

Proposed Rule Change by American Stock Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposal to adopt a riskless principal and other exceptions to Amex rules against members proprietary trading while in possession of like or better priced customer orders

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	<input type="text" value="Daniel"/>	Last Name	<input type="text" value="Mollin"/>
Title	<input type="text" value="Associate General Counsel"/>		
E-mail	<input type="text" value="daniel.mollin@amex.com"/>		
Telephone	<input type="text" value="(212) 306-1154"/>	Fax	<input type="text" value="(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	<input type="text" value="11/16/2007"/>
By	<input type="text" value="William C. Love, Jr."/> (Name)
	<input type="text" value="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.

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

The American Stock Exchange LLC (“Amex” or “Exchange”) proposes to adopt changes to Rules 24—AEMI, 150—AEMI, and 152—AEMI in order to (i) provide for a “riskless principal” and other exceptions to its general rules against members entering proprietary orders while in possession of a customer order which could trade at the same price and (ii) make various “housekeeping” changes to eliminate duplicative or unnecessary portions of the AEMI rules. 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 Amex Chief Executive Officer, pursuant to delegated authority, on August 7, 2007. 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*

In order to provide greater flexibility in trading methods available on the Amex, while still sufficiently protecting customer orders, the Amex proposes adoption of a “riskless principal” and other exceptions detailed below to its general rules against members entering proprietary orders while in possession of a customer order which could trade at the same price. These new exemptions are the same as those previously approved by the Commission for the New York Stock Exchange (“NYSE”) in July 2007,¹

¹ See Securities Exchange Act Release Nos. 34-56017 (July 5, 2007), 133 FR 38110 (July 12, 2007) and 34-56088 (July 18, 2007), 141 FR 40351 (July 24, 2007).

would be added to Rule 24—AEMI (which is the Amex equivalent of NYSE Rule 92), and would promote regulatory consistency. Additionally, Amex is proposing certain housekeeping changes occasioned by the change to Rule 24—AEMI: (i) elimination of Rule 150—AEMI, which substantially overlaps with and is being folded into new Rule 24—AEMI; (ii) addition of a riskless principal exception to Rule 152—AEMI’s general restrictions against members supplying/taking stock to fill a customer’s order.

Riskless Principal Exception and Other Changes to Rule 24—AEMI

Rule 24—AEMI is substantially and structurally similar to the version of NYSE Rule 92 that existed until the NYSE’s most recent amendments thereto were approved in July 2007. In relevant part, Amex intends to adopt the substance of those NYSE amendments to:

- add a “riskless principal” exception which would permit members to place orders as principal for securities for which one or more of their customers have already placed orders with them², in order to allow for the members to then pass on the same prices received on the Exchange to their customer;
- amend certain customer consent requirements to allow customers to give affirmative prior blanket – rather than order-by-order – consent to members trading while in possession of customer orders as permitted by the rule, provided requisite disclosures to the customer about potential

² Firms would be permitted to aggregate only those customer orders whose order types and instructions (including tick restrictions) permit such aggregation. Such aggregating meets the standards set forth in the Commission’s July 18, 2005 No-Action Letter, in which the Commission granted a riskless principal exemption from Securities Exchange Act Rule 10a-1 to permit a broker-dealer to fill customer orders without complying with the “tick” provisions of the Rule, in certain situations and subject to certain conditions. See Securities Industry Association, SEC No-Action Letter, available at www.sec.gov/divisions/marketreg/mr-noaction/sia071805.htm (July 18, 2005).

trading-along, opt-out rights, and allocation methodology are periodically made³ and such informed customer consent has been documented⁴;

- expand the class of customers eligible to give affirmative consent from institutional investors with 10,000 share orders or more to all institutional investors and individual investors with orders of 10,000 shares (worth at least \$100,000) or more; and
- add an exception which would permit specialists to trade proprietarily ahead of held customer orders 2.5 hours after the close of regular trading and up to 15 minutes prior to the following trading day's opening, thereby better allowing the specialists to hedge their trading risk and bring their dealer accounts in line with trading in away markets.

All of these changes will serve to harmonize Rule 24—AEMI with FINRA's (formerly NASD) guidelines on members trading while in possession of customer orders, commonly known as the "Manning Rule,"⁵ so as to provide a more consistent regulatory environment for broker-dealers. Amex intends to make the same amendments in

³ The required periodic disclosures would include affirmative notice of: (i) the fact that the member may trade along with the customer's order, subject to the customer's right to affirmatively opt-out of such trading-along on an order-by-order basis or to modify the instructions obtained under the blanket consent and (ii) the method by which the member organization will allocate shares to the customer's order (including the allocation methodology for riskless principal transactions that include Rule 24—AEMI(b) proprietary orders and orders from customers that have and/or have not consented to trade along with such proprietary orders). The Exchange would not require a specific allocation methodology (e.g., strict time priority, precedence based on size, etc.), but would require it to be fair and reasonable, consistently applied, consistent with the rules governing parity of orders, and not unfairly discriminatory against any particular class of accounts or types of orders.

⁴ Acceptable documentation of customer consent following delivery of the required disclosures would be (i) a signed writing from the customer that acknowledges receipt of the required disclosures and provides consent; or (ii) in the case of oral customer consent, by a written notice from the member sent to the customer documenting the provision of such required disclosures and such oral consent. Once a customer has provided affirmative consent and so long as firms continue to provide written disclosures on a periodic basis, members will not need to renew such affirmative consent.

⁵ See NASD IM 2110-2 and Rule 2111.

substance to its Rule 24—AEMI as NYSE made to its Rule 92, with slight differences discussed below.

New NYSE Rule 92(c)(3) requires, among other things, that in order to avail itself of the riskless principal transaction:

A member must submit a report of execution of the facilitated order to a designated Exchange database as required by NYSE Rule 123(f). The member must also submit to the same database, within such time frame and in such format as the Exchange may from time to time require, an electronic report containing data elements sufficient to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

The referenced “Exchange database” is the NYSE’s Front End Systemic Capture (“FESC”) database. Amex does not have a database that is able to capture order and execution data with respect to riskless principal transactions in the same manner as FESC. Accordingly, Amex regulatory staff will need to surveil for proper use of the new riskless principal exemption simultaneous with general surveillance of transactions where members trade ahead of customers orders under pre-existing exceptions to Rule 24—AEMI. Should a transaction appear to be a riskless principal transaction, Amex Regulation will validate that all elements required by the exception are met by requesting and reviewing supporting documentation from the members involved, rather than automatically surveilling for violations as NYSE is presumably able to do with its FESC system. Accordingly, because technological differences require development of slightly different audit trail, Amex’s corresponding paragraph in Rule 24—AEMI will state:

A member or member organization must maintain a contemporaneous record of every execution on a riskless principal basis, which record shall be submitted to the Exchange within such time frame, in such format, and containing such information (in addition to any information required by Rule 153—AEMI) as the Exchange may from time to time require to validate the riskless principal nature of the transaction.

Other wording, structural, or grammatical differences between comparable sections of NYSE Rule 92 and Rule 24—AEMI are not intended create substantive differences and are intended only to add clarity where the Amex thought necessary for its members.⁶

Housekeeping Changes

Existing Rule 24—AEMI substantially overlaps with existing Rule 150—AEMI, in that both rules recite the general prohibitions upon, and exceptions to, Amex members trading proprietary orders while in possession of customer orders which could be executed at the same price. To eliminate future confusion, Rule 150—AEMI (which is a vestige of pre-AEMI Amex Rule 150) will be eliminated in favor of merging the two rules into Rule 24—AEMI (which was originally patterned after NYSE Rule 92). This will result in 3 additional exceptions being added to Rule 24-AEMI, but no substantive expansion of the list of exceptions available pre-amendment (except as noted above by

⁶ For example, while the NYSE chose to make the riskless principal exception a separate standalone sub-section (c) to its Rule 92 (with remaining exceptions listed in Rule 92(d)), Amex preferred to list all exceptions – including the riskless principal transaction exception – in the same sub-section of its equivalent Rule 24—AEMI(c). For another example, NYSE Rule 92(b) begins:

A member or member organization may enter a proprietary order while representing a customer order that could be executed at the same price, provided that the customer's order is designated not held and is for (i) an institutional account, or (ii) over 10,000 shares, unless such orders are less than \$100,000 in value, and the member organization periodically provides written disclosures to its customers and obtains and documents affirmative customer consent, under the following conditions

Comparable Rule 24—AEMI(b), as proposed to be amended, provides:

A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided:

(1) the customer's order is for (i) an institutional account, or (ii) over 10,000 shares (unless such orders are less than \$100,000 in value); and the member organization has periodically provided written disclosures to such customer of the possibility and allocation methodology of its potential trading along and obtained and documented such customer's affirmative consent to same; and

(2) one of the following conditions exists

expanding the exceptions to include the recent changes made to comparable NYSE Rule 92).⁷

Additionally, Commentary .06 to Rule 24—AEMI will now clarify that the riskless principal exception of new subsection (c)(10) only applies to orders entered from off the Floor of the Exchange, and that specialists, in particular, remain bound by Rule 155—AEMI which contains no such exception (replacing existing Commentary .06 which deals with the interplay between the now-defunct ITS plan and Rule 24—AEMI).

Finally, Rule 152—AEMI (originally patterned after NYSE Rule 91), which currently contains the general prohibitions upon, and exceptions to, supplying/taking stock to fill a customers' order, will be amended to incorporate the new riskless principal transaction exception, as such transactions, by definition, include a member supplying/taking stock to fill a customer's order.⁸

(b) *Basis*

The proposed rule change is designed to be consistent with Regulation NMS, as well as consistent with Section 6(b)⁹ of the Securities Exchange Act of 1934 (the "1934 Act"), in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular,

⁷ Note, however, that the former Rule 150—AEMI(c)(5) exception for

a purchase or sale of an ETF by a specialist where the specialist is on parity with another broker/dealer order pursuant to the Exchange's rules (e.g., Rule 126—AEMI)

has been incorporated in new Rule 24—AEMI(c)(7) as

any purchase or sale of any security ... by a specialist whose bid (offer) is on parity with a customer's order pursuant to Rule 126—AEMI.

The new phrasing more accurately describes the operation and application of Rule 126—AEMI, under which specialists have been and are permitted to trade on parity with customers under a variety of circumstances broader than reflected in former Rule 150—AEMI(c)(5).

⁸ NYSE did not so amend its comparable Rule 91 although it is not clear why.

⁹ 15 U.S.C. § 78f(b).

¹⁰ 15 U.S.C. § 78f(b)(5).

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 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 formal written comments were solicited or received with respect to the proposed rule change itself, but Amex staff have had numerous communications with representatives of the Securities Industry and Financial Markets Association, which have requested that Amex amend its rules to match the recent changes to the NYSE Rule 92 as described above.

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.

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

(a) The Exchange believes that these proposed rule changes are non-controversial pursuant to Paragraph A of Section 19(b)(3)¹¹ of the 1934 Act and Rule 19b-4(f)(6) thereunder.¹²

(b) This proposed rule change does not significantly affect the protection of

¹¹ 15 U.S.C. § 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange desires to implement this rule change on an expeditious basis, noting in particular the commencement of full industry compliance with Rules 610 and 611 of Regulation NMS during the “All Stocks Phase,” and the broker-dealer community’s desire to have the riskless principal exemption in place at all automated market centers as soon as possible. Moreover, the proposed changes are similar to those already approved by the Commission for the NYSE after ample opportunity for industry comment, no new issues are raised, and there is no reason to expect that Amex’s filing will be controversial. Accordingly, the Exchange requests that the Commission waive the 30-day operative delay period for “non-controversial” proposals so that this rule change may be immediately effective and operative.

(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 changes to Rule 24—AEMI are patterned after the rule changes recently approved by the Commission for the NYSE’s Rule 92. No substantive differences exist between the changes, except as specifically noted above with respect to audit trail development.

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-2007-125)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC To Establish a “Riskless Principal” and Other Exceptions to Exchange Rules Against Members’ Proprietary Trading While in Possession of Like or Better-Priced Customer Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 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 Exchange proposes to adopt changes to Rules 24—AEMI, 150—AEMI, and 152—AEMI in order to (i) provide for a “riskless principal” and other exceptions to its general rules against members entering proprietary orders while in possession of a customer order which could trade at the same price and (ii) make various “housekeeping” changes to eliminate duplicative or unnecessary portions of the AEMI rules.

The text of the proposed rule change is available on the Amex’s website at <http://www.amex.com>, the 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

In order to provide greater flexibility in trading methods available on the Amex, while still sufficiently protecting customer orders, the Amex proposes adoption of a “riskless principal” and other exceptions detailed below to its general rules against members entering proprietary orders while in possession of a customer order which could trade at the same price. These new exemptions are the same as those previously approved by the Commission for the New York Stock Exchange (“NYSE”) in July 2007,¹ would be added to Rule 24—AEMI (which is the Amex equivalent of NYSE Rule 92), and would promote regulatory consistency. Additionally, Amex is proposing certain housekeeping changes occasioned by the change to Rule 24—AEMI: (i) elimination of Rule 150—AEMI, which substantially overlaps with and is being folded into new Rule 24—AEMI; (ii) addition of a riskless principal exception to Rule 152—AEMI’s general restrictions against members supplying/taking stock to fill a customer’s order.

¹ See Securities Exchange Act Release Nos. 34-56017 (July 5, 2007), 133 FR 38110 (July 12, 2007) and 34-56088 (July 18, 2007), 141 FR 40351 (July 24, 2007).

Riskless Principal Exception and Other Changes to Rule 24—AEMI

Rule 24—AEMI is substantially and structurally similar to the version of NYSE Rule 92 that existed until the NYSE’s most recent amendments thereto were approved in July 2007. In relevant part, Amex intends to adopt the substance of those NYSE amendments to:

- add a “riskless principal” exception which would permit members to place orders as principal for securities for which one or more of their customers have already placed orders with them², in order to allow for the members to then pass on the same prices received on the Exchange to their customer;
- amend certain customer consent requirements to allow customers to give affirmative prior blanket – rather than order-by-order – consent to members trading while in possession of customer orders as permitted by the rule, provided requisite disclosures to the customer about potential trading-along, opt-out rights, and allocation methodology are periodically made³ and such informed customer consent has been documented⁴;

² Firms would be permitted to aggregate only those customer orders whose order types and instructions (including tick restrictions) permit such aggregation. Such aggregating meets the standards set forth in the Commission’s July 18, 2005 No-Action Letter, in which the Commission granted a riskless principal exemption from Securities Exchange Act Rule 10a-1 to permit a broker-dealer to fill customer orders without complying with the “tick” provisions of the Rule, in certain situations and subject to certain conditions. See Securities Industry Association, SEC No-Action Letter, available at www.sec.gov/divisions/marketreg/mr-noaction/sia071805.htm (July 18, 2005).

³ The required periodic disclosures would include affirmative notice of: (i) the fact that the member may trade along with the customer’s order, subject to the customer’s right to affirmatively opt-out of such trading-along on an order-by-order basis or to modify the instructions obtained under the blanket consent and (ii) the method by which the member organization will allocate shares to the customer’s order (including the allocation methodology for riskless principal transactions that include Rule 24—AEMI(b) proprietary orders and orders from customers that have and/or have not consented to trade along with such proprietary orders). The Exchange would not require a specific allocation methodology (e.g., strict time priority, precedence based on size, etc.), but would require it to be fair and reasonable, consistently applied, consistent with the rules governing parity of orders, and not unfairly discriminatory against any particular class of accounts or types of orders.

⁴ Acceptable documentation of customer consent following delivery of the required disclosures would be

- expand the class of customers eligible to give affirmative consent from institutional investors with 10,000 share orders or more to all institutional investors and individual investors with orders of 10,000 shares (worth at least \$100,000) or more; and
- add an exception which would permit specialists to trade proprietarily ahead of held customer orders 2.5 hours after the close of regular trading and up to 15 minutes prior to the following trading day's opening, thereby better allowing the specialists to hedge their trading risk and bring their dealer accounts in line with trading in away markets.

All of these changes will serve to harmonize Rule 24—AEMI with FINRA's (formerly NASD) guidelines on members trading while in possession of customer orders, commonly known as the "Manning Rule,"⁵ so as to provide a more consistent regulatory environment for broker-dealers. Amex intends to make the same amendments in substance to its Rule 24—AEMI as NYSE made to its Rule 92, with slight differences discussed below.

New NYSE Rule 92(c)(3) requires, among other things, that in order to avail itself of the riskless principal transaction:

A member must submit a report of execution of the facilitated order to a designated Exchange database as required by NYSE Rule 123(f). The member must also submit to the same database, within such time frame and in such format as the Exchange may from time to time require, an electronic report containing data elements sufficient to provide an

(i) a signed writing from the customer that acknowledges receipt of the required disclosures and provides consent; or (ii) in the case of oral customer consent, by a written notice from the member sent to the customer documenting the provision of such required disclosures and such oral consent. Once a customer has provided affirmative consent and so long as firms continue to provide written disclosures on a periodic basis, members will not need to renew such affirmative consent.

⁵ See NASD IM 2110-2 and Rule 2111.

electronic link of the execution of the facilitated order to all of the underlying orders.

The referenced “Exchange database” is the NYSE’s Front End Systemic Capture (“FESC”) database. Amex does not have a database that is able to capture order and execution data with respect to riskless principal transactions in the same manner as FESC. Accordingly, Amex regulatory staff will need to surveil for proper use of the new riskless principal exemption simultaneous with general surveillance of transactions where members trade ahead of customers orders under pre-existing exceptions to Rule 24—AEMI. Should a transaction appear to be a riskless principal transaction, Amex Regulation will validate that all elements required by the exception are met by requesting and reviewing supporting documentation from the members involved, rather than automatically surveilling for violations as NYSE is presumably able to do with its FESC system. Accordingly, because technological differences require development of slightly different audit trail, Amex’s corresponding paragraph in Rule 24—AEMI will state:

A member or member organization must maintain a contemporaneous record of every execution on a riskless principal basis, which record shall be submitted to the Exchange within such time frame, in such format, and containing such information (in addition to any information required by Rule 153—AEMI) as the Exchange may from time to time require to validate the riskless principal nature of the transaction.

Other wording, structural, or grammatical differences between comparable sections of NYSE Rule 92 and Rule 24—AEMI are not intended create substantive differences and are intended only to add clarity where the Amex thought necessary for its members.⁶

⁶ For example, while the NYSE chose to make the riskless principal exception a separate standalone sub-section (c) to its Rule 92 (with remaining exceptions listed in Rule 92(d)), Amex preferred to list all exceptions – including the riskless principal transaction exception – in the same sub-section of its equivalent Rule 24—AEMI(c). For another example, NYSE Rule 92(b) begins:

Housekeeping Changes

Existing Rule 24—AEMI substantially overlaps with existing Rule 150—AEMI, in that both rules recite the general prohibitions upon, and exceptions to, Amex members trading proprietary orders while in possession of customer orders which could be executed at the same price. To eliminate future confusion, Rule 150—AEMI (which is a vestige of pre-AEMI Amex Rule 150) will be eliminated in favor of merging the two rules into Rule 24—AEMI (which was originally patterned after NYSE Rule 92). This will result in 3 additional exceptions being added to Rule 24-AEMI, but no substantive expansion of the list of exceptions available pre-amendment (except as noted above by expanding the exceptions to include the recent changes made to comparable NYSE Rule 92).⁷

A member or member organization may enter a proprietary order while representing a customer order that could be executed at the same price, provided that the customer's order is designated not held and is for (i) an institutional account, or (ii) over 10,000 shares, unless such orders are less than \$100,000 in value, and the member organization periodically provides written disclosures to its customers and obtains and documents affirmative customer consent, under the following conditions

Comparable Rule 24—AEMI(b), as proposed to be amended, provides:

A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided:

- (1) the customer's order is for (i) an institutional account, or (ii) over 10,000 shares (unless such orders are less than \$100,000 in value); and the member organization has periodically provided written disclosures to such customer of the possibility and allocation methodology of its potential trading along and obtained and documented such customer's affirmative consent to same; and
- (2) one of the following conditions exists

⁷ Note, however, that the former Rule 150—AEMI(c)(5) exception for

a purchase or sale of an ETF by a specialist where the specialist is on parity with another broker/dealer order pursuant to the Exchange's rules (e.g., Rule 126—AEMI)

has been incorporated in new Rule 24—AEMI(c)(7) as

any purchase or sale of any security . . . by a specialist whose bid (offer) is on parity with a customer's order pursuant to Rule 126—AEMI.

The new phrasing more accurately describes the operation and application of Rule 126—AEMI, under which specialists have been and are permitted to trade on parity with customers under a variety of circumstances broader than reflected in former Rule 150—AEMI(c)(5).

Additionally, Commentary .06 to Rule 24—AEMI will now clarify that the riskless principal exception of new subsection (c)(10) only applies to orders entered from off the Floor of the Exchange, and that specialists, in particular, remain bound by Rule 155—AEMI which contains no such exception (replacing existing Commentary .06 which deals with the interplay between the now-defunct ITS plan and Rule 24—AEMI).

Finally, Rule 152—AEMI (originally patterned after NYSE Rule 91), which currently contains the general prohibitions upon, and exceptions to, supplying/taking stock to fill a customers' order, will be amended to incorporate the new riskless principal transaction exception, as such transactions, by definition, include a member supplying/taking stock to fill a customer's order.⁸

(2) Statutory Basis

The proposed rule change is designed to be consistent with Regulation NMS, as well as consistent with Section 6(b)⁹ of the Securities Exchange Act of 1934 (the "1934 Act"), in general, and furthers the objectives of Section 6(b)(5),¹⁰ 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 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 does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

⁸ NYSE did not so amend its comparable Rule 91 although it is not clear why.

⁹ 15 U.S.C. § 78f(b).

¹⁰ 15 U.S.C. § 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No formal written comments were solicited or received with respect to the proposed rule change itself, but Amex staff have had numerous communications with representatives of the Securities Industry and Financial Markets Association, which have requested that Amex amend its rules to match the recent changes to the NYSE Rule 92 as described above.

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 Act¹¹ and Rule 19b-4(f)(6)¹² 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 of appropriate in 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 1934 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-2007-125 on the subject line.

¹¹ 15 U.S.C. § 78s(b)(3)(A).

¹² 17 CFR § 240.19b-4(f)(6).

Paper Comments:

Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File No. SR-Amex-2007-125. 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-2007-125 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.¹³

Dated:

Nancy M. Morris
Secretary

¹³ 17 CFR § 200.30-3(a)(12).

AMERICAN STOCK EXCHANGE LLC**Proposed Rule Change**

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

* * * *

Rule 24—AEMI Limitations on Members' Trading Because of Customers' Orders

(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) [any] on the Exchange[-listed] any security for any account in which such member or member organization or any member, officer, employee or approved person thereof is directly or indirectly interested (a "proprietary order"), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.

(b) A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided[the customer's order is not for the account of an individual investor, and the customer has given express permission, including an understanding of the relative price and size of allocated execution reports, under the following conditions]:

(1) the customer's order is designated not-held and is for (i) an institutional account, or (ii) over 10,000 shares (unless such orders are less than \$100,000 in value); and the member organization periodically provides written disclosures to such customer of the possibility and allocation methodology of its potential trading along and obtains and documents such customer's affirmative consent to same; and

(2) one of the following conditions exists:

(1) the member or member organization is liquidating a position held in a proprietary facilitation account[, and the customer's order is for 10,000 shares or more];

(2) the member or member organization is creating a bona fide hedge ("hedge") and (i) the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related; (ii) the size of the hedge is commensurate with the risk it offsets; and (iii) the risk to be offset is the result of a position acquired in the course of facilitating a

customer's order; [and (iv) the customer's order is for 10,000 shares or more;]

(3) the member or member organization is modifying an existing hedge and (i) the size of the hedge, as modified, remains commensurate with the risk it offsets; and (ii) the hedge was created to offset a position acquired in the course of facilitating a customer's order[; and (iii) the customer's order is for 10,000 shares or more]; or

(4) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transactions, and recording such transactions in an account used solely to record arbitrage transactions (an "arbitrage account").

(c) The provisions of this Rule shall not apply to: [(1)] any purchase or sale of any security;

(1) in an amount of less than the unit of trading made by the specialist as the odd-lot dealer to offset odd-lot orders for customers;

(2) by a specialist as the odd-lot dealer to offset a position previously acquired through the purchase or sale of odd-lots or to offset odd-lot orders that will be executed on a purchase or sale, provided such specialist has entered an order in the Specialist Order Book and that his order is "up" in the Specialist Order Book based upon the time stamp on the order, and he is bidding or offering at the limit indicated on the order;

[(2) any purchase or sale of any security] 3) upon terms for delivery other than those specified in such unexecuted market or limited price order;

[(3) transactions] 4) by a member or member organization acting in the capacity of a specialist or market maker in a security listed on the Exchange otherwise than on the Exchange;

[(4)] 5) transactions made to correct bona fide errors; [and]

6) intermarket sweep orders sent as principal in compliance with Rules 600(b)(30)(ii) and 611(b)(6) of Regulation NMS ("ISO"), provided that the member organization yields its principal executions to any open customer orders that are required to be protected by this rule and are capable of being filled, except if the member organization executed the ISO to facilitate a customer order at a price inferior to one or more protected quotations and that customer has consented to not receiving the better prices obtained by the ISO[.];

7) by a specialist whose bid (offer) is on parity with a customer's order pursuant to Rule 126-AEMI;

8) by a specialist where the order is suspended in whole or part in AEMI because it has been sent to another market;

9) by a specialist more than two and one half hours after the close of regular trading in such security on the Exchange and more than fifteen minutes prior to

the opening of regular trading in such security on the Exchange on the following trading day; or

(10) purchased or sold on a “riskless principal” basis, which is when a member or member organization, after having received one or more orders to buy (sell) a security (the “facilitated order(s)”), enters a proprietary order to purchase (sell) the security at the same price in order to satisfy such facilitated order(s), provided that the following additional requirements are satisfied:

(i) A member or member organization that relies on this exclusion to the rule must give any facilitated order the same per-share price at which it purchased or sold shares to satisfy the facilitated order, exclusive of any markup or markdown, commission equivalent, or other fee.

(ii) A member or member organization must maintain a contemporaneous record of every execution on a riskless principal basis, which record shall be submitted to the Exchange within such time frame, in such format, and containing such information (in addition to any information required by Rule 153—AEMI) as the Exchange may from time to time require to validate the riskless principal nature of the transaction.

(iii) In allocating a facilitated order comprised of customer and proprietary orders (as defined in paragraph (a) above), any proprietary order(s) therein must yield to customer orders that do not meet all of the criteria of paragraph (b)(1) above (hereinafter “non-consenting customer orders”). Once such non-consenting customer orders have been filled, the proprietary order(s) can trade along with any remaining customer orders in the facilitated order subject to any allocation methodology disclosed to the customers pursuant to paragraph (b)(1) above.

(iv) Members and member organizations must have written policies and procedures to assure that riskless principal transactions relied upon for this exception comply with applicable Exchange rules. At a minimum, these policies and procedures must require that the facilitated order was received before entry of the offsetting proprietary order; that executions of the offsetting proprietary order must be allocated to facilitated orders pursuant to consistent methodologies within 60 seconds of execution; that such methodologies are disclosed to customers in the manner that the Exchange may from time to time require; and that supervisory systems are in place that produce records sufficient to reconstruct in a time-sequenced manner, the receipt, entry, and execution times of all facilitated orders and proprietary orders underlying the riskless principal transactions for which exceptions are claimed.

••• Commentary

.01 A member or employee of a member or member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies

and procedures to prevent the misuse of information about customers orders by those responsible for entering such proprietary orders.

.02 This Rule shall apply to any agency or proprietary transaction effected on the Exchange if such transaction ("Exchange transaction") is part of a group of related transactions that together have the effects prohibited by the Rule, regardless of whether (i) one or more of the other related transactions were effected on other market centers; or (ii) the Exchange transaction by itself had such effects.

.03 This Rule shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.04 For purposes of paragraph (b) above, the term "institutional account[of an individual investor]" shall mean [an] the account of [covered by Section 11(a)(1)(E) of] (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment advisor registered with the Securities and Exchange [Act of 1934.] Commission under Section 203 of the Investment Advisors Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other entity (whether a corporation, partnership, trust or otherwise) with total assets of at least \$50 million. For purposes of paragraph (b)(1) above, the term "proprietary facilitation account" shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(2) and (b)(4) above, the terms "bona fide hedge", "bona fide arbitrage" and "risk arbitrage" shall have the meaning ascribed to such terms in Securities Exchange Act Release No. 15533, January 29, 1979. All transactions effected pursuant to paragraph (b)(4) above must be recorded in an arbitrage account.

.05 For purposes of paragraph (b)(2) above, a hedge will be deemed to be "clearly related" if either the first or last transaction comprising the hedge is executed on the same trade date as the transaction that precipitates such hedge. A member shall mark all memoranda of orders to identify each transaction creating or modifying a hedge as permitted under this Rule.

.06 Only members submitting orders from off the Floor shall be permitted to avail themselves of the "riskless principal" exception of paragraph (c)(10) above. Specialists, in particular, remain bound by Rule 155—AEMI, which contains no riskless principal exception.[A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System or any other linkage to other markets shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.]

.07 For purposes of paragraph (c)([5]6) above, the terms "protected quotation" and "intermarket sweep order" shall have the meanings ascribed to such terms in Rule 600 of Regulation NMS, 17 CFR 242.600.

.08 For purposes of paragraph (c)(10)(iii), a member firm executing a riskless principal transaction would have to yield to all customer orders until any non-consenting customer orders have been filled, and only then could the firm trade along with any remaining customer orders that have provided consent pursuant to paragraph (b)(1). For example:

Customer A, who has not consented under paragraph (b)(1), has an order to buy 700 shares. Customer B, who has consented under paragraph (b)(1), has an order to buy 1600 shares. The member firm has a proprietary order to buy 400 shares. When executed, the riskless principal transaction buys 2,000 shares. A and B would be filled first to the extent of A's order volume and each be allocated 700 shares of the 2,000 share order. Of the remaining 600 shares of the 2,000 share order, the member firm would trade along with B, so B and the member firm would each be allocated 300 shares. In total, A would buy 700 shares (filling the entire order), B would buy 1,000 shares (partially filling its order), and the member firm would buy 300 shares.

As illustrated in the above example, and as should be disclosed to customers who have consented under paragraph (b)(1), a consenting customer may not get its entire order filled.

* * * *

[Rule 150—AEMI. Purchases and Sales While Holding Unexecuted Market Order

(a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he or his member organization or any member, officer, employee or approved person therein is directly or indirectly interested, while such member personally holds or has knowledge that his member organization or any member, officer, employee or approved person therein holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization or any member, officer, employee or approved person therein holds an unexecuted market order to sell such security in the unit of trading for a customer.

Purchases and sales while holding unexecuted limit order

(b) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization or any member, officer, employee or approved person therein holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization or any member, officer, employee or approved person therein holds an unexecuted limited price order to sell such security in the unit of trading for a customer.

Odd-lot and other exemptions

(c) The provisions of this rule shall not apply to (1) any purchase or sale of any security in an amount of less than the unit of trading made by a specialist as the odd-lot dealer to

offset odd-lot orders of customers, (2) a purchase or sale made by a specialist as the odd-lot dealer to offset a position previously acquired through the purchase or sale of odd lots or to offset odd-lot orders that will be executed on a purchase or sale, provided such specialist has entered an order in the Specialist Order Book and that his order is "up" in the Specialist Order Book based upon the time stamp on the order, and he is bidding or offering at the limit indicated on the order, (3) to any purchase or sale of any security, delivery of which is to be upon a day other than the day of delivery provided in such unexecuted market or limited price order, (4) a purchase or sale of any security by a specialist where the member or member organization entering a percentage order has permitted the specialist to be on parity with the order, (5) a purchase or sale of an ETF by a specialist where the specialist is on parity with another broker/dealer order pursuant to the Exchange's rules (e.g., Rule 126-AEMI), or (6) a purchase or sale of any security by a specialist where the order is suspended in whole or part in AEMI because it has been sent to another market.

Intermarket Trading

(d) The provisions of this rule shall apply to the issuance of a commitment or obligation to trade from the Exchange, and the acceptance on the Exchange of a commitment or obligation to trade issued from another market center.]

* * * *

Rule 152—AEMI. Taking or Supplying Stock to Fill Customer's Order

(a) No member or member organization shall take or supply for any account in which the member, member organization or any other member, officer or approved person therein has any direct or indirect interest, of which the member knows or should have known, the securities named in a sell or buy order accepted for execution by the member or member organization, except as follows:

Error

(1) A member who neglects to execute an order may be compelled to take or supply for his own account or that of his member organization the securities named in the order.

Filling Customer's Order

(2) A member or member organization may take or supply the securities for the purpose of filling a customer's order [only] in connection with a riskless principal transaction as described in Rule 24—AEMI(c)(10), or if:

(i) In connection with taking (supplying) the securities named in a sell (buy) order, the member or member organization shall have offered (bid for) the securities in the open market at a price which is higher (lower) than the bid (offer) of such member or member organization by the minimum price variation of trading permitted in such securities. This requirement does not apply to cross orders entered into AEMI pursuant to Rule 131-AEMI;

(ii) [In connection with supplying the securities named in a buy order, the member or member organization shall have bid for the securities in the open market at a price which is lower than the offer of such member or member organization by the minimum price variation of trading permitted in such securities. This requirement does not apply to cross orders entered into AEMI pursuant to Rule 131-AEMI;][(iii)]The price in each case is justified by the condition of the market;

([iv]iii) In the case of an order received from a non-member customer of the member or member organization, the member or member organization either (A) prior to effecting the transaction shall have obtained from the customer the customer's consent or, except as otherwise provided by law, (B) as promptly as possible following execution of the order shall have disclosed to the customer that the securities have been taken or supplied for an account in which the member, member organization, or any member, officer or approved person therein has an interest, and the customer accepts the trade;

([v]iv) In the case of an order received from another member or member organization, the member or member organization receiving the order, promptly after effecting the transaction notifies such other member or member organization that the member or member organization receiving the order took or supplied the securities named in the order for the account of the member, member organization or a member, officer or approved person therein and such other member or member organization accepts the trade; and

([vi]v) Such transaction is made in accordance with any other applicable rules of the Exchange.

(b) In the event that a member or member organization having executed a sell or buy order accepted for execution as a broker finds that inadvertently the securities sold or purchased in such execution were taken or supplied for an account in which the member, member organization or any member, officer or approved person therein has a direct or indirect interest, such member or member organization shall report that fact to his or its principal who may accept or reject the trade.

(c) A specialist acting as principal in the course of his specializing function is prohibited from charging a commission for the execution against his account of an order entrusted to him, as agent, by a member.

••• *Commentary*

.01 The provisions of [clauses (i) and (ii) of]Rule 152-AEMI(a)(2)(i) do not apply to a specialist's transactions as principal in the proper performance of his function to assist in the maintenance of a fair and orderly market, and he may as principal take or supply the securities named in an order on the Specialist Order Book provided he complies with the other requirements of Rule 152-AEMI.