

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

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

Revising the AEMI and AEMIOne Rules Relating to the Publishing of Manual Quotations and ReEnabling AutoEx

**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="William"/>	Last Name	<input type="text" value="Love"/>
Title	<input type="text" value="Vice President and Associate General Counsel"/>		
E-mail	<input type="text" value="william.love@amex.com"/>		
Telephone	<input type="text" value="(212) 306-1789"/>	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

By  Vice President and Associate General Counsel

(Name)

(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**

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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**

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**

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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 and AEMI-One rules to address a situation that the Exchange has encountered in publishing its manual, non-firm quote following a tolerance breach that disables the Exchange’s automatic execution functionality (“auto-ex”). Under certain circumstances, displaying the price of the national best bid (“NBB”) or national best offer (“NBO”) (as the case may be) as part of such a non-firm quote (as provided in the current AEMI and AEMI-One rules) may result in the Exchange publishing a locked or crossed quotation. To avoid this situation, the Exchange is proposing to amend Rules 128A–AEMI-One(g) and 128A–AEMI(g) to provide instead for using the price of the best bid, offer or order (as the case may be) in AEMI, rather than the NBB or NBO, under these circumstances. Related changes to Rules 123–AEMI-One(h) and 123–AEMI(h) would clarify that all such non-firm quotes disseminated through the AEMI platform are indicative only. In addition, the Exchange is proposing the addition of a phrase to each of Rules 128A–AEMI-One(g) and 128A–AEMI(g) to clarify that the obligation of the Specialist is to “attempt to” pair off the remainder of an aggressing order that results in a locked or crossed AEMI Book to re-enable auto-ex prior to the expiration of a ten-second time period. The Exchange also is proposing an unrelated change to the text of Rules 1A–AEMI-One(b) and 1A–AEMI(b) to clarify the applicability of cross-references in the Exchange’s rules to a legacy rule that is no longer applicable due to having been superseded by a corresponding AEMI or AEMI-One rule. 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 has recently adopted two sets of rules in connection with the operation of its new hybrid market trading platform for equity products and exchange traded funds, designated as AEMI<sup>SM</sup> (the "Auction and Electronic Market Integration" platform). The initial version of AEMI is referred to as "AEMI-One" and is currently operational on a pilot basis<sup>1</sup> through the day prior to the final date set by the Commission for full operation of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611<sup>2</sup> of Regulation NMS (the latter date being referred to as the "Trading Phase Date").<sup>3</sup> On the Trading Phase Date, the regular AEMI rules will become effective<sup>4</sup> and the AEMI-One rules will cease to be operative. The

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<sup>1</sup> See Securities Exchange Act Release No. 54709 (Nov. 3, 2006), 71 FR 65847 (Nov. 9, 2006) (SR-Amex-2006-72) (Order Approving a Proposed Rule Change and Amendment No 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, To Adopt New Rules To Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform For Equity Products and Exchange Traded Funds).

<sup>2</sup> 17 CFR 242.611. The Order Protection Rule requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to certain exceptions.

<sup>3</sup> The Trading Phase Date is currently established as March 5, 2007.

<sup>4</sup> See Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (SR-Amex-2005-104) (Order Approving a Proposed Rule Change and Amendments No. 1, 2, 3, 4, and 5 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 6, To Establish a New Hybrid Trading System Known as AEMI).

Exchange proposes to adopt the following change to the AEMI platform and to reflect that change in both the currently effective AEMI-One rule and the corresponding AEMI rule that will become effective on the Trading Phase Date.

In the event that auto-ex is disabled through the breach of the Spread Tolerance or Momentum Tolerance or a gap trade (each a “Tolerance”), as provided in Exchange Rules 128A–AEMI-One(f) and 128A–AEMI(f), Exchange Rules 128A–AEMI-One(g) and 128A–AEMI(g) currently provide that the Amex Published Quote (“APQ”) will display a price on the same side corresponding to the aggressing order that is equal to the price of the NBB or NBO (as the case may be), with the contra side of the quote reflecting the best bid, offer or order in AEMI (both sides being non-firm). Under certain circumstances, however, displaying the NBB or NBO as part of such a non-firm quote may result in the Exchange publishing a locked or crossed quotation. The problem is illustrated by the following hypothetical example.

Assume that the NBB is 10.50 and the NBO is 10.00 (a crossed market). Further assume that the APQ is 9.80 x 10.00 and that an aggressing buy order takes out Amex offers on the AEMI Book and breaches a Tolerance at 10.25 (disabling auto-ex). The next offer in AEMI is 10.30. Under the current AEMI-One and AEMI rules, the Amex’s manual non-firm quote displayed by the AEMI platform would then be 10.50 x 10.30 (a crossed APQ).

To avoid the foregoing situation, the Exchange is proposing to amend Rules 128A–AEMI-One(g) and 128A–AEMI(g) to provide instead for using the price of the best bid, offer or order (as the case may be) in AEMI, rather than the NBB or NBO, under these circumstances. Under the language of the proposed amendment, the

Exchange's manual, non-firm quote in the foregoing example would be 9.80 x 10.30.

The proposed amendment also contains language providing that the size of the non-firm quote on the same side as the aggressing order will be equal to the remainder of the aggressing order. The proposed amendment further clarifies that the aggressing order itself is not considered as the best bid, offer or order in AEMI in the situation where the price of the NBB or NBO is not used as part of the non-firm APQ on the side of the aggressing order. Related changes to Rules 123–AEMI-One(h) and 123–AEMI(h) would clarify that all such non-firm quotes disseminated through the AEMI platform are indicative only.

In addition, the Exchange is proposing the addition of a phrase to each of Rules 128A–AEMI-One(g) and 128A–AEMI(g) to clarify that the obligation of the Specialist is to “attempt to” pair off the remainder of an aggressing order that results in a locked or crossed AEMI Book to re-enable auto-ex prior to the expiration of a 10-second time period. This proposed change is consistent with the extensive discussion in the same rule sections regarding what to do if auto-ex is not re-enabled within 10 seconds, and it avoids the implication that the Specialist has committed an enforceable rule violation if conditions are such that the Specialist is unable to complete the pair-off to re-enable auto-ex within the 10-second period.

The Exchange also is proposing an unrelated change to the text of Rules 1A–AEMI-One(b) and 1A–AEMI(b) to clarify the applicability of cross-references in the Exchange's rules to a legacy rule that is no longer applicable due to having been superseded by a corresponding AEMI or AEMI-One rule. Under the proposed change,

any reference to such an inapplicable legacy rule shall be deemed to be a reference to the corresponding AEMI or AEMI-One rule, as the case may be.

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.

(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.

**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.

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

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

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.

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**

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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).

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-2007-26****Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Revising the AEMI and AEMI-One Rules Relating to the Publishing of Manual Quotations and Re-Enabling Auto -Ex**

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 and AEMI-One rules to address a situation that the Exchange has encountered in publishing its manual, non-firm quote following a tolerance breach that disables the Exchange’s automatic execution functionality (“auto-ex”). Under certain circumstances, displaying the price of the national best bid (“NBB”) or national best offer (“NBO”) (as the case may be) as part of such a non-firm quote (as provided in the current AEMI and AEMI-One rules) may result in the Exchange publishing a locked or crossed quotation. To avoid this situation, the Exchange is proposing to amend Rules 128A–AEMI-One(g) and 128A–AEMI(g) to provide instead for using the price of the best bid, offer or order (as the case may be) in AEMI, rather than the NBB or NBO, under these

circumstances. Related changes to Rules 123–AEMI-One(h) and 123–AEMI(h) would clarify that all such non-firm quotes disseminated through the AEMI platform are indicative only. In addition, the Exchange is proposing the addition of a phrase to each of Rules 128A–AEMI-One(g) and 128A–AEMI(g) to clarify that the obligation of the Specialist is to “attempt to” pair off the remainder of an aggressing order that results in a locked or crossed AEMI Book to re-enable auto-ex prior to the expiration of a ten-second time period. The Exchange also is proposing an unrelated change to the text of Rules 1A–AEMI-One(b) and 1A–AEMI(b) to clarify the applicability of cross-references in the Exchange’s rules to a legacy rule that is no longer applicable due to having been superseded by a corresponding AEMI or AEMI-One rule.

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 has recently adopted two sets of rules in connection with the operation of its new hybrid market trading platform for equity products and exchange traded funds, designated as AEMI<sup>SM</sup> (the “Auction and Electronic Market Integration”

platform). The initial version of AEMI is referred to as “AEMI-One” and is currently operational on a pilot basis<sup>1</sup> through the day prior to the final date set by the Commission for full operation of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611<sup>2</sup> of Regulation NMS (the latter date being referred to as the “Trading Phase Date”).<sup>3</sup> On the Trading Phase Date, the regular AEMI rules will become effective<sup>4</sup> and the AEMI-One rules will cease to be operative. The Exchange proposes to adopt the following change to the AEMI platform and to reflect that change in both the currently effective AEMI-One rule and the corresponding AEMI rule that will become effective on the Trading Phase Date.

In the event that auto-ex is disabled through the breach of the Spread Tolerance or Momentum Tolerance or a gap trade (each a “Tolerance”), as provided in Exchange Rules 128A–AEMI-One(f) and 128A–AEMI(f), Exchange Rules 128A–AEMI-One(g) and 128A–AEMI(g) currently provide that the Amex Published Quote (“APQ”) will display a price on the same side corresponding to the aggressing order that is equal to the price of the NBB or NBO (as the case may be), with the contra side of the quote reflecting the best bid, offer or order in AEMI (both sides being non-firm). Under certain circumstances, however, displaying the NBB or NBO as part of such a non-firm

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<sup>1</sup> See Securities Exchange Act Release No. 54709 (Nov. 3, 2006), 71 FR 65847 (Nov. 9, 2006) (SR-Amex-2006-72) (Order Approving a Proposed Rule Change and Amendment No 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, To Adopt New Rules To Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform For Equity Products and Exchange Traded Funds).

<sup>2</sup> 17 CFR 242.611. The Order Protection Rule requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to certain exceptions.

<sup>3</sup> The Trading Phase Date is currently established as March 5, 2007.

<sup>4</sup> See Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (SR-Amex-2005-104) (Order Approving a Proposed Rule Change and Amendments No. 1, 2, 3, 4, and 5 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 6, To Establish a New Hybrid Trading System Known as AEMI).

quote may result in the Exchange publishing a locked or crossed quotation. The problem is illustrated by the following hypothetical example.

Assume that the NBB is 10.50 and the NBO is 10.00 (a crossed market). Further assume that the APQ is 9.80 x 10.00 and that an aggressing buy order takes out Amex offers on the AEMI Book and breaches a Tolerance at 10.25 (disabling auto-ex). The next offer in AEMI is 10.30. Under the current AEMI-One and AEMI rules, the Amex's manual non-firm quote displayed by the AEMI platform would then be 10.50 x 10.30 (a crossed APQ).

To avoid the foregoing situation, the Exchange is proposing to amend Rules 128A–AEMI-One(g) and 128A–AEMI(g) to provide instead for using the price of the best bid, offer or order (as the case may be) in AEMI, rather than the NBB or NBO, under these circumstances. Under the language of the proposed amendment, the Exchange's manual, non-firm quote in the foregoing example would be 9.80 x 10.30. The proposed amendment also contains language providing that the size of the non-firm quote on the same side as the aggressing order will be equal to the remainder of the aggressing order. The proposed amendment further clarifies that the aggressing order itself is not considered as the best bid, offer or order in AEMI in the situation where the price of the NBB or NBO is not used as part of the non-firm APQ on the side of the aggressing order. Related changes to Rules 123–AEMI-One(h) and 123–AEMI(h) would clarify that all such non-firm quotes disseminated through the AEMI platform are indicative only.

In addition, the Exchange is proposing the addition of a phrase to each of Rules 128A–AEMI-One(g) and 128A–AEMI(g) to clarify that the obligation of the

Specialist is to “attempt to” pair off the remainder of an aggressing order that results in a locked or crossed AEMI Book to re-enable auto-ex prior to the expiration of a 10-second time period. This proposed change is consistent with the extensive discussion in the same rule sections regarding what to do if auto-ex is not re-enabled within 10 seconds, and it avoids the implication that the Specialist has committed an enforceable rule violation if conditions are such that the Specialist is unable to complete the pair-off to re-enable auto-ex within the 10-second period.

The Exchange also is proposing an unrelated change to the text of Rules 1A–AEMI-One(b) and 1A–AEMI(b) to clarify the applicability of cross-references in the Exchange’s rules to a legacy rule that is no longer applicable due to having been superseded by a corresponding AEMI or AEMI-One rule. Under the proposed change, any reference to such an inapplicable legacy rule shall be deemed to be a reference to the corresponding AEMI or AEMI-One rule, as the case may be.

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

(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

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

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 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

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

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

send an e-mail to [rulecomments@sec.gov](mailto:rulecomments@sec.gov). Please include File No. SR Amex 2007-26 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 2007-26. 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 2007-26 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>

Nancy M. Morris  
Secretary

Dated:

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<sup>8</sup> 17 CFR 200.30–3(a)(12).

**SR-Amex-2007-26**  
**Exhibit 5**

AMERICAN STOCK EXCHANGE LLC

Proposed Rule Change

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

**Applicability, Definitions, References and Phase-In**

**Rule 1A—AEMI-One.**

(a) No Change.

(b) Once the roll-out of AEMI is complete for all securities that had been subject to a particular Exchange legacy rule, the corresponding AEMI-One rule shall govern all transactions in those securities; provided, however, that if such rollout of all securities that had been subject to a particular Exchange legacy rule is completed on or after the Trading Phase Date, the corresponding AEMI rule shall govern all transactions in these securities. The legacy rule will no longer have any applicability and the Exchange will delete that rule from its rulebook via a filing with the Commission. Any reference in any of the Exchange’s other rules to such an inapplicable legacy rule shall be deemed to be a reference to the corresponding AEMI-One or AEMI rule, as the case may be.

(c) – (g) No Change.

\* \* \* \*

**Applicability, Definitions, References and Phase-In**

**Rule 1A—AEMI**

(a) No Change.

(b) Once the roll-out of AEMI is complete for all securities that had been subject to a particular Exchange legacy rule, the corresponding AEMI rule shall govern all transactions in those securities. The legacy rule will no longer have any applicability and the Exchange will delete that rule from its rulebook via a filing with the Commission. Any reference in any of the Exchange’s other rules to such an inapplicable legacy rule shall be deemed to be a reference to the corresponding AEMI rule.

(c) – (g) No Change.

\* \* \* \*

## Manner of Bidding and Offering

### Rule 123—AEMI-One.

(a) – (g) No change.

(h) Automated bids and offers disseminated through AEMI are firm until revised or withdrawn. Other bids and offers disseminated through AEMI, such as when the Exchange is conducting an auction or is unable to accurately collect, process and/or make available quotations under certain circumstances, are non-firm and indicative only, and AEMI will disseminate a specified indicator<sup>1</sup> whenever the APQ is not firm. In conjunction with publishing a non-firm quote, AEMI will disable Auto-Ex. The specific circumstances under which such a non-firm indicator will be disseminated are:

(i) The Exchange is incapable of collecting, processing and/or making available quotations in one or more securities due to the high level of trading activity or the existence of unusual market conditions (See Rule 115A—AEMI-One), or

(ii) Auto-Ex has been disabled due to the breach of a Tolerance (as defined in Rule 128A—AEMI-One(g)), and Auto-Ex and the dissemination of an automated quotation have not yet resumed (see conditions for Auto-Ex resumption described in Rule 128A—AEMI-One(g)), or

(iii) A gap quote situation exists due to an order imbalance, as described in Rule 170—AEMI-One(f)).

### ••• *Commentary*

.01 – .02 No change.

\* \* \* \*

## Manner of Bidding and Offering

### Rule 123—AEMI.

(a) – (g) No change.

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<sup>1</sup> The Exchange will use the indicator “N” to denote a non-firm quote in connection with the circumstances described in subsection (h)(i) above and the indicator “U” to denote a non-firm quote (and that the specialist is arranging an auction) in connection with either of the circumstances described in subsections (h)(ii) and (h)(iii) above. These quote indicators are not to be confused with the indicators “A,” “B” and “H,” which are for firm quotes and denote that a market center is not meeting the SEC’s Regulation NMS definition of an automated market even though Auto-Ex is on.

(h) Automated bids and offers disseminated through AEMI are firm until revised or withdrawn. Other bids and offers disseminated through AEMI, such as when the Exchange is conducting an auction or is unable to accurately collect, process and/or make available quotations under certain circumstances, are non-firm and indicative only, and AEMI will disseminate a specified indicator<sup>2</sup> whenever the APQ is not firm. In conjunction with publishing a non-firm quote, AEMI will disable Auto-Ex. The specific circumstances under which such a non-firm indicator will be disseminated are:

- (i) The Exchange is incapable of collecting, processing and/or making available quotations in one or more securities due to the high level of trading activity or the existence of unusual market conditions (See Rule 115A—AEMI), or
- (ii) Auto-Ex has been disabled due to the breach of a Tolerance (as defined in Rule 128A—AEMI(g)), and Auto-Ex and the dissemination of an automated quotation have not yet resumed (see conditions for Auto-Ex resumption described in Rule 128A—AEMI(g)), or
- (iii) A gap quote situation exists due to an order imbalance, as described in Rule 170—AEMI(f)).

••• *Commentary*

.01 – .02 No change.

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**Automatic Execution**

**Rule 128A—AEMI-One.**

(a) – (f) No change.

(g) If a buy or sell imbalance that locks or crosses the AEMI Book exists in a security and Auto-Ex has been disabled for any of the reasons listed in items (i) through (iv) of paragraph (f) of this Rule, the specialist must perform an auction pair-off of any remaining imbalance in order to re-enable Auto-Ex. If Auto-Ex has been disabled due to the breach of a Spread Tolerance (under (f)(i) above), a Momentum Tolerance (under (f)(ii) above), or the Exchange's gap trade rule price change parameters (under (f)(iv)

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<sup>2</sup> The Exchange will use the indicator “N” to denote a non-firm quote in connection with the circumstances described in subsection (h)(i) above and the indicator “U” to denote a non-firm quote (and that the specialist is arranging an auction) in connection with either of the circumstances described in subsections (h)(ii) and (h)(iii) above. These quote indicators are not to be confused with the indicators “A,” “B” and “H,” which are for firm quotes and denote that a market center is not meeting the SEC’s Regulation NMS definition of an automated market even though Auto-Ex is on.

above), each of the three foregoing parameters being referred to herein as a "Tolerance," the procedures for re-enabling Auto-Ex shall operate in the following manner.

When a Tolerance is breached, Auto-Ex and the dissemination of an automated APQ are automatically disabled in that security for an initial period of 10 seconds. The re-enabling of Auto-Ex and the dissemination of an automated APQ are contingent on the AEMI Book not being in a locked or crossed condition during, or at the end of, this initial 10-second time period. The specialist will be required to attempt to pair off the remainder of an aggressing order that results in a locked or crossed AEMI Book to re-enable Auto-Ex prior to the expiration of the 10-second time period. The contra interest applied against the aggressing order in the pair-off will come from marketable orders on the contra side of the AEMI Book. Any portion of the aggressing order that is not paired off against marketable orders on the AEMI Book will be parity-allocated against the specialist and/or eligible crowd participants represented electronically on the contra side of the AEMI Book. Upon the specialist's performance of this pair-off, AEMI will automatically disseminate a new automated APQ. Alternatively, the specialist may re-enable Auto-Ex prior to the expiration of the 10-second period through a "front end" device if the remainder of the aggressing order (if any) is expired or cancelled or the AEMI Book is not locked or crossed. Following the breach of the Tolerance, the APQ will display [remainder of the aggressing order (if any) shall be reflected in the APQ at the price of the NBBO] on the same side corresponding to the aggressing order (e.g., national best bid for an aggressing buy order) the price of the NBB or NBO (as the case may be) and a size equal to the remainder of the aggressing order, with the contra side of the quote reflecting the best bid, offer or order in AEMI (both sides being non-firm); provided, however, if the resulting non-firm APQ would be locked or crossed, then the APQ will instead display (also as a non-firm quote) on the side corresponding to the aggressing order the price of the best bid, offer or order (as the case may be) in AEMI (not considering the aggressing order itself as such bid, offer or order) and a size equal to the remainder of the aggressing order. If there is no remainder due to the fact that the aggressing order is cancelled or expired (e.g., it is an IOC order) or is filled upon the breach of the Tolerance, the APQ shall reflect the best bid and offer in the AEMI Book with both sides non-firm. If there are no orders left on the contra side of the AEMI Book, a stabilizing quote will be generated automatically so that a two-sided non-firm quotation is published, with a round lot at one tick away from the price of the NBBO on the contra side.

During the 10-second time period following the breach of the Tolerance, if the specialist has not resolved the locked or crossed AEMI Book along with AEMI disseminating a new automated APQ, incoming orders, amendments and cancels shall continue to enter the AEMI Book but shall not update the APQ. On the expiration of the 10-second time period following the breach of the Tolerance, if the AEMI Book is not locked or crossed, Auto-Ex and the dissemination of an automated Amex quote shall resume automatically.

If the AEMI Book remains locked or crossed following the expiration of the 10-second period, Auto-Ex and the dissemination of an automated quotation shall not resume until the specialist takes action to pair-off the remainder of the aggressing order (i.e., to resolve the locked or crossed condition). AEMI will perform a recursive check

every subsequent 10 seconds to determine if the locked or crossed condition has been eliminated and, if it has been eliminated, Auto-Ex and the dissemination of an automated Amex quote shall resume automatically. Members may not trade in the open outcry market (other than to consummate an auction trade to remove a condition that caused Auto-Ex to be disabled) while Auto-Ex is disabled as a result of the breach of a Tolerance but may enter and cancel bids, offers and orders in AEMI during this time.

If Auto-Ex has been disabled for either of the reasons listed in item (vi) of paragraph (f) of this Rule, the Exchange will disseminate the indicator "N" to indicate that the Amex's quotation, if a trading halt has not been declared and quotations are being published in the particular security, is not firm (see Rule 115—AEMI-One, Commentary .01). Once the condition that caused Auto-Ex to be disabled has been eliminated, the specialist, with Floor Official approval as described in Rule 115—AEMI-One, Commentary .01, paragraph 4, may resume the publication and dissemination of automated quotations in that security by manually re-enabling Auto-Ex or conducting an auction if the AEMI Book is locked or crossed. However, if a trading halt had been declared in the security in conjunction with the disabling of Auto-Ex, the specialist must conduct a normal reopening of the security, which may include a reopening pair-off, in order to re-enable Auto-Ex. (See Rules 108—AEMI-One and 119—AEMI-One with respect to the procedures for reopening a security.)

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### **Automatic Execution**

#### **Rule 128A—AEMI.**

(a) – (f) No change.

(g) If a buy or sell imbalance that locks or crosses the AEMI Book exists in a security and Auto-Ex has been disabled for any of the reasons listed in items (i) through (iv) of paragraph (f) of this Rule, the specialist must perform an auction pair-off of any remaining imbalance in order to re-enable Auto-Ex. If Auto-Ex has been disabled due to the breach of a Spread Tolerance (under (f)(i) above), a Momentum Tolerance (under (f)(ii) above), or the Exchange's gap trade rule price change parameters (under (f)(iv) above), each of the three foregoing parameters being referred to herein as a "Tolerance," the procedures for re-enabling Auto-Ex shall operate in the following manner.

When a Tolerance is breached, Auto-Ex and the dissemination of an automated APQ are automatically disabled in that security for an initial period of 10 seconds. The re-enabling of Auto-Ex and the dissemination of an automated APQ are contingent on the AEMI Book not being in a locked or crossed condition during, or at the end of, this initial 10-second time period. The specialist will be required to attempt to pair off the remainder of an aggressing order that results in a locked or crossed AEMI Book to re-enable Auto-Ex prior to the expiration of the 10-second time period. The contra interest applied against the aggressing order in the pair-off will come from marketable orders on

the contra side of the AEMI Book. Any portion of the aggressing order that is not paired off against marketable orders on the AEMI Book will be parity-allocated against the specialist and/or eligible crowd participants represented electronically on the contra side of the AEMI Book. Upon the specialist's performance of this pair-off, AEMI will automatically disseminate a new automated APQ. Alternatively, the specialist may re-enable Auto-Ex prior to the expiration of the 10-second period through a "front end" device if the remainder of the aggressing order (if any) is expired or cancelled or the AEMI Book is not locked or crossed. Following the breach of the Tolerance, the APQ will display [remainder of the aggressing order (if any) shall be reflected in the APQ at the price of the automated NBBO] on the same side corresponding to the aggressing order (e.g., automated national best bid for an aggressing buy order) the price of the automated NBB or NBO (as the case may be) and a size equal to the remainder of the aggressing order, with the contra side of the quote reflecting the best bid, offer or order in AEMI (both sides being non-firm); provided, however, if the resulting non-firm APQ would be locked or crossed, then the APQ will instead display (also as a non-firm quote) on the side corresponding to the aggressing order the price of the best bid, offer or order (as the case may be) in AEMI (not considering the aggressing order itself as such bid, offer or order) and a size equal to the remainder of the aggressing order. If there is no remainder due to the fact that the aggressing order is cancelled or expired (e.g., it is an IOC order) or is filled upon the breach of the Tolerance, the APQ shall reflect the best bid and offer in the AEMI Book with both sides non-firm. If there are no orders left on the contra side of the AEMI Book, a stabilizing quote will be generated automatically so that a two-sided non-firm quotation is published, with a round lot at one tick away from the price of the automated NBBO on the contra side.

During the 10-second time period following the breach of the Tolerance, if the specialist has not resolved the locked or crossed AEMI Book along with AEMI disseminating a new automated APQ, incoming orders, amendments and cancels shall continue to enter the AEMI Book but shall not update the APQ. On the expiration of the 10-second time period following the breach of the Tolerance, if the AEMI Book is not locked or crossed, Auto-Ex and the dissemination of an automated Amex quote shall resume automatically.

If the AEMI Book remains locked or crossed following the expiration of the 10-second period, Auto-Ex and the dissemination of an automated quotation shall not resume until the specialist takes action to pair-off the remainder of the aggressing order (i.e., to resolve the locked or crossed condition). AEMI will perform a recursive check every subsequent 10 seconds to determine if the locked or crossed condition has been eliminated and, if it has been eliminated, Auto-Ex and the dissemination of an automated Amex quote shall resume automatically. Members may not trade in the open outcry market (other than to consummate an auction trade to remove a condition that caused Auto-Ex to be disabled) while Auto-Ex is disabled as a result of the breach of a Tolerance but may enter and cancel bids, offers and orders in AEMI during this time.

If Auto-Ex has been disabled for either of the reasons listed in item (vi) of paragraph (f) of this Rule, the Exchange will disseminate the indicator "N" to indicate that the Amex's quotation, if a trading halt has not been declared and quotations are being published in the particular security, is not firm (see Rule 115—AEMI, Commentary .01).

Once the condition that caused Auto-Ex to be disabled has been eliminated, the specialist, with Floor Official approval as described in Rule 115—AEMI, Commentary .01, paragraph 4, may resume the publication and dissemination of automated quotations in that security by manually re-enabling Auto-Ex or conducting an auction if the AEMI Book is locked or crossed. However, if a trading halt had been declared in the security in conjunction with the disabling of Auto-Ex, the specialist must conduct a normal reopening of the security, which may include a reopening pair-off, in order to re-enable Auto-Ex. (See Rules 108—AEMI and 119—AEMI with respect to the procedures for reopening a security.)

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