



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information**

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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**

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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**

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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**

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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**

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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**

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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**

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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) The American Stock Exchange LLC (“Amex” or “Exchange”) proposes to adopt changes to its AEMI rules to eliminate the existing post-opening pair-off of marketable orders that are held in a Message Queue<sup>1</sup> during the main pair-off at an opening or reopening. The text of the proposed rule change 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 by the Board or by the membership of the Exchange 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 recently adopted a new Commentary .06 to its Rule 126–AEMI to provide that its new hybrid market trading platform for equity products and exchange traded funds, designated as AEMI<sup>SM</sup>, shall function at all times in a manner that assures compliance with the Exchange’s priority and parity rules.<sup>2</sup> The foregoing rule change was adopted in order to comply with an undertaking of the Exchange set forth in Section III.F.1 of the Order of the Securities and Exchange Commission (“SEC” or “Commission”) in the Administrative Proceeding entitled, “In the Matter of the

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<sup>1</sup> See Rule 1A–AEMI for the description of a Message Queue.

<sup>2</sup> See Securities Exchange Act Release No. 56495 (Sept. 21, 2007), 72 FR 55262 (Sept. 28, 2007), File No. SR-Amex-2007-105 (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).

American Stock Exchange LLC” (File No. 3-12594). In its related rule filing with the Commission, the Exchange noted that there were two exceptions to its compliance with the new rule requirements that the Exchange had recently become aware of and was working to correct in the near future.<sup>3</sup>

The Exchange has subsequently changed its trading system to eliminate the first exception mentioned above. The purpose of the instant rule filing is to resolve the second exception to Commentary .06 of Rule 126–AEMI mentioned above by amending Exchange Rules 108–AEMI and 128A–AEMI to eliminate the existing post-opening pair-off of marketable orders that are briefly held in a Message Queue during the main pair-off at an opening or reopening. System issues associated with this post-opening pair-off, which takes place at the time the Message Queue is terminated, can, under certain circumstances, result in the violation of the Exchange’s priority and parity rules.

This rule filing is being filed simultaneously with the implementation of the related changes to the AEMI system eliminating the post-opening pair-off. As provided in the rule language proposed herein, the orders from the Message Queue following the opening pair-off will be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required, and they will enter the AEMI Book in the same time sequence in which they entered the Message Queue.<sup>4</sup>

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<sup>3</sup> See 72 FR 55262, at n. 7.

<sup>4</sup> The Exchange also proposes to make a conforming change to the definition of a Message Queue in Rule 1A–AEMI to clarify that queued messages that enter the AEMI Book do so in the aforementioned time sequence under the current functioning of the AEMI system.

The Exchange asserts that the proposal to effect the foregoing changes 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. The Exchange believes that the proposed rule changes are non-controversial and that the related changes to the AEMI system will benefit investors by eliminating an existing system function that could potentially result in a violation of the Exchange's rules. The changes should also have the additional benefit of simplifying our market structure and making our pricing more transparent.

(b) *Basis*

The proposed rule change is designed to be consistent with Regulation NMS,<sup>5</sup> as well as consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "1934 Act"), in general, and furthers the objectives of Section 6(b)(5),<sup>6</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 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 1934 Act.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

**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 1934 Act.<sup>7</sup>

**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 1934 Act<sup>8</sup> and Rule 19b-4(f)(5) thereunder.<sup>9</sup>

(b) The filing relates solely to effecting a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest, (ii) does not impose any significant burden on competition, and (iii) does not have the effect of limiting the access to or the availability of the system, and as such takes effect upon filing under Subsection (iii) of Paragraph (A).

(c) Not applicable.

(d) Not applicable.

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<sup>7</sup> 15 U.S.C. 78f(b)(2).

<sup>8</sup> 15 U.S.C. 78s(b)(3).

<sup>9</sup> 17 CFR 240.19b-4(f)(5).

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 Exchange.

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-2007-118**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Revising the AEMI Rules to Eliminate the Post-Opening Pair-Off of Marketable Orders Held in the Message Queue**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “1934 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

The American Stock Exchange LLC (“Amex” or “Exchange”) proposes to adopt changes to its AEMI rules to eliminate the existing post-opening pair-off of marketable orders that are held in a Message Queue<sup>1</sup> during the main pair-off at an opening or reopening.

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-

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<sup>1</sup> See Rule 1A–AEMI for the description of a Message Queue.

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 recently adopted a new Commentary .06 to its Rule 126–AEMI to provide that its new hybrid market trading platform for equity products and exchange traded funds, designated as AEMI<sup>SM</sup>, shall function at all times in a manner that assures compliance with the Exchange’s priority and parity rules.<sup>2</sup> The foregoing rule change was adopted in order to comply with an undertaking of the Exchange set forth in Section III.F.1 of the Order of the Securities and Exchange Commission (“SEC” or “Commission”) in the Administrative Proceeding entitled, “In the Matter of the American Stock Exchange LLC” (File No. 3-12594). In its related rule filing with the Commission, the Exchange noted that there were two exceptions to its compliance with the new rule requirements that the Exchange had recently become aware of and was working to correct in the near future.<sup>3</sup>

The Exchange has subsequently changed its trading system to eliminate the first exception mentioned above. The purpose of the instant rule filing is to resolve the second exception to Commentary .06 of Rule 126–AEMI mentioned above by amending Exchange Rules 108–AEMI and 128A–AEMI to eliminate the existing post-opening pair-off of marketable orders that are briefly held in a Message Queue during the

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<sup>2</sup> See Securities Exchange Act Release No. 56495 (Sept. 21, 2007), 72 FR 55262 (Sept. 28, 2007), File No. SR-Amex-2007-105 (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).

<sup>3</sup> See 72 FR 55262, at n. 7.

main pair-off at an opening or reopening. System issues associated with this post-opening pair-off, which takes place at the time the Message Queue is terminated, can, under certain circumstances, result in the violation of the Exchange's priority and parity rules.

This rule filing is being filed simultaneously with the implementation of the related changes to the AEMI system eliminating the post-opening pair-off. As provided in the rule language proposed herein, the orders from the Message Queue following the opening pair-off will be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required, and they will enter the AEMI Book in the same time sequence in which they entered the Message Queue.<sup>4</sup>

The Exchange asserts that the proposal to effect the foregoing changes 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. The Exchange believes that the proposed rule changes are non-controversial and that the related changes to the AEMI system will benefit investors by eliminating an existing system function that could potentially result in a violation of the Exchange's rules. The changes should also have the additional benefit of simplifying our market structure and making our pricing more transparent.

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<sup>4</sup> The Exchange also proposes to make a conforming change to the definition of a Message Queue in Rule 1A-AEMI to clarify that queued messages that enter the AEMI Book do so in the aforementioned time sequence under the current functioning of the AEMI system.

(2) 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 “1934 Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>5</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 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 proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 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

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(5)<sup>7</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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(5).

the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

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](mailto:rulecomments@sec.gov). Please include File No. SR Amex 2007-118 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 2007-118. 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. SR Amex 2007-118 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.<sup>8</sup>

Dated:

Nancy M. Morris  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).

**SR Amex 2007-118  
EXHIBIT 5**

**AMERICAN STOCK EXCHANGE LLC**

**Proposed Rule Change**

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

\* \* \* \*

**Rule 1A—AEMI. Applicability, Definitions, References and Phase-In**

(a) – (f) No change.

(g) The following terms as used in the rules of this Chapter shall have the meanings specified herein unless the context otherwise indicates:

\* \* \* \*

**Message Queue.** A "Message Queue" refers to an accumulation of messages (e.g., orders, status requests, cancels, cancel/replaces) that have entered AEMI but are not permitted by the system to enter the AEMI Book. AEMI shall initiate a Message Queue only during an Opening or Reopening Pair-off Session, a Cash Closing Pair-off Session (in ETFs), a pair-off to execute an order imbalance following a breach of a Spread or Momentum Tolerance or a "gap trade", or a pair-off to execute an order imbalance that caused the dissemination of a gap quote. During a Message Queue, messages come into the AEMI queue and do not enter the AEMI Book. A Message Queue shall last no longer than three seconds at which point it will automatically terminate and all queued messages will enter the AEMI Book in the same time sequence in which they entered the Message Queue. No member or person associated with a member shall see messages in a Message Queue.

\* \* \* \*

**Rule 108—AEMI. Priority and Parity at Openings and Reopenings**

(a) – (d) No change.

(e) In the event that there is a Message Queue during the opening pair-off session, the messages held in the Message Queue will enter the AEMI Book after the opening pair-off has been completed, with the exception of "at the opening" orders, which expire upon successful completion of the opening pair-off. [AEMI will then attempt to automatically pair-off any marketable orders from the Message Queue at the opening price unless this would cause a trade-through of a protected quotation in another market center, in which case AEMI will effect the pair-off at whichever price would result in the largest trade and would not result in a trade-through of a protected quotation. If such a post-opening pair-off cannot be effected or there are orders from the Message Queue that do not participate in the pair-off,] T[t]he [remaining] orders from the Message Queue that enter the AEMI Book will be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required, and they will enter the AEMI Book in the same time sequence in which they entered the Message Queue.

(f) No change.

••• *Commentary*

.01 No change.

\* \* \* \*

**Rule 128A—AEMI. Automatic Execution**

(a) – (d) No change.

(e) Processing of Message Queue. Following the termination of a Message Queue, the AEMI Book shall first process any cancellations or order amendments. [AEMI then shall attempt to automatically execute any marketable orders in a Message Queue at the pair-off price unless this would cause a trade-through of a protected quotation, in which case, AEMI shall attempt to effect the pair-off at whichever price would result in the largest trade and would not result in a trade-through of a protected quotation, provided, however, that AEMI shall not automatically execute orders that accumulated in a Message Queue after the close. If such a pair-off cannot be effected or there are orders from the Message Queue that do not participate in the pair-off,] T[t]he [remaining] orders from the Message Queue that enter the AEMI Book will be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required, and they will enter the AEMI Book in the same time sequence in which they entered the Message Queue.

(f) – (g) No change.

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