv), and trades in New FCO Securities shall be treated as trades in Eligible Securities other than FCO Options and Index Options and not as trades in FCO Securities. At the close of business on the last day of the period of effectiveness, this section VIII(c)(iii) shall automatically terminate and cease to be of any further effect.

\* \* \* \* \*

#### II. Implementation of the OPRA Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Section 11A of the Act<sup>5</sup> and Rule 608 thereunder.<sup>6</sup>

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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 No. SR-OPRA-2006-02 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-OPRA-2006-02. 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 plan

amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 OPRA. 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-OPRA-2006-02 and should be submitted on or before January 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54866; File No. SR-Amex-2006-111]

#### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Odd-Lot Rejections by Away Markets in the AEMI-One Pilot

December 4, 2006.

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 November 29, 2006, 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 substantially prepared by the Exchange. Amex has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(5) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit

<sup>7</sup> 17 CFR 200.30-3(a)(29).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(5).

<sup>5</sup> 15 U.S.C. 78k-1.

<sup>6</sup> 17 CFR 242.608.

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 adopt changes to its AEMI-One rules to provide for the execution of an unexecuted odd-lot balance on an aggressing order as the result of an unexecuted odd-lot balance on an away market obligation that was routed to another market by the AEMI platform to access a better-priced protected quotation.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Exchange's principal office, 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 self-regulatory organization 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. 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 has recently adopted new rules to implement an initial version of AEMI, its proposed new hybrid market trading platform for equity products and exchange-traded funds.<sup>5</sup> This initial version of AEMI is referred to as AEMI-One and is operational on a pilot basis through February 4, 2007. Under the AEMI-One pilot, the AEMI platform will route orders to better-priced protected quotations of away markets. Such "away market obligations" (as defined in Exchange Rule 131-AEMI-One) are sent only in round lots. Although the quotation of an away market that AEMI is attempting to execute against is also expressed in a round lot, the possibility exists that fills at certain away markets may include odd lots since AEMI uses private linkages instead of ITS to access

such quotations in the AEMI-One pilot. For example, if Nasdaq is displaying a better bid than Amex for 200 shares of XYZ Corp. and there is an aggressing sell order in AEMI, Amex will send an away market obligation to Nasdaq (in the form of an immediate or cancel order or an intermarket sweep order) and could receive back an execution in the form of two trades for 160 shares and 40 shares, respectively.

Consequently, the possibility exists that, under unusual circumstances, AEMI might receive only a partial fill on a round-lot order and be left with a rejected odd-lot portion of a round-lot order that was suspended on the AEMI Book. In the example cited above, it is possible that 160 shares out of the 200 shares routed away would be filled but that the balance of 40 shares would be rejected. The Exchange's current Rule 205-AEMI-One addresses odd-lot orders that are submitted to AEMI as such, but it is not applicable to a rejected odd-lot portion of an order submitted for a round lot, since the latter was not intentionally for an odd lot but became an odd lot due to the action of another market.

The Exchange believes that the situation described above, in which the Exchange would be left with a rejected odd-lot portion of an away market obligation that was transmitted to another market as a round-lot order, will be a rare event. However, it is necessary to make appropriate changes to the AEMI platform and to the Exchange's AEMI-One rules to provide for this possibility.

The Exchange is therefore proposing to add language to Rule 205-AEMI-One (Manner of Executing Odd-Lot Orders) to distinguish such occurrences from the treatment of odd-lot orders that are submitted as such and to provide for the proper treatment of such odd-lot rejections by other markets. Proposed new paragraph (b)(viii) of the rule would provide that, if a partial-lot trade is received from an away market in response to an away market obligation sent by AEMI, resulting in an unexecuted balance which comprises an odd lot, then any unexecuted odd-lot balance on the aggressing order (including the unexecuted odd-lot balance from the away market obligation) shall be traded immediately against the Specialist at the last trade price of the away market obligation, and any remaining unexecuted round-lot balance shall reaggregate the AEMI Book in accordance with Rule 126A-AEMI-One.<sup>6</sup>

The following examples illustrate how the proposed additional rule provision would operate:

*Example 1:* Assume an incoming client order to buy 100 shares of XYZ Corp. AEMI routes the entire order to Nasdaq to access a better-priced offer. If the Exchange receives back a trade for only 80 shares at the limit price and a rejection for 20 shares, that 20-share odd-lot balance would trade against the Specialist at the same price as the 80-share execution on Nasdaq.

*Example 2:* Assume an incoming client order to buy 130 shares of XYZ Corp. AEMI routes 100 shares to Nasdaq to access a better-priced offer. If the Exchange receives back a trade for only 80 shares at the limit price and a rejection for 20 shares, the unexecuted odd-lot balance on the order of 50 shares (including the unexecuted odd-lot balance of 20 shares from the away market obligation) would trade against the Specialist at the same price as the 80-share execution on Nasdaq. This is the same outcome for the order that would have resulted if the execution at the away market had been for the entire 100 shares that was routed to that market.

*Example 3:* Assume an incoming client order to buy 280 shares of XYZ Corp. AEMI routes 200 shares to Nasdaq to access a better-priced offer. If the Exchange receives back a trade for 70 shares at the limit price, followed by a trade for 100 shares at the limit price and a rejection for 30 shares, the remaining unexecuted 110-share balance of the order would include an odd-lot balance of 10 shares that would trade against the Specialist at the same price as the 100-share execution on Nasdaq and a round-lot balance of 100 shares that would reaggregate the AEMI Book.

The Exchange asserts that the proposal to effect the foregoing change to the AEMI trading system does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not have the effect of limiting the access to or availability of the system.

##### **2. Statutory Basis**

The proposed rule change is designed to be consistent with Regulation NMS,<sup>7</sup> as well as consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in

the aforementioned unexecuted odd-lot balance from the away market obligation could not be traded against the Specialist at the last trade price of the away market obligation without violating the Exchange's short sale tick test (Amex Rule 7), the Exchange would need to have received exemptive or no-action relief from the Commission from the requirements of Rule 10a-1 under the Act and the Exchange's related short sale rule in order to avoid leaving that odd-lot balance unexecuted. The Exchange has prepared a request for such relief and is submitting it to the Commission separately.

<sup>7</sup> 17 CFR 242.600 *et seq.*

<sup>8</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> See Securities Exchange Act Release No. 54709 (November 3, 2006), 71 FR 65847 (November 9, 2006).

<sup>6</sup> In a situation where the original aggressing order in AEMI was a non-exempt short sale and the

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 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 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 proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) have the effect of limiting the access to or availability of an existing order entry or trading system of the Exchange, the foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(5)<sup>11</sup> thereunder. At any time within 60 days of the filing of such 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 the 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 at <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 No. SR-Amex-2006-111 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 No. SR-Amex-2006-111. 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 Exchange. 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 No. SR-Amex-2006-111 and should be submitted on or before January 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54873; File No. SR-NASD-2006-123]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Regarding Guidance for Adjudicating Clearly Erroneous Transactions Under NASD Rule 11890**

December 5, 2006.

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 November 7, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. On November 30, 2006, Nasdaq filed Amendment No. 1.<sup>3</sup> Nasdaq filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> 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**

Nasdaq is providing guidance regarding factors it generally considers in adjudicating clearly erroneous transactions under NASD Rule 11890.

The text of the proposed rule change is below. Proposed new language is in italics.

\* \* \* \* \*

*IM-11890-4. Clearly Erroneous Transaction Guidance for Filings Under Rule 11890(a) and Single Stock Events Under Rule 11890(b)(1)*

*Nasdaq is providing the following guidance on how it generally considers:*

- *All complaints filed by market participants under Rule 11890(a); and*

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

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

<sup>3</sup> Amendment No. 1 replaced the text of the original filing in its entirety in order to make several clarifying edits to the rule text and the description thereof.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(5).

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