

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56236; File No. SR-Amex-2007-85)

August 9, 2007

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Establish a New Class of Off-Floor Market Makers in ETFs and Equities Called Designated Amex Remote Traders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 8, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. 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 Amex proposes to adopt changes to its rules to create a new class of off-floor market makers in all ETF and equity-traded securities that trade on the Exchange, including the implementation of related changes to the Exchange’s AEMISM trading platform. These market makers, to be called “Designated Amex Remote Traders” or “DARTs,” will electronically enter competitive quotations on a regular basis sufficient to satisfy market maker regulatory requirements. Business requirements will include minimum performance standards, including that the quotations entered must be on one side of the NBBO for a required percentage of the time in all assigned securities. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

purpose of the new program is to (1) encourage competitive quoting within the Amex and between the Amex and other market centers, (2) retain and increase order flow by attracting new market makers to the Exchange, and (3) encourage greater depth at or around the NBBO.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Amex's principal office, 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 Amex 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 Amex 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 (1) encourage competitive quoting within the Amex and between the Amex and other market centers, (2) retain and increase equity and ETF order flow in AEMI by attracting new market makers to the Exchange, and (3) encourage greater depth at or around the NBBO, the Exchange proposes to adopt changes to its rules to create a new class of off-floor market makers in all ETF and equity-traded securities that trade on the Exchange, including the implementation of related changes to the Exchange's AEMI trading platform. These market makers, to be called "Designated Amex Remote Traders" or "DARTs," will electronically enter competitive quotations on a regular basis sufficient

to satisfy market maker regulatory requirements. DARTs will also have to meet certain business requirements, which will include minimum performance standards. The Exchange anticipates that the implementation of the DARTs program should increase the liquidity available in those securities to which DARTs are assigned and reduce the likelihood of tolerance breaches in AEMI due to the resultant additional depth at or around the NBBO.

DARTs will be members or member organizations physically located off-floor that will electronically enter competitive quotations into AEMI on a regular basis in all securities to which they are assigned in the DART program. The proposed DART program is similar to the Supplemental Registered Options Traders (“SROT”) program implemented by the Amex for options,³ with its own unique caveats. Under the DART proposal, an Amex specialist firm may also be a DART, although it may not be registered as such in securities in which it is also the specialist. In ETFs, DARTs will trade in an identical way as Registered Traders in the same securities on the Exchange when auto-ex is on, with similar obligations under Exchange rules such as those relating to a course of dealings that contributes to the maintenance of a fair and orderly market. DARTs in equity-traded securities will be subject to the same obligations as DARTs in ETFs and will not be subject to the stabilization rules that are applicable to equity specialists. DARTs will not participate in any post-trade allocation in connection with an auction trade; instead, a DART’s participation in an auction pair-off on the Exchange will be limited to the amount of its quotation on the AEMI Book at the time of the pair-off.

Amex will establish minimum requirements for a DART to remain in the program, which may be modified by the Exchange from time to time. First, they must

³ See Amex Rule 993–ANTE (Supplemental Registered Options Traders).

provide competitive quotations on a regular basis sufficient to satisfy market maker regulatory requirements. Business requirements will include minimum performance standards determined from time-to-time by the Exchange, including that a DART's quotations must be on one side of the NBBO for a required percentage of the time in all assigned securities. Other such performance standards will include average displayed size, average quoted spread, and the ability of the DART to transact in underlying markets in the case of a derivative security. A DART that fails to comply with one or more of the performance standards, as determined by the Chief Executive Officer of the Exchange or his/her designee, may be subject to loss of the benefits to which it would otherwise be entitled under Amex rules by virtue of its status as a DART (e.g., rebates for providing liquidity), including suspension or termination of DART status. A DART may be either a regular member of the Exchange or an associate member of the Exchange that meets the requirements for electronic access to the Exchange's automated systems. DARTs will receive benefits for participating in and meeting the requirements of the DART program. The benefits currently being considered by the Exchange may include, but would not necessarily be limited to:

- (i) rebates for providing liquidity as the contra to any customer orders/quotes executed on AEMI;
- (ii) no charges for proprietary trades by DART program participants; and/or
- (iii) no limitation on the number of equity and ETF securities in which a DART could be assigned to make markets.

The Exchange expects that the proposed rules for the DART program will set a high bar for prospective DART participants, and, while management anticipates starting

the program with a limited group of DARTS, no specific upper limit on the number of DARTs is anticipated. In addition to the requirements cited above, DARTs shall be required to meet eligibility criteria similar to those specified in the SROT program, which include:

- (i) adequacy of resources including capital, technology and personnel;
- (ii) history of stability, superior electronic capacity, and superior operational capacity;
- (iii) level of market-making and/or specialist experience in a broad array of securities;
- (iv) ability to interact with order flow in all types of markets;
- (v) existence of order flow commitments;
- (vi) willingness and ability to make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the equity and ETF securities it trades; and
- (vii) the number of member organizations requesting approval to act as a DART.

The Exchange would use the factor relating to the existence of order flow commitments to evaluate existing order flow commitments between a DART applicant and order flow providers. A future change to, or termination of, any such commitments would not be used by the Exchange at any point in the future to terminate or take remedial action against a DART. Furthermore, the Exchange would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. The factor relating to willingness to promote the Exchange includes assisting in meeting and educating market participants, maintaining

communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other similar activities. The Exchange would use this criterion to determine which applicants would best be able to enhance the competitiveness of the Exchange. The Exchange would not apply this factor to in any way restrict, either directly or indirectly, a DART's activities as a market maker or specialist on other exchanges, or to restrict how a DART handle orders held by it in a fiduciary capacity to which it owes a duty of best execution.

Finally, the Exchange will propose in future rule filings certain other significant changes to AEMI in order to enhance the DART program's chances of success. Those proposed changes are expected to include:

- (i) significantly reducing the parity window from the current two-second joining time to a significantly shorter time period, which should increase the competition among liquidity providers to establish a new market;
- (ii) providing reserve interest to DARTs and other quoting participants; and
- (iii) allowing DARTs to use PPI orders (currently limited to Specialists and Registered Traders).

The regulatory requirements applicable to DARTs will be surveilled for by the NASD Amex Regulatory Division ("NASD") consistent with current surveillance procedures for Registered Traders on the Exchange. NASD staff will work with Amex technical staff on planning the necessary changes to AEMI to capture required surveillance data and in surveilling the increased number of market makers that the program is expected to attract. Adjustments to current technology and surveillance procedures will likely also be necessitated by the fact that the DARTs will not be

physically located on the floor of the Exchange.

The specific AEMI rules to which changes are being proposed are discussed below.

Rule 110A–AEMI. Designated Amex Remote Traders

This proposed new rule will contain the basic requirements for DARTs as described herein, in the same manner that Rule 110–AEMI contains the basic requirements for Registered Traders.

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

The Exchange is proposing revisions to Rule 1A–AEMI in order to (i) update the definition of the AEMI Book to include electronic submissions from DARTs, (ii) provide that a Crowd Order includes any bid or offer in the AEMI Book entered by a DART, (iii) provide a definition of a DART with a cross-reference to proposed Rule 110A–AEMI, (iv) update the definition of the Specialist Order Book to exclude bids and offers of DARTs, and (v) make a minor unrelated correction to the definition of Exchange Traded Funds (“ETFs”).

Rule 109–AEMI. “Stopping” Stock

The Exchange proposes to revise Rule 109–AEMI to add DARTs to the list of Amex market participants prohibited from granting or accepting a stop with respect to a security traded in AEMI.

Rule 112–AEMI. Suspension of Registration of Registered Trader or Designated Amex Remote Trader

The Exchange is proposing to add a provision to this rule to provide for the suspension of the registration of a DART under circumstances similar to the current

provision that provides for the suspension of a Registered Trader. Both types of participants are market makers with respect to securities traded in AEMI.

Rule 115–AEMI. Exchange Procedures for Use of Unusual Market Exception

The Exchange proposes to revise Rule 115–AEMI to provide procedures that will cover situations in which DARTs are unable to publish quotations or are streaming in incorrect quotes under unusual market conditions. The Exchange also is proposing to correct an inaccuracy in the current rule in order to clarify that such issues with respect to Registered Traders are handled via the Service Desk and not by a Floor Official.

Rule 123–AEMI. Manner of Bidding and Offering

The Exchange is proposing revisions to this rule to provide that AEMI shall accept electronic bids and offers from DARTs and include them in the AEMI Book. The proposed changes would also place DARTs on a par with Specialists and Registered Traders in terms of their ability to stream bids and offers into AEMI at multiple price levels and would require (as with Specialists and Registered Traders) that all quotes provided be two-sided. DARTs would also be prohibited from streaming in a quote that locks or crosses an existing quote that the same DART has previously streamed in for the same security.

Rule 128A–AEMI. Automatic Execution

The Exchange is proposing two minor changes to Rule 128A–AEMI so that DARTs will be treated in the same manner as Registered Traders in connection with certain automatic executions when a DART’s quotation (i) matches the Amex Published Quote (“APQ”) on the other side of the market or (ii) would lock or cross the APQ in certain circumstances.

Rule 128B–AEMI. Auction Trades

The changes being proposed to this rule would exclude DARTs from participation in any post-trade allocation in connection with an auction, as described above.

Rule 157–AEMI. Orders With More Than One Broker

The Exchange proposes to add a new paragraph to this rule that would place restrictions on DARTs similar to those that Registered Traders are subject to in terms of not being able to (i) place a Crowd Order with a broker or (ii) maintain an order on the Specialist Order Book, while the DART is maintaining a bid or offer for the security in AEMI.

Rule 719–AEMI. Comparison of Exchange Transactions

The Exchange is proposing to add DARTs to one of the equity account type codes used for market maker transactions in the equities and ETFs in which they are registered.

Rule 957. Accounts, Orders and Records of Registered Traders, Designated Amex Remote Traders, Specialists and Associated Persons

The Exchange is proposing changes to Rule 957 that will place the same requirements on DARTs that Registered Traders are subject to with respect to reporting certain trading accounts and orders to the Exchange and producing books, records, and other information pertaining to certain transactions.

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 Act,⁴ in general, and furthers the objectives of

⁴ 15 U.S.C. 78f(b).

Section 6(b)(5),⁵ 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 Act.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

⁵ 15 U.S.C. 78f(b)(5).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-85 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 Number SR-Amex-2007-85. 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 (<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, on official business days between the hours of 10:00 am and

3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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 Number SR-Amex-2007-85 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.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).