



Neal L. Wolkoff
Chief Executive Office

American Stock Exchange
86 Trinity Place
New York, New York
T 212.306.1782
F 212.306.5464
neal.wolkoff@amex.com

October 10, 2006

Nancy M. Morris
Secretary
US Securities and Exchange Commission
100 F Street, N. E.
Washington, DC 20549-9303

Re: Responses to Comment Letters Regarding Release No. 34-54413; File No. SR-AMEX-2006-72

Dear Ms. Morris:

Response to the NYSE comment letter

The American Stock Exchange (“Amex” or “Exchange”) wishes to take this opportunity to respond to the comment letter dated September 29, 2006 of the New York Stock Exchange (“NYSE”) regarding the Amex’s proposed pilot program for the initial rollout and operation of its new AEMI hybrid market trading platform. In its comment letter, the NYSE states that “Approval of the AMEX rule would ignore all the compelling reasons the Commission set forth in its order extending the original implementation date of June 29, 2006 to February 5, 2007”. In the accompanying footnote, NYSE further states that “Some of these compelling reasons include providing SROs and industry participants with ‘greater certainty’ concerning Reg. NMS phase-in and giving industry participants a period in time in which to gain practical experience trading on new systems in advance of the initial compliance date for trade-through protection. The Commission also noted that implementation of Reg. NMS must be managed appropriately so that it does not risk market disruption”. The request for exemptive relief by the Amex is based precisely on these same compelling reasons.

NYSE is Wrong in its Assertion that the Commission Contemplates a Big Bang

Contrary to the NYSE, Amex does not believe that February 5, 2007 (the “Trading Phase Date”) is a “launch date” (i.e. a date on which all SROs will switch on their Regulation NMS functionality). Instead, Amex understands this date to represent the date *by which time* all SROs must be compliant with Regulation NMS. Amex further believes that the extension of the original implementation date does not negate the need to provide a period of time in which to gain practical experience trading on new systems in advance of the initial compliance date¹. Nor does it negate the need to manage the implementation of Regulation NMS appropriately or eliminate the possibility of a phase-in period.

¹ See SEC Release No. 34-53829; File No. S7-10-04

ITS Exemptive Relief Request

Amex is seeking a partial exemption from the trade-through provisions of the ITS Plan in order to allow industry participants and the Exchange to gain necessary experience in operating the Exchange's new AEMI platform in a manner that will closely approximate the manner in which it will be required to operate beginning on the Trading Phase Date. In doing so, Amex will continue to recognize the validity of all quotes at the NBBO, whether automated or manual, and will not trade through such quotations. The requested period of exemption is reasonably short, in Amex's view, given that the main deployment of securities to the AEMI platform is planned for November and December 2006. Amex therefore believes that granting this exemption will not be detrimental to market quality. The Exchange also believes that allowing markets to come online gradually with respect to their Regulation NMS-compliant systems during the period prior to the Trading Phase Date, rather than collectively in all stocks on that Trading Phase Date, will lead to far greater investor confidence by demonstrating a market-wide effort to mitigate risks, control the implementation of Regulation NMS in an orderly manner, and preserve market quality.

In the ITS Operating Committee meeting to which the NYSE refers, the proposal put forward by the Amex was presented for discussion only and was not a formal proposal that required adoption or a vote. The proposal received positive support from the NASDAQ and Philadelphia exchanges, and two other Plan members present expressed neutral views. The NYSE was the only Plan participant that was vocal about its opposition to the proposal. Furthermore, some exchanges, individually, said in the FIF/SIA Regulation NMS Working Group² meeting on September 20, 2006 that they would each be seeking similar exemptions from the ITS plan. The Amex is therefore not alone in its approach to Rule 611 implementation.

No Additional Technical Burden on Other Market Centers

The NYSE is correct that the proposal to operate as closely to the Regulation NMS-compliant state as possible is not a question of technical implementation. In fact, implementation of the AEMI-One pilot, as filed, will place no additional burden on any away market in terms of that market's own implementation. Amex will publicize whether each market is considered by the Amex to be an automated trading center, and will make this determination based on the current automated state of each market or that market's use of the new manual quote conditions approved by the CTA and OTC/UTP Plans. Further, Amex will not send Intermarket Sweep Orders (ISOs) to any market that is not ready to accept them, and will publish the list of markets to which ISOs are being sent prior to the Trading Phase Date.

Need for Practical Experience Prior to Initial Compliance Date

Absent operating experience prior to the Trading Phase Date, Amex is not confident that the industry can have a reasonable and accurate view of the impact of Regulation NMS before liability becomes an issue, such as how market centers will collectively handle quotations that may be locked or crossed. Nor can the marketplace be assured that the new

² Financial Information Forum (FIF) and Securities Industry Association (SIA) set up a joint SRO advisory committee on Regulation NMS implementation, and SROs as well as B/Ds participate on the committee.

policies and procedures for invoking self help and handling intermarket trade-through issues will work in reality. Under its proposed AEMI-One rules, Amex believes that it will be able to achieve the necessary operating experience with its new AEMI platform in a near Regulation NMS-compliant environment to make an orderly transition to full operation under Regulation NMS on the Trading Phase Date. Moreover, Amex further believes that it will be managing the implementation of Regulation NMS appropriately during this period and with reduced risk to the overall marketplace. In Amex's view, this is completely in accordance with the Commission's intent.

Furthermore, from several discussions with the Division of Market Regulation staff, the Division's FAQ³, and the Commission's release extending the compliance date⁴, the Amex believes that the Commission's intent in setting forth its order extending the implementation dates from June 29, 2006 to February 5, 2007 was to enable SROs to complete their Regulation NMS-compliant systems and to allow market participants to gain practical experience in supporting the new market structure before the final compliance date of the trade-through rule. The NYSE's comments seek to negate this aspect of the Commission's order.

We therefore urge the Commission to expeditiously approve our proposed AEMI-One pilot and the related exemptions from the ITS Plan.

Response to the OES comment letter

The Exchange wishes to take this opportunity to respond to the comment letter dated September 22, 2006 of Order Execution Services Holdings, Inc ("OES") regarding the Amex's proposed pilot program for the initial rollout and operation of its new AEMI hybrid market trading platform. In its comment letter, OES refers to functionality detailed in Rule 126B-AEMI-One of Amex filing SR-AMEX-2006-72. This rule is exactly the same as Rule 126B-AEMI that is contained in Amex filing SR-Amex-2005-104 which the SEC approved on September 29th, 2006 and to which no changes in the rule text are being proposed in the current filing.

Amex Routing Functionality Has No Discretion

Contrary to the main premise of OES's comment letter, Amex will not be acting in a broker's capacity, since the Exchange will route orders away in a purely fair and non-discretionary method. In compliance with Regulation NMS, Amex will route orders immediately and automatically to any away market with better priced protected quotations. In order to do so, Amex is licensing routing technology, but the logic which directs the outbound order flow is held exclusively within the Amex systems. This routing logic is based on pre-coded functionality which seeks to route the order to the market center displaying the best price based on price-size-time priority. Amex believes that this approach satisfies the best price protection requirements of Rule 611 under Regulation NMS. The routing logic does not provide for any discretion on the part of the Amex, and the Exchange

³ See question 34 and the corresponding answer in the SEC's "Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS."

⁴ SEC Release No. 34-53829; File No. S7-10-04

will not rely on its private linkage technology provider's smart routing algorithms to accomplish the Exchange's obligations.

Amex Would Not Assume Best Execution Obligations of Broker/ Dealers

Amex does not believe that the use of routing logic or licensing of routing technology in any way undermines or changes the Amex's ability to provide a marketplace which brings together buyers and sellers. The Amex has, however, chosen to satisfy its legal obligations under Regulation NMS by using a different model than setting up a broker-dealer facility to route orders. To this end, Amex has entered into an agreement with a third party broker-dealer to secure its membership and clearing facilities and to facilitate the execution and clearance of trades consummated through its outbound routing technology. Further, the Exchange has sought a No-Action Letter from the Commission regarding its proposed treatment of certain locate requirements under Regulation SHO, the collection of margin under Regulation T and customer reporting requirements under Commission Rule 10b-10. Amex believes that an approval of the No-Action Letter and the approval of the AEMI rule filing that contains Rule 126B-AEMI will satisfy the Commission regarding the manner in which Amex will fulfill its obligations towards other markets under Regulation NMS. Amex further believes that its proposed private linkage model is not at odds with Regulation ATS.

The Amex appreciates this opportunity to respond to these two comment letters which the Exchange received on its AEMI-One pilot proposal, and believes that it has addressed all the key issues raised by NYSE and OES in their respective letters. We urge the Commission to approve the AEMI-One rules, and to allow the Amex to start rolling out AEMI as soon as possible. We are happy to provide more information at your request.

Sincerely,



cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Kathleen L. Casey
Commissioner Roel C. Campos
Commissioner Annette L. Nazareth
Mr. Erik Sirri, Director, Division of Market Regulation
Mr. Robert L. D. Colby, Deputy Director, Division of Market Regulation