



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

November 3, 2006

Claire P. McGrath
Senior Vice President and General Counsel
American Stock Exchange
86 Trinity Place
New York, NY 10006

**Re: Request for Exemptions for Initial Version of the American Stock Exchange's
AEMI Hybrid Market Trading Platform**

Dear Ms. McGrath:

In your letter, dated October 30, 2006,¹ you requested, on behalf of Amex, that the Commission grant a limited exemption pursuant to Rule 608(e) under the Securities Exchange Act of 1934 ("Act")² from certain trade-through provisions of the ITS Plan, in connection with implementation of an initial version of the Exchange's new "AEMI" hybrid market trading platform ("AEMI-One").³ Specifically, you request an exemption from Section 8(d)(i) (Trade-Throughs; Locked Markets) of the ITS Plan in connection with the use of intermarket sweep orders ("ISOs") as defined in Regulation NMS (and modified as described below), execution of which by AEMI could violate Section 8(d) of the ITS Plan. In addition, you request an exemption from the obligation under the ITS Plan to route orders through the ITS electronic communications network.

¹ See letter from Claire P. McGrath, Senior Vice President and General Counsel, American Stock Exchange LLC ("Amex" or "Exchange"), to Nancy Morris, Secretary, Securities and Exchange Commission ("Commission"), dated October 30, 2006 ("Amex Exemption Request").

² 17 C.F.R. § 242.608(e). Rule 608(c) requires each participant in a national market system plan to comply, and enforce compliance with, the plan by its members and their associated persons. Rule 608(e) establishes the Commission's authority to exempt any self-regulatory organization ("SRO") or SRO member from the requirements of the Rule.

³ In a separate action, the Commission today is approving a proposed rule change relating to the AEMI-One Pilot. See Securities Exchange Act Release No. 54709 (Nov. 3, 2006). The AEMI-One Pilot would terminate at the end of the day prior to the "Trading Phase Date." Trading Phase Date (February 5, 2007) is the required date for full operation of Regulation NMS-compliant trading systems of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611. The Commission previously extended compliance dates for Rules 610 (Access Rule) and Rule 611 (The Order Protection Rule). See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

Since October 1, 2006, the effective date of the “Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934” (“Linkage Plan”), connectivity between markets is provided pursuant to the Linkage Plan.⁴ The purpose of the ITS Plan and the Linkage Plan is to enable their participants to act jointly in planning, developing, operating and regulating the System⁵ that electronically links the participant markets to one another, as described in the ITS Plan and the Linkage Plan. The Linkage Plan, together with the ITS Plan, governs the operation of the System until the termination of the ITS Plan, which is expected to take place on the Trading Phase Date. After the Trading Phase Date and until the termination of the Linkage Plan, the operation of the System would be governed by the Linkage Plan. Therefore, until the Trading Phase Date, when the ITS Plan is expected to terminate, Amex remains subject to the ITS Plan.⁶

On September 18, 2006, to permit the Linkage Plan participants to commence trading pursuant to the Linkage Plan, the ITS Plan participants, including Amex, requested exemptions from certain provisions of the ITS Plan.⁷ However, Section 8(d)(i) regarding the avoidance of trade-throughs continues to apply to the ITS Plan participants, including Amex.

In the Amex Exemption Request, the Exchange states that the Exchange plans to use private linkages instead of the System to send and receive orders. The Exchange plans to send “away market obligations” to access AEMI-One Protected Quotations of away markets up to

⁴ See Securities Exchange Act Release No. 54551 (Sept. 29, 2006), FR 59148 (Oct. 6, 2006) (approving the Linkage Plan).

⁵ The current ITS technology is used to effectuate both the ITS and the Linkage plans. Therefore, the term “System” applies to the technology used to effectuate both the ITS Plan and the Linkage Plan.

⁶ Because the Linkage Plan does not contain trade-through and locked market prohibitions, the ITS Plan was preserved for the period before the Trading Phase Date. The ITS Plan participants include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Nasdaq Stock Market LLC (“Nasdaq”), the National Association of Securities Dealers, Inc. (“NASD”), the National Stock Exchange, Inc., the New York Stock Exchange LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

⁷ The ITS Plan participants asked for these exemptions because certain provisions of the ITS Plan conflict with the operation of the Linkage Plan, whereas other provisions of the ITS Plan are no longer relevant. The Commission granted the requested exemptions, including the exemption from Section 8(d)(ii) (Adoption of Trade-Through Rules), on September 29, 2006. See letter from David Shillman, Associate Director, Division of Market Regulation, Commission, to Robert Hill, Chairman, ITS Operating Committee, dated September 29, 2006 (“ITS Exemption Letter”).

their displayed size.⁸ If an away market that trades a particular security is capable of receiving intermarket sweep orders (“ISOs”) before the Trading Phase Date, then the Exchange may choose to require AEMI to generate and utilize ISOs as the away market obligations for that market.⁹

In addition, the Exchange plans to accept and act upon all inbound, appropriately marked ISOs received by the Exchange before the Trading Phase Date that involve securities traded on the AEMI platform. Execution of ISOs received from others can violate Section 8(d)(i) of the ITS Plan due to the fact that AEMI will execute them immediately on receipt while disregarding AEMI-One Protected Quotations displayed by other markets.¹⁰ Members who route ISOs to the Exchange during this period will be required to simultaneously send ISOs (or comparable orders) to execute against the full displayed size of every other AEMI-One Protected Quotation.¹¹

The Exchange states that the requested exemption will allow it to acquire the necessary operating experience with its new AEMI platform in a manner that better approximates a Regulation NMS-compliant environment. Amex believes this will help assure an orderly transition to full operation under Regulation NMS by the Trading Phase Date.

Based on the aforementioned factors and conditions, the Commission finds that the requested exemption in connection with implementation of AEMI-One from Section 8(d)(i) is consistent with the requirements of Rule 608 (e) under the Act in that it is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of the mechanisms of, a national market system. The Commission believes that the Exchange’s proposal is reasonably designed to allow Amex and its market participants to gain experience with ISOs before the Trading Phase Date.

⁸ A “protected quotation” for trade-through purposes in AEMI-One (“AEMI-One Protected Quotation”) will consist of each firm quotation, whether manual or automated and whether or not at the national best bid or offer (“NBBO”), that is at a better price than the next trade that would occur on AEMI and that is the best bid or offer of a national securities exchange or a national securities association.

⁹ If the Exchange chooses to require AEMI to generate and utilize ISOs as the away market obligations, AEMI will be required to simultaneously send an away market obligation to execute against the full displayed size of every other AEMI-One Protected Quotation. See Rule 126A – AEMI-One.

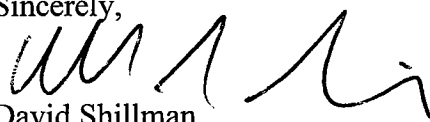
¹⁰ Although the use of ISOs is specifically provided for in Rule 611 of Regulation NMS, that rule does not become effective until the Trading Phase Date. See supra note 3.

¹¹ See Rule 126A – AEMI-One. The Exchange represented that it would conduct surveillance to assure that its members are in compliance with the Exchange’s rules on the use of ISOs. Specifically, the Exchange represented that it would enter into an agreement with the NASD either pursuant to Rule 17d-2 under the Exchange Act and/or a Regulatory Services Agreement to appropriately monitor compliance.

Accordingly, based on the Amex's representations and the facts presented, the Commission hereby grants the requested exemption to the Amex, effective November 3, 2006 through February 4, 2007. This exemption is subject to modification or revocation at any time, however, if the Commission determines that such action is necessary or appropriate to further the purposes of the Act.

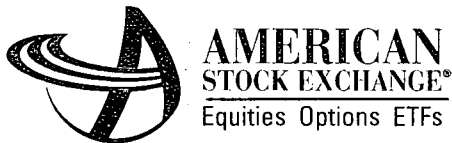
For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Sincerely,

A handwritten signature in black ink, appearing to read 'David Shillman', written in a cursive style.

David Shillman
Associate Director

¹² See 17 CFR § 200.30-3(a)(27).



Claire P. McGrath
Senior Vice President and
General Counsel

American Stock Exchange
86 Trinity Place
New York, NY 10006-1872
T 212 306 1885
F 212 306 5402
claire.mcgrath@amex.com

October 30, 2006

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Request for Exemptive Relief for the Initial Version of the American Stock Exchange's AEMI Hybrid Market Trading Platform

Dear Ms. Morris:

The American Stock Exchange LLC ("Amex" or "Exchange") is submitting this letter requesting exemptive relief as described herein from (1) the trade-through provisions of Section 8(d)(i) of the ITS Plan (including the Exchange's trade-through rule (Rule 236) adopted in accordance therewith) in connection with the use of intermarket sweep orders ("ISOs") as defined in Regulation NMS and (2) any obligation to use the ITS electronic communications network to route orders to other markets, as (1) and (2) would otherwise be applicable to the proposed Pilot for the initial version of the Exchange's "AEMI" hybrid market trading platform.¹

A. Specific Relief Requested

The Exchange is a party to the Intermarket Trading System Plan ("ITS Plan"), a national market system plan as defined in Rule 600 of Regulation NMS. Section 8(d) (Order Protection) of the ITS Plan and related Exchange Rule 236 adopted in accordance therewith prohibit members of the Exchange from trading through better quotations of other markets that are also ITS Plan participants.²

¹ The Amex has already presented the contents of this letter informally to the other members of the ITS Operating Committee and will continue to communicate the position of the Amex to the other members.

² Section 8(d)(i) of the ITS Plan states: "Absent reasonable justification or excuse, a member located in an Exchange Market, or an ITS/CAES Market Maker, should not purchase any security that he is permitted to trade through the System at a price that is higher than the price at which that security, at the time of such purchase, is offered in one or more other Participant's Markets that trade the security through ITS as reflected by the offer from such other Participant's Market(s) then being displayed on the trading floor of, or available in the quotation service used by, such member or available in the quotation service used by an ITS/CAES Market Maker. Similarly, absent

The Exchange has filed a Pilot proposal with the Commission for the operation of an initial version of the Exchange's new "AEMI" hybrid market trading platform (such initial version being referred to herein as "AEMI-One"), which is expected to become operative prior to the final date set by the Commission for full operation of all trading centers that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS ("Trading Phase Date"). The proposed AEMI-One Pilot (and the exemptions requested herein) would terminate at the end of the day prior to the Trading Phase Date. Certain provisions of the proposed AEMI-One Pilot appear to be in conflict with the foregoing provisions of the ITS Plan. Specifically:

- A "protected quotation" for trade-through purposes in AEMI-One (an "AEMI-One Protected Quotation") will consist of each firm quotation, whether manual or automated and whether or not at the national best bid or offer ("NBBO"), that is at a better price than the next trade that would occur on AEMI and that is the best bid or offer of a national securities exchange or a national securities association. Under AEMI-One, the Exchange plans to send "away market obligations" through private linkages to access AEMI-One Protected Quotations of away markets up to their displayed size. Each outbound away market obligation will be issued as an immediate or cancel limit order but will also carry an expiration delay timer.³ If an away market that trades a particular security is capable of receiving intermarket sweep orders ("ISOs") prior to the Trading Phase Date, then the Exchange may choose to require AEMI to generate and utilize ISOs as the away market obligations for that market. In addition, the Exchange will accept and act upon all inbound, appropriately marked ISOs⁴ received by the Exchange prior to the Trading Phase Date that involve securities traded on the Exchange that have made the transfer from our legacy systems to the AEMI platform. Although the use of ISOs is specifically provided for in Rule 611 (Order Protection Rule) of Regulation NMS, that rule does not become effective until the Trading Phase Date. Execution of ISOs received from others can violate Section 8(d)(i) of the ITS Plan and Amex's rules due to the fact that AEMI will execute them immediately on receipt while disregarding better priced AEMI-One Protected Quotations displayed by other markets. Consequently, Amex is

reasonable justification or excuse, a member located in an Exchange Market, or an ITS/CAES Market Maker, should not sell any such security at a price that is lower than the price at which that security, at the time of such sale, is bid for in one or more other Participant's Markets that trade the security through ITS as reflected by the bid from such other Participant's Market(s) then being displayed on the trading floor of, or available in the quotation service used by, such member or available in the quotation service used by an ITS/CAES Market Maker. The Participants also agree that 'locked markets' in System securities should be avoided."

³ At the outset of AEMI-One, the expiration delay timer will be set to 35 seconds for all such away market obligations.

⁴ Rule 126A-AEMI-One requires that, during the AEMI-One operational period, a member of the Exchange may submit an ISO to the AEMI platform only if it has simultaneously sent an ISO (or comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced AEMI-One Protected Quotation.

requesting exemptive relief from the ITS Plan for its incorporation of ISOs in the AEMI-One Pilot as described above.

- The Exchange is also concerned that its use of private linkages instead of the ITS electronic communications network for the routing of away market obligations to other markets may be deemed to be a violation of the ITS Plan. The Amex therefore is requesting exemptive relief from the ITS Plan for its use of private linkages for routing such obligations to other markets.

B. Discussion

The following paragraphs discuss the rationale for the specific exemptions being requested by the Exchange herein.

1. Exemption from the ITS Trade-Through Requirement in Connection With the Use of ISOs Prior to the Trading Phase Date

With SEC approval, the Amex intends to initiate the AEMI-One rollout in November 2006, with full deployment anticipated by the end of December 2006. During this time period and the remaining time up to the Trading Phase Date, the Exchange is seeking a partial exemption from the trade-through provisions of the ITS Plan in order to gain necessary experience in operating its new AEMI platform in a RegNMS-compliant manner that will better approximate the manner in which it will be required to operate beginning on the Trading Phase Date. Under our AEMI-One proposal, the Exchange will immediately execute ISOs without regard for better-priced AEMI-One Protected Quotations displayed by other market centers. In addition, the Exchange is adopting rules under AEMI-One that will require members of the Exchange to protect the same quotations that the Exchange recognizes as protected quotations prior to the Trading Phase Date. Specifically, members who route ISOs to the Exchange during this period must simultaneously send ISOs (or comparable orders) to execute against the full displayed size of every other AEMI-One Protected Quotation.⁵ The requested period of exemption is reasonably short, in our view, given that the main deployment of our securities to the AEMI platform is planned for November and December 2006, and the Exchange therefore believes that granting this exemption will not be detrimental to market quality.

The Exchange further believes that facilitating the ability of markets to come online gradually with respect to their RegNMS-compliant systems during the period prior to the Trading Phase Date, rather than collectively in all stocks on that date, will lead to greater investor confidence by demonstrating a market-wide effort to mitigate risks, control the implementation of Regulation NMS in an orderly manner, and support market quality.

⁵ The Exchange will conduct surveillance to assure that its members are in compliance with the Exchange's rules on the use of ISOs. Specifically, the Exchange will enter into an agreement with the NASD either pursuant to Rule 17d-2 under the Exchange Act and/or a Regulatory Service Agreement to appropriately monitor compliance.

2. Approval to Use Private Linkages Prior to the Trading Phase Date

The Exchange is seeking an exemption from the ITS Plan to allow it to send orders, including orders marked as ISOs (described above), to other markets via private linkages prior to the Trading Phase Date to comply with its trade-through obligations with respect to AEMI-One Protected Quotations that the Exchange has described herein. The Exchange is also seeking an exemption from the ITS Plan to allow it to receive orders that are marked as ISOs prior to the Trading Phase Date. These exemptions will allow us to satisfactorily implement and test this private linkage function that is crucial to the successful implementation of Rule 611 of Regulation NMS.


C. Conclusion

Absent the requested relief regarding the trade-through requirements with respect to the use of ISOs and the use of private linkages instead of the ITS system, Amex believes that it will not be able to achieve the necessary operating experience with its new AEMI platform in a manner that better approximates a RegNMS-compliant environment to assure an orderly transition to full operation under Regulation NMS on the Trading Phase Date. A gradual transition to such an environment prior to the Trading Phase Date would be in the interest of all markets as well as investors by providing time to work through any problems encountered. We believe that our proposal for this interim period strikes a proper balance between current requirements and the Regulation NMS environment.

In light of the foregoing, we believe that, in connection with the operation of its AEMI-One Pilot prior to the Trading Phase Date, the Exchange should (1) be granted limited relief from the ITS Plan trade-through provisions in connection with the receipt and execution of ISOs as outlined above, and (2) be allowed to route orders, including ISOs, to other markets using private linkages instead of the ITS system. Such relief should extend to Amex Rule 236 that was adopted as a uniform rule under the terms of the ITS Plan.

Please do not hesitate to contact the undersigned or William Love, Associate General Counsel at 212-306-1789 regarding this request.

Sincerely,



cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Kathleen L. Casey
Commissioner Roel C. Campos

Ms. Nancy M. Morris

October 30, 2006

Page 5 of 5

Commissioner Annette L. Nazareth

Mr. Erik Sirri, Director, Division of Market Regulation

Mr. Robert L.D. Colby, Deputy Director, Division of Market Regulation

Daniel M. Gray, Division of Market Regulation

David S. Shillman, Division of Market Regulation

Stephen L. Williams, Division of Market Regulation

Michael J. Gaw, Division of Market Regulation

Neal Wolkoff, Chairman & CEO, American Stock Exchange

Oscar Onyema, American Stock Exchange

Miranda Mizen, American Stock Exchange