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Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-Amex 2006-89
Proposal to Establish Fees for the Receipt and
Use of Proprietary Market Data

Dear Ms. Morris:

The American Stock Exchange LLC (“Amex” or “Exchange”) submits this letter in response to various issues and comments raised by the Division of Trading and Markets’ staff and in further support of our proposal to establish fees for the receipt and use of proprietary market data.

Clarification Regarding AEMI Market Data

The Amex’s proposal SR-Amex 2006-89 seeks to establish fees for the receipt and use of proprietary market data, specifically the dissemination on a real-time basis of a compilation of all visible limit orders resident in the AEMI central limit order book (“AEMI Depth of Book”).¹ The Amex also plans to permit vendors to select the best bids and offers from the AEMI Depth of Book to create an AEMI Best Bid-and-Offer service for distribution to its professional and nonprofessional subscribers (“AEMI BBO Service”). Fees for the AEMI BBO Service are the subject of another pending rule proposal, SR-Amex 2006-100, filed on October 24, 2006. The AEMI Depth of Book

¹ It should be noted that the Exchange makes available to vendors the best bids and offers that are included in the AEMI depth of book data no earlier than it makes those best bids and offers available to the processors under the CQ Plan and the “Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis” (the “UTP Plan”). Notwithstanding the foregoing, it is possible that the unconsolidated AEMI Market Data feed may be received faster by recipients than the consolidated feed that the markets make available under the CQ and UTP Plans. However, the variations in speed are measured in milliseconds, a time difference only the most sophisticated order-routing engines would notice. From a display perspective, the difference is imperceptible. In addition, as discussed below, AEMI Market Data or the displayed depth of book data from any one trading center does not provide a complete picture of the full market for the security; it only provides a portion of all interest in the security. In fact, the Commission has prescribed top-of-the-book consolidated market data as the data required for best execution purposes.

service and the AEMI BBO Service are collectively referred to as “AEMI Market Data.” Once the proposals are approved, the fees for both services will be a part of the Market Data Fee Schedule. In order for a subscriber to obtain either the AEMI Depth of Book service or the AEMI BBO Service the subscriber must gain access to the data feeds through which AEMI Market Data is made available. A subscriber can choose to obtain either Direct Access or Indirect Access. Once the subscriber determines the type of access, the subscriber is charged the appropriate monthly Data Access Fee. The subscriber can then choose whether to receive the AEMI Depth of Book service, the AEMI BBO Service or both. The instant proposal only refers to AEMI Market Data without defining the term and neglects to explain that the payment of one Data Access Fee will entitle the subscriber to purchase both the AEMI Depth of Book service and the AEMI BBO Service.

Further Discussion Regarding the Purpose of the Proposal

The Exchange believes that the proposed market data fees would reflect an equitable allocation of its overall costs to users of its facilities. As described in its rule filing, the Exchange believes that the fees are fair and reasonable because they compare favorably to fees that other markets charge for similar products. Specifically, the '34 Act and rules thereunder require the Amex to provide for the “equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.” Moreover, the Amex is required pursuant to Rule 603(a) of Regulation NMS to provide market data on terms that are not unreasonably discriminatory and establish market data fees that are fair and reasonable. As more fully described herein, the proposed fees for the receipt and use of Amex’s proprietary market data meet all of these standards. The Amex primarily imposes fees on its members and listed companies; the market data fees proposed herein are being imposed on “other persons using its facilities.” By charging such persons for their use of Amex proprietary market data, the Amex is imposing fees on persons who do not otherwise contribute to the Amex’s operating costs and therefore the Amex believes the proposed fees represent an equitable allocation of its fees and charges. The fees proposed for AEMI Depth of Book service and the AEMI BBO Service differentiate between professional and non-professional subscribers, with professional subscribers paying a higher rate. Such discrimination between professional and non-professional subscribers has long been deemed by the Commission and the industry to be reasonable.

In addition to the discussion above wherein the Exchange set forth how the proposed AEMI Market Data fees compare favorably with the level of fees that other U.S. markets and the CTA and Nasdaq/UTP plans impose for comparable market data products, the Exchange took into consideration other factors in setting the level of fees that it believes are fair and reasonable. For example, the Exchange looked at the potential contribution that revenues from AEMI Market Data fees would make toward the Exchange’s market data business. Thus, while the Exchange can not predict the amount of revenues it will receive from AEMI Market Data, it has estimated (1) 8% of its current

subscribers will gain access to the data feeds using the Direct Access Service and 16% will use the Indirect Access Service; and (2) 5% of its Tape B professional subscriber base will become professional subscribers of its AEMI Market Data, and 1% of its Tape B non-professional subscribers will become non-professional subscribers of AEMI Market Data. The estimated annual revenues generated by the proposed fees for Direct or Indirect Access and professional and non-professional subscribers would be \$4.8 million, which is 18.5% of the \$26 million in revenue generated by Tape B for the Amex in 2006. In addition, the Exchange anticipates that under the new revenue allocation formula adopted as part of Regulation NMS, its market data revenue as a percent of its total revenue will likely be lower than its 2006 total, which was about 15.9 percent of the Exchange's revenues. Market data revenue as a percent of total Amex revenue for the period through September 2007 was 13.5% of the Exchange's revenues for that period. The rest of the Exchange's September 2007 year-to-date revenues come from transaction fees (49.4 percent) and revenues from listings and other sources (37.1 percent). The Exchange also looked at the contribution the revenues accruing from AEMI Market Data would make toward meeting the overall costs of the Exchange's operations. The Exchange believes that the revenue generated by market data compares favorably to its costs of producing the data. Producing market data is a primary exchange output and therefore most amounts that the Exchange spends on systems, infrastructure and development is properly allocated to market data production. For September 2007 year-to-date, market data revenues covered approximately 10.1 percent of total Exchange expenses. It is not expected that the revenues generated by AEMI Market Data will significantly affect the percentage of total Exchange expenses covered by market data revenue.

The Commission staff has asked the Exchange to discuss the competition for order flow it encounters with respect to the products (equities and ETFs) for which it proposes to provide AEMI Market Data and collect the proposed fees. Such a discussion will assist the Commission in its assessment of whether the proposed AEMI Market Data fees reflect an exercise of monopoly pricing power by the Exchange.² Exchanges compete with one another as well as dark pools, crossing networks, ECNs, Alternative Trading Systems, broker dealer internalization and other non-traditional execution facilities to attract order flow. These trading centers base the competition for order flow on one or more of the following: technology, transaction costs, ease of access, liquidity and the transparency provided by innovative market data products. Given all of the venues in which orders may be executed, the displayed depth of book data or a BBO service from any one trading center provides only a portion of all market interest in a given security. In fact, the Commission has prescribed top-of-the-book consolidated market data as the data required for best execution purposes and, of course, the NMS Plans make that data available. The Exchange believes that if it set AEMI Market Data fees too high, broker-dealers and other order flow providers would forgo AEMI Market

² Such an allegation was made by NetCoalition in its Petition for Commission Review of the action of the Division of Market Regulation in approving by delegated authority fees that NYSE Arca, LLC proposed to establish for its Arca Book product.

Nancy M. Morris, Secretary
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Page 4 of 4

Data and choose to receive the depth of book or BBO services of other markets. If too many market professionals reject AEMI Market Data as too expensive, the Exchange would need to reassess the fees since AEMI Market Data is expected to be an important part of the Exchange's market transparency and play an important role in its competition for order flow. Thus, the proposed AEMI Market Data fees do not reflect an exercise of monopoly pricing power. In addition, the Exchange does not maintain a monopoly in order executions. Order flow providers choose how to execute their orders and have no obligation to route them to a particular trading center for execution. The competition for order execution business in the products for which the Exchange plans to provide AEMI Market Data is highly competitive. The Exchange does not maintain a dominant share of the market in any of these products³ and does not maintain a monopoly in order executions.

Very truly yours,



Claire P. McGrath
Senior Vice President and General Counsel

cc: Mr. Michael Gaw, Division of Trading and Markets
Mr. Theodore Venuti, Division of Trading and Markets

³ In October 2007, the Amex's market share in Amex listed equities was 25.5 percent and in Amex listed ETFs was 3.5 percent.