

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"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<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).

Proposal to adopt changes to Rule 205 AEMI in order to change the method by which specialists on the Exchange execute odd-lot market 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  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**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.

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**

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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**

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 Rule 205—AEMI in order to change the method by which specialists on the Exchange execute odd-lot market orders. 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 May 8, 2007. 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 is currently operating, and has adopted 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). Rule 205—AEMI (“Manner of Executing Odd-Lot Orders”) requires the specialist for a relevant security to be the contra-party for executions of any odd-lot orders in that security received by AEMI and specifies, in relevant part, the pricing at which such executions must occur. In the case of odd-lot market orders that are not executed within 30 seconds of receipt by AEMI, the specialist is currently required to execute such orders at the price of the qualifying national best bid or offer (“NBBO”). In order to ensure a fair and orderly market, the Exchange proposes to

amend Rule 205-AEMI to provide for such odd-lot market orders to now be executed at the specialist's quote, rather than the NBBO.

(i) How Rule 205—AEMI works today

Rule 205—AEMI(b)(i)-(iii) currently requires the specialist to execute market odd-lot orders at the price of subsequent round-lot executions that occur in the subject security on the Exchange for 30 seconds after the odd-lot order is entered.

However, market odd-lot orders only are executed at these round-lot prices to the extent that there are a sufficient number of shares subsequently transacted in round-lots on the Exchange within that 30 second window to match any imbalance between the pending odd-lot market buy and sell orders. If there are an insufficient number of shares in round-lot executions within that 30 seconds from which to benchmark the market odd-lot execution price of the imbalance, Rule 205—AEMI(b)(iv) dictates that the NBBO be used as the default price at which the specialist is required to execute.<sup>1</sup>

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<sup>1</sup> Applying the rule, assume AEMI receives market odd-lot buy orders aggregating 1,500 shares and market odd-lot sell orders aggregating 3,500 shares in a security. The next and only round-lot execution on the Amex within the next 30 seconds is 500 shares at \$10, and, at the expiration of the 30 seconds, the NBB is 100 shares at \$10.50 on NYSE. The specialist is required in time priority of receipt of the odd-lot orders into AEMI to:

- Sell/buy an equal number of shares on each side of the odd-lot market at \$10, which clears the 1,500 shares of odd-lot market buy orders and leaves an imbalance of 2,000 of the original 3,500 shares of odd-lot market sell orders.
- In response to the remaining 2,000 shares of odd-lot market sell orders, buy a maximum of 500 shares at \$10 because that is the total size of subsequent round-lot transactions within the 30 second window. (This assumes that the remaining odd-lot sell orders with greatest time priority total 500 shares exactly. If a partial execution would result by stopping the specialist from buying at \$10 once the 500 share threshold was reached, then the specialist could buy more than 500 shares at \$10 so as to permit execution in full of the last odd-lot order at that price. *See* Rule 205—AEMI(b)(ii)).
- At the expiration of 30 seconds, purchase the 1,500 shares remaining from the odd-lot sell orders at \$10.50 (the NBB), even though the NBB was only for 100 shares and might not reflect the price at which the specialist would or should otherwise be willing to purchase 1,500 shares.

(ii) The identified deficiency in Rule 205—AEMI

It has become apparent to the Exchange that the current version of Rule 205—AEMI (insofar as it forces the specialist to execute any unexecuted imbalance in odd-lot orders at the NBBO) provides too much opportunity for manipulation to the detriment of both the specialists and accuracy in pricing. In practice, the Exchange has recently observed a high number of odd-lot market orders in less liquid securities and believes that this is a direct result of the rule's guarantee of execution at the NBBO irrespective of whether the size or timeliness of the NBBO is comparable to those of the odd-lot orders on the Exchange. The Exchange is concerned that off-floor participants may be breaking up larger round-lots into multiple odd-lots to take advantage of NBBO pricing on the Exchange where such pricing would be unattainable if the larger orders were submitted and price discovery was possible. This behavior would violate Exchange rules<sup>2</sup> but unfortunately can only be ascertained via case-by-case post-trade investigation. Additionally, in the case of very highly-priced, yet thinly traded, securities, specialists are bearing inappropriate burdens as odd-lot dealers as well. Below are two examples of what can occur:

- Assume that an illiquid security has an average daily volume of 15,000 shares.

Assume also that the NBBO is \$5.00 bid for 100 shares on NASDAQ and 500 shares offered at \$5.10 on NYSE. The liquidity around the NBBO is very

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<sup>2</sup> See Rule 4 (generally prohibiting manipulation of securities prices) and Rule 208 (applicable in AEMI via Rule 1A-AEMI(d)), entitled "Bunching of Odd-Lot Orders," which provides in relevant part:

When a person gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders which aggregate one or more round-lots, a member or member organization shall not accept such orders for execution unless they are, as far as possible, consolidated into round-lots, except that selling orders marked "long" or "short exempt" need not be so consolidated with selling orders marked "short."

thin, and no round-lot executions have taken place over the last four hours, during which period the Amex nonetheless receives many odd-lot market orders. In accordance with Rule 205—AEMI, each odd-lot order is executed after 30 seconds against the specialist at the NBBO automatically, although the specialist is not quoting at the NBBO, the NBBO has not changed, and no round-lot trades have occurred in the market place. Over the course of the four hours, the specialist is forced to purchase an aggregate of 10,553 shares in odd-lots, each at a price of \$5.00, even though grossly disproportionate to the 100 share order size connected to the \$5.00 NBB, the overall activity in the marketplace, and the likely lower value at which an equivalent aggregate volume of round-lots would have transacted in such an illiquid market. As such, the specialist is forced to bear an inappropriate amount of risk of loss as odd-lot dealer because, rather than price discovery being permitted to occur as would occur with round-lot quotes, the specialist is forced to purchase all of the odd-lots at the stale NBBO price.

- Assume a very highly-priced thinly-traded security with an NBBO of 100 shares bid for \$800 on NASDAQ and 100 shares offered at \$806 on NYSE. Because of the high price of the shares, round-lot executions are infrequent and no round-lot executions have taken place on Amex over the last four hours. Nonetheless, Amex receives multiple odd-lot market sale orders aggregating 367 shares over that time period. In accordance with Rule 205—AEMI, each odd-lot order is executed after 30 seconds against the specialist at \$800, and, over the course of the four hours, the specialist is forced to

purchase an aggregate of 367 shares in odd-lots at \$800 per share for \$293,600. Because of the high stock price, the absence of price discovery amplifies the costs to the specialist in the event of disparity between the stale NBBO and the true value of the security. Had the mandatory \$800 bid been reduced by a mere 0.5% (to \$796) – to reflect what a hypothetical reasonable investor would pay for a thinly-traded \$800 security with an imbalance of sell interest in the market – the aggregate outlay would be \$1468 less.

(iii) The solution

As described above, the Exchange believes that the way odd-lot market orders are currently being executed today (only insofar as the NBBO price is imposed under Rule 205—AEMI(b)(i)-(iv) as a default price upon the specialists in the absence of a sufficient number of round-lot order executions on the Exchange within 30 seconds of each odd-lot market order) is inconsistent with the specialists' obligations to quote and maintain a fair and orderly market. Moreover, odd-lot orders are not subject to the Limit Order Display Rule (17 C.F.R. § 242.604) or Order Protection Rule (17 C.F.R. § 242.611) under Regulation NMS and do not have the same standing as round-lots with regard to price protection. Accordingly, the Exchange proposes to change the default price in Rule 205—AEMI(b) under which specialists are required to execute odd-lot market orders not executed within 30 seconds after receipt by AEMI from the NBBO to the specialist's own best bid or offer.

The Exchange believes that this proposal properly balances a more reasonable level of risk exposure for the specialists with their obligation to trade odd-lots and deliver timely executions to investors. In particular, the proposal would permit price

discovery to occur (via programmed automated adjustments flowing from executions against the specialist's quote) while still requiring the specialist to provide timely executions of odd-lot market orders. As such, executions of odd-lots on the Exchange will be more likely to occur at prices which reflect the most current market conditions. In this regard, the Exchange points out that specialists are specifically required by Exchange rules to formulate quotes to avoid wide swings in the pricing of prior and subsequent transactions<sup>3</sup>, so the substitution of the specialist's quote for the NBBO in Rule 205—AEMI is not intended to, and should not result in, unreasonably priced executions of odd-lot market orders.

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The proposed rule change would result in the following textual changes in Rule 205—AEMI:

- Substitution of the words “specialist’s best bid” and “specialist’s best offer” for “qualified national best bid” and “qualified national best offer” where such terms appear in the rule.
- Removal of Commentary .04 to the rule, which deals solely with explaining the definition of “qualified national best bid or offer,” which will no longer be relevant to Rule 205—AEMI.

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

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<sup>3</sup> Commentary .03 to Rule 170—AEMI provides in relevant part: “A specialist’s quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread ... would bear a proper relation to preceding transactions and anticipated succeeding transactions or, in the case of ETFs or other derivatively priced securities, to the value of underlying or related securities.”

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 Section 6(b)<sup>4</sup> of the Securities Exchange Act of 1934 (the “1934 Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and 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.

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>6</sup>

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<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 15 U.S.C. 78f(b)(2).

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>7</sup> and Rule 19b-4(f)(5) thereunder.<sup>8</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
2. Not applicable
3. Not applicable
4. Not applicable
5. Text of the Proposed Rule Change

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<sup>7</sup> 15 U.S.C. 78s(b)(3).

<sup>8</sup> 17 CFR 240.19b-4(f)(5).

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34- ; File No. SR-Amex-2007-47)**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC To Change The Method By Which Specialists On The Exchange Execute Odd-Lot Market Orders Under Rule 205—AEMI**

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 Rule 205—AEMI in order to change the method by which specialists on the Exchange execute odd-lot market orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

(1) Purpose

The Exchange is currently operating, and has adopted 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). Rule 205—AEMI (“Manner of Executing Odd-Lot Orders”) requires the specialist for a relevant security to be the contra-party for executions of any odd-lot orders in that security received by AEMI and specifies, in relevant part, the pricing at which such executions must occur. In the case of odd-lot market orders that are not executed within 30 seconds of receipt by AEMI, the specialist is currently required to execute such orders at the price of the qualifying national best bid or offer (“NBBO”). In order to ensure a fair and orderly market, the Exchange proposes to amend Rule 205-AEMI to provide for such odd-lot market orders to now be executed at the specialist’s quote, rather than the NBBO.

(i) How Rule 205—AEMI works today

Rule 205—AEMI(b)(i)-(iii) currently requires the specialist to execute market odd-lot orders at the price of subsequent round-lot executions that occur in the subject security on the Exchange for 30 seconds after the odd-lot order is entered. However, market odd-lot orders only are executed at these round-lot prices to the extent that there are a sufficient number of shares subsequently transacted in round-lots on the Exchange within that 30 second window to match any imbalance between the pending odd-lot market buy and sell orders. If there are an insufficient number of shares in round-lot executions within that 30 seconds from which to benchmark the market odd-lot

execution price of the imbalance, Rule 205—AEMI(b)(iv) dictates that the NBBO be used as the default price at which the specialist is required to execute.<sup>1</sup>

(ii) The identified deficiency in Rule 205—AEMI

It has become apparent to the Exchange that the current version of Rule 205—AEMI (insofar as it forces the specialist to execute any unexecuted imbalance in odd-lot orders at the NBBO) provides too much opportunity for manipulation to the detriment of both the specialists and accuracy in pricing. In practice, the Exchange has recently observed a high number of odd-lot market orders in less liquid securities and believes that this is a direct result of the rule's guarantee of execution at the NBBO irrespective of whether the size or timeliness of the NBBO is comparable to those of the odd-lot orders on the Exchange. The Exchange is concerned that off-floor participants may be breaking up larger round-lots into multiple odd-lots to take advantage of NBBO pricing on the Exchange where such pricing would be unattainable if the larger orders were submitted and price discovery was possible. This behavior would violate Exchange

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<sup>1</sup> Applying the rule, assume AEMI receives market odd-lot buy orders aggregating 1,500 shares and market odd-lot sell orders aggregating 3,500 shares in a security. The next and only round-lot execution on the Amex within the next 30 seconds is 500 shares at \$10, and, at the expiration of the 30 seconds, the NBB is 100 shares at \$10.50 on NYSE. The specialist is required in time priority of receipt of the odd-lot orders into AEMI to:

- Sell/buy an equal number of shares on each side of the odd-lot market at \$10, which clears the 1,500 shares of odd-lot market buy orders and leaves an imbalance of 2,000 of the original 3,500 shares of odd-lot market sell orders.
- In response to the remaining 2,000 shares of odd-lot market sell orders, buy a maximum of 500 shares at \$10 because that is the total size of subsequent round-lot transactions within the 30 second window. (This assumes that the remaining odd-lot sell orders with greatest time priority total 500 shares exactly. If a partial execution would result by stopping the specialist from buying at \$10 once the 500 share threshold was reached, then the specialist could buy more than 500 shares at \$10 so as to permit execution in full of the last odd-lot order at that price. *See* Rule 205—AEMI(b)(ii)).
- At the expiration of 30 seconds, purchase the 1,500 shares remaining from the odd-lot sell orders at \$10.50 (the NBB), even though the NBB was only for 100 shares and might not reflect the price at which the specialist would or should otherwise be willing to purchase 1,500 shares.

rules<sup>2</sup> but unfortunately can only be ascertained via case-by-case post-trade investigation. Additionally, in the case of very highly-priced, yet thinly traded, securities, specialists are bearing inappropriate burdens as odd-lot dealers as well. Below are two examples of what can occur:

- Assume that an illiquid security has an average daily volume of 15,000 shares. Assume also that the NBBO is \$5.00 bid for 100 shares on NASDAQ and 500 shares offered at \$5.10 on NYSE. The liquidity around the NBBO is very thin, and no round-lot executions have taken place over the last four hours, during which period the Amex nonetheless receives many odd-lot market orders. In accordance with Rule 205—AEMI, each odd-lot order is executed after 30 seconds against the specialist at the NBBO automatically, although the specialist is not quoting at the NBBO, the NBBO has not changed, and no round-lot trades have occurred in the market place. Over the course of the four hours, the specialist is forced to purchase an aggregate of 10,553 shares in odd-lots, each at a price of \$5.00, even though grossly disproportionate to the 100 share order size connected to the \$5.00 NBB, the overall activity in the marketplace, and the likely lower value at which an equivalent aggregate volume of round-lots would have transacted in such an illiquid market. As such, the specialist is forced to bear an inappropriate amount of risk of loss as

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<sup>2</sup> See Rule 4 (generally prohibiting manipulation of securities prices) and Rule 208 (applicable in AEMI via Rule 1A-AEMI(d)), entitled “Bunching of Odd-Lot Orders,” which provides in relevant part:

When a person gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders which aggregate one or more round-lots, a member or member organization shall not accept such orders for execution unless they are, as far as possible, consolidated into round-lots, except that selling orders marked "long" or "short exempt" need not be so consolidated with selling orders marked "short."

odd-lot dealer because, rather than price discovery being permitted to occur as would occur with round-lot quotes, the specialist is forced to purchase all of the odd-lots at the stale NBBO price.

- Assume a very highly-priced thinly-traded security with an NBBO of 100 shares bid for \$800 on NASDAQ and 100 shares offered at \$806 on NYSE. Because of the high price of the shares, round-lot executions are infrequent and no round-lot executions have taken place on Amex over the last four hours. Nonetheless, Amex receives multiple odd-lot market sale orders aggregating 367 shares over that time period. In accordance with Rule 205—AEMI, each odd-lot order is executed after 30 seconds against the specialist at \$800, and, over the course of the four hours, the specialist is forced to purchase an aggregate of 367 shares in odd-lots at \$800 per share for \$293,600. Because of the high stock price, the absence of price discovery amplifies the costs to the specialist in the event of disparity between the stale NBBO and the true value of the security. Had the mandatory \$800 bid been reduced by a mere 0.5% (to \$796) – to reflect what a hypothetical reasonable investor would pay for a thinly-traded \$800 security with an imbalance of sell interest in the market – the aggregate outlay would be \$1468 less.

(iii) The solution

As described above, the Exchange believes that the way odd-lot market orders are currently being executed today (only insofar as the NBBO price is imposed under Rule 205—AEMI(b)(i)-(iv) as a default price upon the specialists in the absence of a sufficient number of round-lot order executions on the Exchange within 30

seconds of each odd-lot market order) is inconsistent with the specialists' obligations to quote and maintain a fair and orderly market. Moreover, odd-lot orders are not subject to the Limit Order Display Rule (17 C.F.R. § 242.604) or Order Protection Rule (17 C.F.R. § 242.611) under Regulation NMS and do not have the same standing as round-lots with regard to price protection. Accordingly, the Exchange proposes to change the default price in Rule 205—AEMI(b) under which specialists are required to execute odd-lot market orders not executed within 30 seconds after receipt by AEMI from the NBBO to the specialist's own best bid or offer.

The Exchange believes that this proposal properly balances a more reasonable level of risk exposure for the specialists with their obligation to trade odd-lots and deliver timely executions to investors. In particular, the proposal would permit price discovery to occur (via programmed automated adjustments flowing from executions against the specialist's quote) while still requiring the specialist to provide timely executions of odd-lot market orders. As such, executions of odd-lots on the Exchange will be more likely to occur at prices which reflect the most current market conditions. In this regard, the Exchange points out that specialists are specifically required by Exchange rules to formulate quotes to avoid wide swings in the pricing of prior and subsequent transactions<sup>3</sup>, so the substitution of the specialist's quote for the NBBO in Rule 205—AEMI is not intended to, and should not result in, unreasonably priced executions of odd-lot market orders.

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<sup>3</sup> Commentary .03 to Rule 170—AEMI provides in relevant part: “A specialist's quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread ... would bear a proper relation to preceding transactions and anticipated succeeding transactions or, in the case of ETFs or other derivatively priced securities, to the value of underlying or related securities.”

The proposed rule change would result in the following textual changes in Rule 205—AEMI:

- Substitution of the words “specialist’s best bid” and “specialist’s best offer” for “qualified national best bid” and “qualified national best offer” where such terms appear in the rule.
- Removal of Commentary .04 to the rule, which deals solely with explaining the definition of “qualified national best bid or offer,” which will no longer be relevant to Rule 205—AEMI.

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<sup>4</sup> (the “1934 Act”), in general, and furthers the objectives of Section 6(b)(5) thereunder,<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest.

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<sup>4</sup> 15 U.S.C. 78f(b).

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

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 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 Act. Comments may be submitted by any of the following methods:

Electronic Comments:

Use the Commission's Internet comment form at <http://www.sec.gov/rules/sro.shtml> or send an e-mail to [rulecomments@sec.gov](mailto:rulecomments@sec.gov). Please include File No. SR Amex 2007-47 on the subject line.

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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).

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 2007-47. 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 2007-47 and should be submitted on or before [insert date 21 days from publication in the *Federal Register*].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Dated:

Nancy M. Morris  
Secretary

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<sup>8</sup> 17 CFR 200.30–3(a)(12).

**EXHIBIT 5**

**AMERICAN STOCK EXCHANGE LLC**

**Proposed Rule Change**

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

\* \* \* \*

**Rule 205 —AEMI.**

**Manner of Executing Odd-Lot Orders**

(a) No Change.

(b) Market Orders. Odd-lot market orders received by AEMI shall be executed in time priority of receipt by AEMI at the price of the next round-lot transaction on the Exchange in the subject security following receipt of the orders by AEMI, subject to the following:

(i) Odd-lot buy orders and odd-lot sell orders will be executed at the price of such round-lot transaction with the specialist as the contra side to the extent that such odd-lot orders total an equal number of shares bought and sold.

(ii) The total number of additional shares of odd-lot orders executed at the price of such round lot transaction shall not exceed the number of shares of such round-lot transaction, except that an odd-lot order which would otherwise receive a partial execution shall be executed in full.

(iii) Odd-lot market orders not executed pursuant to paragraph (i) or (ii) above shall be executed, in time priority order, at the price of the subsequent round-lot transactions, subject to the same procedures stated in paragraph (i) and (ii) as to volume of round-lot transactions.

(iv) Any odd-lot market order not executed within 30 seconds of receipt by AEMI pursuant to paragraphs (i), (ii) or (iii) above shall be executed, in the case of an order to buy, at the price of the [qualified national] specialist's best offer after 30 seconds, and in the case of an order to sell, at the price of the [qualified national] specialist's best bid after 30 seconds.

(v) Odd-lot market orders entered before the opening of the subject security shall be executed at the price of the opening transaction. If there is no opening transaction (i.e., the symbol opens on a quote) in the subject security, odd-lot market orders will trade according to Rule 205—AEMI(b)(i-iv).

(vi) Any odd-lot market order entered within 30 seconds of the close of trading and not executed prior to the closing transaction shall be executed, in the case of an order to buy, at the price of the [qualified national] specialist's best offer at 4:00 p.m. (or such other closing time), and in the case of an order to sell at the price of the [qualified national] specialist's best bid at 4:00 p.m. (or such other closing time).

(vii) An odd-lot market order to sell short a security subject to price restrictions under Exchange Rule 7 shall be executed at the price of the next sale in the round-lot market on the Exchange following entry of the order which is higher than the last different round-lot price.

(viii) If a partial-lot trade is received from an away market in response to an intermarket sweep order sent by AEMI, resulting in an unexecuted balance which comprises an odd lot, then any unexecuted odd-lot balance on the aggressing order (including the unexecuted odd-lot balance from the intermarket sweep order) shall be traded immediately against the specialist at the last trade price of the intermarket sweep order, and any remaining unexecuted round-lot balance shall reaggregate the AEMI Book in accordance with Rule 126A-AEMI.

(c) – (g) No Change.

• • • **Commentary** -----

**.01 - .03** No Change.

**[.04** For purposes of this Rule, the qualified national best bid or offer for a security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center; provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127-AEMI ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (b)(2) of Rule 602 under Regulation NMS pursuant to the "unusual market" exception of paragraph (a)(3) of Rule 602 under Regulation NMS, and (v) the quotation disseminated by the other market center is automated.]

**.04[5]** In instances in which quotation information is not available, e.g., the quotation collection or dissemination facilities are inoperable, or the market in a security has been determined to be affected by an unusual market condition (as described in Rule 115-AEMI), standard, regular way odd-lot market orders will be executed by means of AEMI at the price of the next Exchange round lot sale.