OMB APPROVAL	
OMB Number:	3235-0045
Expires:	June 30, 2007
Estimated average burden hours per response............38	

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2007 - 105
Amendment No.

Proposed Rule Change by American Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☑	☐	☐	☐	☑	☐

Rule

☑ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposal to require that its AEMI trading platform function to assure compliance with the Amex Priority and Parity rules

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: William   Last Name: Love

Title: Vice President and Associate General Counsel

E-mail: william.love@amex.com

Telephone: (212) 306-1789   Fax: (212) 306-2139

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date: 09/18/2007

By: William Love (Name)

Vice President and Associate General Counsel (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

William C. Love, Jr.,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. **Text of the Proposed Rule Change**

(a) In compliance with an order of the Securities and Exchange Commission (the “Commission”) in a recent administrative proceeding, the American Stock Exchange LLC (the “Amex” or the “Exchange”) proposes to adopt a new Commentary to its Rule 126–AEMI to provide that its new hybrid trading platform for equity products and ETFs, designated as AEMI^{SM}, shall function at all times in a manner that assures compliance with the Exchange’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 text of the proposed rule appears in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. **Procedures of the Self -Regulatory Organization**

The proposed rule change was approved by the Exchange’s Board of Governors on April 20, 2005. No further action is required to be taken.

3. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) *Purpose*

The Exchange is proposing to add to its rules governing the operation of its new hybrid trading platform for equity products and ETFs, designated as AEMI^{SM}, 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 a new Commentary to Rule 126–AEMI (Precedence of Bids and Offers).[1]

The Exchange believes that the new AEMI platform, as currently operational, does in fact meet the foregoing requirements.[2] The implementation of AEMI, whose operation has been described in detail in previous filings, goes well beyond simply adding enhancements to our legacy trading systems to bring the Exchange into compliance. AEMI is an entirely new trading platform whose design and operation will,

---

[1] The Exchange is making this rule filing in compliance with the Commission's Order in the Administrative Proceeding entitled "In the Matter of American Stock Exchange LLC, Respondent" (File No. 3-12594). *See* Securities Exchange Act Release No. 55507 (March 22, 2007). The Exchange's original filing with respect to this proposed rule change, SR-Amex-2007-50 filed on May 21, 2007, has been withdrawn and is being replaced by this rule filing.

[2] There are two exceptions to this statement that the Exchange has recently become aware of and that we are 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 we do 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.

in transactions involving equity products and ETFs, prevent Specialists from violating the Exchange's priority and parity rules in ways that our legacy systems could not.[3]

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 a negotiated trade. Such trades 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 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 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 APQ) and, if so, accepts the trade into AEMI for execution. If the price of the trade is outside the

---

3 Options are not traded on AEMI at this time.

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, a negotiated trade may only take place at or inside the Amex Published Quote (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, since 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 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 + 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 since 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, since 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.[4]

---

[4] 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

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 <u>not</u> 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).[5] 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

---

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 Rule 126–AEMI(d).

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

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 participation or non-participation to the Specialist.[6] 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.

(b) Statutory Basis

The proposed rule change is designed to be consistent with Regulation NMS, as well as consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

---

[6] 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 (since his allocation would go to zero from the number that he initially was assigned by AEMI), who could challenge the result. In other words, it is highly unlikely that the Specialist could get away with such a blatant act.

[7] 15 U.S.C. 78f(b)

[8] 15 U.S.C. 78f(b)(5)

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.

4. **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.

5. **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.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission consideration of the proposed rule change specified in Section 19(b)(2) of the Act.[9]

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

(a) This filing is made pursuant to Paragraph (A) of Section 19(b)(3) of the Act[10] and Rule 19b-4(f)(1) thereunder.[11]

(b) This filing relates solely to a proposed rule change constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or

---

9 15 U.S.C. 78s(b)(2).

10 15 U.S.C. 78s(b)(3).

11 17 CFR 240.19b-4(f)(1).

enforcement of an existing rule, and as such takes effect upon filing under Subsection (iii) of Paragraph (A).

(c) Not applicable.

(d) Not applicable.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. **Exhibits**

List of Exhibits Filed:

1. Form of Notice of Proposed Rule Change for publication in the **Federal Register**
2. Not applicable
3. Not applicable
4. Not applicable
5. Text of the Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-   ; File No. SR-Amex-2007-105)

Self-Regulatory Organizations; Notice of a Proposed Rule Change by American Stock Exchange LLC to Require That Its AEMI Trading Platform Function to Assure Compliance With The Exchange's Priority And Parity Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on ___________ , 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 an order of the Securities and Exchange Commission (the "Commission") in a recent administrative proceeding, the American Stock Exchange LLC (the "Amex" or the "Exchange") proposes to adopt a new Commentary to its Rule 126–AEMI to provide that its new hybrid trading platform for equity products and ETFs, designated as AEMI^{SM}, shall function at all times in a manner that assures compliance with the Exchange'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 text of the proposed rule change is available on the Amex's website at http://amex.com, the Amex Office of the Secretary, the Amex 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. The self-regulatory organization 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 is proposing to add to its rules governing the operation of its new hybrid trading platform for equity products and ETFs, designated as AEMI℠, 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 a new Commentary to Rule 126–AEMI (Precedence of Bids and Offers).[1]

The Exchange believes that the new AEMI platform, as currently operational, does in fact meet the foregoing requirements.[2] The implementation of AEMI, whose operation has been described in detail in previous filings, goes well beyond simply adding enhancements to our 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, prevent Specialists from violating the Exchange's priority and parity rules in ways that our legacy systems could not.[3]

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

---

1 The Exchange is making this rule filing in compliance with the Commission's Order in the Administrative Proceeding entitled "In the Matter of American Stock Exchange LLC, Respondent" (File No. 3-12594). *See* Securities Exchange Act Release No. 55507 (March 22, 2007). The Exchange's original filing with respect to this proposed rule change, SR-Amex-2007-50 filed on May 21, 2007, has been withdrawn and is being replaced by this rule filing.

2 There are two exceptions to this statement that the Exchange has recently become aware of and that we are 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 we do 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.

3 Options are not traded on AEMI at this time.

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 a negotiated trade. Such trades 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 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 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 APQ) and, if so, accepts the trade into AEMI for execution. If the price of the trade is outside the 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, a negotiated trade may only take place at or inside the Amex Published Quote (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, since 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 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 + 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 since 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, since 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.[4]

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

---

[4] 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 Rule 126–AEMI(d).

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).[5] 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

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

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 participation or non-participation to the Specialist.[6] 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 consistent with Section 6 of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] 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.

---

6 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 (since his allocation would go to zero from the number that he initially was assigned by AEMI), who could challenge the result. In other words, it is highly unlikely that the Specialist could get away with such a blatant act.

7 15 U.S.C. 78f(b).

8 15 U.S.C. 78f(b)(5).

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

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, or

(B) institute proceedings to determine whether the proposed rule change 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 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 *rulecomments@sec.gov*. Please include File No. 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 No. 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 at *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. 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. 2007-105 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.[9]

Nancy M. Morris
Secretary

Dated:

[9] 17 CFR 200.30–3(a)(12).

SR Amex 2007-105
EXHIBIT 5

AMERICAN STOCK EXCHANGE LLC

Proposed Rule Change

It is proposed that the following provisions of the American Stock Exchange Rules be amended as set forth below. Underlining indicates text to be added. [Brackets] indicate text to be deleted.

* * * * *

Rule 126—AEMI

Precedence of Bids and Offers

No change.

••• Commentary

.01 – .05 No change.

.06 AEMI shall systemically operate in a manner that will prevent the violation of the Exchange's priority and parity rules. In particular, in any situation in which a specialist is in the process of executing the specialist's proprietary trade 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 shall systemically allocate the appropriate portion of the specialist's trade to the customer order and print the execution accordingly, unless the trade meets a specified exemption in the Amex's rules and has thereby been programmed into the AEMI system as an allowable trade. All of the Exchange's priority and parity rules must be programmed automatically into AEMI and shall not be subject to being changed or disabled by any market participant including the specialist.

* * * * *