

J. STREICHER & CO. L.L.C.

MEMBER
AMERICAN STOCK EXCHANGE, LLC

SIXTY BROAD STREET, NEW YORK, NY 10004-2306

PHONE (212) 425-2320
FAX (212) 248-9061



September 5, 2007

VIA FEDEX

Nancy M. Morris
Secretary
United States Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-9303

Re: File No. SR-AMEX-2007-85
Release No. 34-56236

Dear Ms. Morris:

This letter represents the comments on the above-referenced rule proposal (the "Proposal") of four of the eight equity specialists firms active on the American Stock Exchange ("Amex" or the "Exchange"). Collectively, our firms, of which we are principals, serve as specialists for a many if not most of the equities listed on the Exchange.

As a general matter, the Proposal would allow for the creation of a new class of off-floor market makers (called "DARTs") in equity securities that trade on the Exchange. The addition of market makers to the Amex's equity marketplace would amount to a significant and fundamental restructuring of the current market structure used by the Amex to trade equities. We believe that this proposed change is likely to lead to increased volatility and otherwise negatively impact the quality of the national market in the stocks listed on the Amex. We also believe that the proposal is unlikely to accomplish its objectives of enhancing the Amex's competitive position. Indeed, we think it much more likely to have the opposite impact.

We also believe that the Proposal constitutes the issuance of new trading rights in accordance with Section 1(j) of Article IV of the Amex's Constitution such that the consent of the Amex Membership Corporation should have been, though it was not, obtained as a condition to the Proposal's approval by the Amex's Board of Governors. Accordingly, we believe that the Proposal is not duly authorized and therefore that consideration of the Proposal by the Securities and Exchange Commission (the "SEC" or "Commission") at this time is premature.

Nancy M. Morris
September 5, 2007

Additional concerns relate to (i) the capital requirements that would be imposed upon DARTs by the Proposal, which we believe do not comply with the Commission's own net capital rule, Rule 15c3-1 under the Securities Exchange Act of 1934 (the "Exchange Act"), and (ii) the exemption of DARTs from the stabilization rules, which appears to us to be unwarranted. We also request clarification of how aspects of Regulation M and the Amex's own Rule 193 would apply to DARTs as well as whether the Amex has made modification to its floor official process to better respond to the inclusion of remote market makers or, if not, whether the Amex believes there is a need for such modifications. More generally, it appears to us that the Amex has rushed this filing forward without giving adequate thought to how it will surveil DARTs for compliance with regulatory requirements or how it will handle any number of critical elements of the DART program.

For all of these reasons, and as discussed more fully below, we believe that the Commission should not approve the Proposal. At the very least, we believe that the Commission should require the Amex to provide a reasoned discussion of its basis for concluding that the Proposal will not have a negative impact on market quality in Amex listed securities. Moreover, and in light of the Amex's frequent and continued shut downs during market hours, we also believe that the Commission should require the Amex to provide an evaluation of the ability of the Amex's systems and technology to handle any anticipated increased quote and trade volume that might be expected to result from this Proposal. In addition, in order to allow for a more reasoned review and consideration of the Proposal, we suggest that the Commission should require the Amex to describe the terms of the Proposal with a much greater degree of specificity.

Substantive Change to Exchange Structure

We were greatly surprised by the Proposal's failure to acknowledge, let alone discuss, the fact that it represents a highly significant and potentially fundamental change in the Amex's current market structure. Instead, the Proposal appears to take the position that DARTs are, in effect, no more than Registered Traders that will be allowed to trade from off-floor. This business as usual approach entirely ignores the fact that Registered Traders are not allowed to make markets in equities, which DARTs would be entitled to do should the Proposal be approved.

Accordingly, the question raised (though never discussed) by the Proposal is whether market makers should be allowed to trade equities on the Amex. As discussed below, we believe that the introduction of market makers into the Exchange's equity marketplace raises a number of significant concerns.

Nancy M. Morris
September 5, 2007

Impact of Proposal on Market Quality

Chief among these concerns is the Proposal's potential impact upon market quality in the stocks listed on the Amex. In responding to this concern, we believe that the Commission should consider the Proposal as, in essence, seeking to replace a specialist driven market structure with a market maker model.

While it is true that the Proposal appears to leave the role of equity specialists unchanged, the introduction of market makers, whether they act from on or off-floor, into the Amex's equity market place, is clearly duplicative of the specialist function. Our opposition, however, is not based upon fear of increased competition. As part of the national market system, Amex specialist already compete against multiple market makers across a range of market places. What we fear is not increased competition but rather the continued diversion of resources and commitment by the Exchange from the Amex's current specialist model. The creation of this duplicate function is likely to further weaken specialists economically and serves no purpose other than to lay the ground work for an alternate market structure that has no place for either specialists or a floor.

This approach is consistent with the previous announced position of the Exchange's senior management, with which we are in strong disagreement, to the effect that specialists increase the costs of trading on the Exchange and weaken the Amex competitively.¹ Amex senior management's negative view of specialists also finds expression in their unwillingness to replace even a part of the commission revenue lost by specialists as a result of broad limitations placed by the Amex on specialists commissions with some form of revenue sharing for specialists, as is obviously necessary to guarantee the continued participation of equity specialist in the Amex's equity marketplace.² In this regard, the Amex's actions stand in stark contrast to those of the NYSE, which, of course, has a similar market structure and has moved aggressively to shore up its specialists system by introducing a revenue sharing partnership between the NYSE and its specialists.³

¹ See SEC Release 34-55533, SR-Amex-2007-13 (March 26, 2007) (seeking approval of broad prohibitions on the right of specialists to charge commissions). See also the April 17, 2007 comment letter of the undersigned, Jonathan Q. Frey, Managing Partner of J. Streicher & Co., responding to this position and arguing that specialists add value in excess of any costs they may impose.

² See SEC Release 34-55008, SR-AMEX-2006-98 (December 22, 2006) and SEC Release 34-55913, SR-AMEX-2007-13 (June 125, 2007) (approving broad limitations on the rights of equity specialist to charge commissions).

³ See SEC Release 34-54856, SR-NYSE-2006-106 (December 1, 2006) (instituting a revenue sharing program for specialist firms in connection with the adoption of prohibitions on specialist commissions;

Nancy M. Morris
September 5, 2007

Not surprisingly, we believe that the presence of specialists does, in fact, improve the quality of the national market over and beyond what might be expected by the addition of more market makers. Traditionally, the specialists model has been associated with increased liquidity, narrower spreads, and decreased volatility as compared to a market maker model. Reasons for this might include the fact that spreading responsibility among multiple market makers may serve only to dilute each individual market maker's feeling of personal responsibility. Moreover, typically, specialist are subject to much greater capital requirements and therefore stand ready to make greater capital commitments.⁴ Specialists also have an ongoing relationship with the companies they represent, which is likely to encourage a view of their responsibility that extends beyond the next trade.

Whatever the reason, the greater willingness of specialist to support their specialty securities has been noted by the Commission's own Division of Market Regulation, which took notice of this contrast between specialist and market makers in its comprehensive report on "The October 1987 Market Break" (the "Market Break Study"). For example, with respect to the performance of specialist on the NYSE during the October 1987 market break, the Market Break Study noted:

Although subject to extraordinary pressure, they [the specialist] increased their aggregate buying activities and maintained reasonably regular markets in their stocks. Without the substantial specialist buying on October 19, it is highly likely that the market decline would have been even worse. Specialist often were the primary, and sometimes the only, buyers during the morning of October 19 and many were substantial buyers during the afternoon of October 19.⁵

By contrast, the Market Break Study characterized over-the-counter market makers as "increasingly unable, or unwilling, to answer the telephone and provide market prices."⁶ Moreover, when market makers could be reached, "they only were willing to provide prices for a nominal amount of shares (*i.e.*, one round lot) due to volatile market conditions and

and see also SR-NYSE-2007-78 (August 28, 2007) (filing a proposal to replace the NYSE's existing revenue sharing program with a system to provide variable payments to specialists firms for liquidity provision).

⁴ For example, Amex Rule 171 requires specialists on the Amex to maintain minimum tentative net capital of \$1,000,000. By contrast, DARTs would be subject to Section (a)(4) of Rule 15c3-1 under the Exchange Act, which would set a minimum net capital level of \$2,500 for each security in which it makes a market.

⁵ See the Market Break Study at 4-26.

⁶ *Id* at 9-1.

Nancy M. Morris
September 5, 2007

uncertainty as to those market maker's ability to obtain access to other market makers to adjust their positions.”⁷

Ironically in light of the Amex's failure to support its own specialists, its web site nevertheless continues to trumpet the benefits of the specialist model over the market maker model.⁸ The materials included on its web site include a detailed comparison of market quality statistics for the common stock of six companies that left the Amex in 2005 for the Nasdaq Global Market and reflect that each of these six securities suffered significant increases in volatility and spreads while experiencing substantial decreases in volume of trading and liquidity. Additionally, the recent spike in volatility in the U.S. equity market has caused Muriel Siebert, founder and President of the brokerage firm, Muriel Siebert & Co. Inc., to consider the possibility that the “ongoing decline in the specialist system” may be exacerbating volatility.⁹

In light of the tremendous changes to the markets over the last ten years that have left us, in some respect, unsure of how our equity markets might function should another market break occur, we believe that prudential concerns dictate that the Commission give increased attention to the impact of rule changes on national market quality. Against this backdrop and in light of the risk that the Proposal presents to the quality of the national market in Amex listed equities, we believe that the SEC should not approve the Proposal. At an absolute minimum, we believe that the SEC, before giving serious consideration to this Proposal, should require the Amex to provide a reasoned discussion of the basis it may have for concluding that the Proposal will not negatively impact market quality. The Commission should then allow time for other commentators to consider and respond to the Amex's position.

To the extent the Amex is unable to provide a *sufficient basis* for concluding that the Proposal is unlikely to have a negative impact on market quality and, therefore, on the investing public, we would urge the Commission to either not approve the Proposal or, at a minimum, to require the Amex to conduct a pilot program, whereby DARTs would be allowed to trade in only a small number of equities for a period of at least six months. Such a pilot program would allow the generation of data that can be expected to be useful in determining the impact that DARTs might have on market quality.

⁷ *Id.*

⁸ See the material at http://www.amex.com/equities/services/eq_amx_adv_auxMktSpec.html and at http://www.amex.com/equities/services/eq_amx_adv_competitive.html.

⁹ See “Why the Markets' Roller Coaster Seems Wilder” by Gretchen Morgenson, The New York Times, August 26, 2007 (quoting Muriel Siebert discussing factors possibly giving rise to increased volatility in markets, including the decline in the specialist system).

Nancy M. Morris
September 5, 2007

Proposal Unlikely to Achieve its Purpose

In addition to the Proposal's impact on the national market, we also do not support the Proposal because we think it unlikely that it will actually achieve its purpose and will only succeed in diverting resources and focus that could have been, and should have been, devoted to solving the more fundamental issues facing the Amex.

In evaluating the Proposal's goals, it is worth keeping in mind that the Exchange has already gone down a similar path with respect to its option market.¹⁰ Each of these proposals anticipated that its approval would result in increased liquidity that would enhance the Exchange's competitiveness. In fact, of course, the filings neither met these expectation nor even slowed the continuing market share erosion in the Amex's options market.

The reasons for this are obvious and equally applicable to the current Proposal. In both equities and options, the Amex is part of the national market. Indeed, since the implementation of Regulation NMS this has become especially true with respect to equities. As a result, liquidity in one marketplace is almost instantaneously accessible in another. This means that investors, including market makers, have more flexibility than was previously the case in choosing the marketplace in which they want to trade. That is, investors can chose markets based upon the factors that are important to them, such as cost, speed of execution, ease of access, reliability, service and the like and are no longer forced to trade on a market merely because it has the deepest liquidity. This appears to be the lesson of BATS Trading, which, touting speed, technology, service, and pricing, continues to witness tremendous growth. Regrettably, this also appears to be the lesson of the Amex, which continues to see steady deterioration in its volume in the face of ongoing concerns regarding its reliability and service issues.

To the extent investors are not currently sending their liquidity to the Amex, it is unclear to us what particular aspect of the Proposal is likely to cause them to do so. Indeed, the Proposal seems to recognize as much when it notes both the "benefits currently being considered" for DARTs as well as the need to "propose in future rule filings certain other significant changes to AEMI in order to enhance the DART program's chance of success." It appears to us that the Amex has put the cart before the horse by proposing a very significant change to its market structure without having thought through the details of how the program will work and without having the technology in place to make it work.

¹⁰ See e.g., SEC Release 34-53635, SR-Amex-2005-075 (April 12, 2006)(approving supplemental registered options traders); and SEC Release 34-53652, SR-Amex-2005-100 (April 13, 2006) (approving remote registered option traders).

Nancy M. Morris
September 5, 2007

To the extent the DART program is not a success, what is lost is resources and focus that could have been, and should have been, devoted to solving the more fundamental issues facing the Amex. Given the precariousness of the Amex's continued existence, we think Amex management would be better advised to focus the Amex's limited resources on addressing those factors that are most obviously and directly responsible for the Amex's non-competitiveness.

At the top of such a list would be fixing the Amex's systems to put the repeated outages over the last several months behind us once and for all. It is our experience that the lack of reliability that we continue to experience is the single leading cause of the Amex's decreasing market share. Simply put, after each outage fewer investors come back to the Amex. The decline is immediate and obvious. Indeed, this problem is so serious and fundamental to the ability of the Amex to function within the national market system, that we would urge the Commission to require the Amex to provide an evaluation of the ability of the Amex's systems and technology to handle any anticipated increased quote and trade volume that might be expected to result from this proposal.

Next on this list is probably the cost of trading on the Amex. Ironically, it would appear to us that the significant revenue generated by the Amex's listing program, at least as compared to many of its competitors, should provide the Amex with a competitive advantage when it comes to costs. While we are not privy to the details of how this competitive advantage has been lost, we would guess that in large part, it has been squandered on the Amex's continued reliance on an inefficient, manually intensive, regulatory program that is significantly larger and far more expensive than those of many of its competitors, including many with far greater market share. In any event, we note that the Proposal would only serve to exacerbate the Amex's costs by putting further stress on its already high regulatory costs and requiring additional technological fixes.

Potential Harm to the Amex's Remaining Competitive Value

In any event, we do not see how even a successful DART program would improve the Amex's overall competitiveness. Indeed, we believe that the success of the DART program would actually rob the Amex of the very thing on which its value is based.

We believe that the Amex's value rests largely upon the fact that it is one of only three marketplaces that primarily trades securities listed on that market. Admittedly, the Amex is a distant third to the NYSE and Nasdaq in this respect. Nevertheless, in contrast to all other securities marketplaces in the United States, the Amex has a viable listing program and, indeed, direct revenue from listings account for a significant portion of the Amex's overall revenue stream. The Amex's listing program not only produces significant revenues for the

Nancy M. Morris
September 5, 2007

Amex, but it helps attract order flow in its own right and sets the Amex apart from the so-called regional market places.

We believe that a significant percentage of the smaller companies of the type that list on the Amex are attracted to the Amex, rather than the Nasdaq, because they believe that the specialist model and a physical trading floor offer a better venue in which to trade their securities. They believe, as the Amex's web site states, that the specialist system will result in better market quality for their securities – less volatility, tighter spreads, more liquidity. They like the fact that there is an individual that handles their security and that they can go to this individual for insight into the market for their security. Specialist also play a significant role in finding and bringing listings to the Amex. Absent the specialist system, it is hard to imagine what would distinguish the Amex from the Nasdaq Small Cap marketplace and cause a small company to list its securities with the Amex rather than Nasdaq or even Arca.

In other words, we believe that the success of the Amex's listing program depends upon the continuation of the specialist model, which, for the reasons noted above, we do not see as being able to co-exist with the DART program. Absent a viable listing program, for all practical purposes, there would be no difference between the Amex and any of the regional markets, except of course, that the Amex would still be likely to have inferior technology and higher costs. In short, absent a specialist program, we do not see what value the Amex offers over and above its competitors and, therefore, how the Amex would be able to continue to compete in such an environment.

Rather, as noted above, we believe that preservation of the specialist model, and with it the listing program, actually holds the key to the Amex's ability to address the competitive disadvantage caused by its currently higher cost structure. Were the Amex appropriately managed, the revenues from its listing program should allow it to have a cost advantage that should more than offset any real, or perceived, costs associated with its specialists system and allow it to compete in the national marketplace.

Proposal was not Duly Authorized and Should be Withdrawn

Section 1(j) of Article IV of the Amex's Constitution prohibits the authorization by the Amex's Board of Governors of "the issuance of any new forms of trading privileges not provided for in this Constitution or the grant [of] materially new rights to the holders of existing privileges, without first obtaining the consent of [the Amex Membership Corporation] in accordance with the terms of its Second Restated Certificate of Incorporation." The Proposal creates an entirely new set of trading rights, ones that have never existed on the Amex previously, namely the right to make markets in equities traded on the Amex. As such, it clearly comes within the scope of the foregoing provision and, therefore, requires the consent of the Amex Membership Corporation before it can be authorized by the Board of

Nancy M. Morris
September 5, 2007

Governors. As this has not been done, it is premature for the Commission to even consider the Proposal and, therefore, it should be withdrawn. Thereafter, should the Amex decide to resubmit the Proposal, it should first seek the approval of the Amex Membership Corporation as a pre-condition to the Board's re-authorization.

Capital Requirements

The capital provisions applicable to DARTs, which are set forth in proposed Rule 110A – AEMI, at (a)(viii), reflect a misunderstanding of the Commission's net capital rule, Rule 15c3-1 under the Exchange Act, and, accordingly, should be revised. Specifically, (a)(viii) of Proposed Rule 110A – AEMI, provides minimum capital requirements for DARTs that are "not subject to Rule 15c3-1 of the Exchange Act[.]" Since, however, all DARTs, in contrast to Registered Traders, are subject to the Commission's net capital rule, this provision is unnecessary in its entirety and should be removed so that it not contribute to a misunderstanding on the part of the Amex and/or its members that at least some DARTs may not be subject to the net capital rule.¹¹

Stabilization

The Proposal would exempt DARTs from the "stabilization rules that are applicable to equity specialists." While no reason is given to support this exemption, it would appear that this exemption rests on a general desire on the part of the Amex to treat DARTs and Registered Traders similarly. While this general desire may be understandable, it ignores significant differences between ETFs and options, the markets in which Registered Traders make markets and equities, the markets in which DARTs would be allowed to make markets. Indeed, the Commission's approval of the Amex's proposals to eliminate the stabilization rules as they applied to Registered Traders was based on the distinction between these markets and the fact that the derivatively priced options and ETFs present a much lower risk of price manipulation than do equities.¹²

¹¹ The language in question appears to be taken from section (c) of Rule 110 – AEMI, which applies to Registered Traders. As it is possible for a Registered Trader to make markets only in options, it is also possible for the Registered Trader to take advantage of the exemption that section (b)(1) of the net capital rule provides for options market makers. As the net capital rule does not provide a similar exemption for equity market makers, such as the proposed DARTs, there is no possibility of a DART taking advantage of, and therefore no need for, the special capital requirements of proposed Rule 110A – AEMI.

¹² See e.g., Release 34-49087, SR-Amex -2002-116 (January 15, 2004)(approving elimination of stabilization restrictions based upon the fact that ETFs are priced derivatively).

Nancy M. Morris
September 5, 2007

Clarifications

We believe that it would be helpful for the Proposal to clarify whether and how various restrictions in Regulation M would apply to activities by DARTs and how the floor official process would function in the face of remote participants.

Regulation M

Regulation M restricts “distribution participants” and such person’s “affiliated purchasers” from, among other things, directly or indirectly bidding for or purchasing specified securities at specified times during a “distribution.” Given the likelihood that this provision could apply to DARTs, it would be helpful for the Amex to explain whether there are any Amex rules that impact this process, such as, for example, obligations to report any participation by a DART or its member organization in any distribution. It would also be helpful to better understand how the Amex intends to surveil for compliance by DARTs with these provisions as well as their review of any informational barriers that might be utilized to shield DARTs from such provisions. Similarly, we would also be interested in understanding whether, as suggested by section (c)(ii) of proposed Rule 110A-AEMI, Amex Rule 193 only applies to DARTs in a limited manner or whether all of the provisions of Rule 193 are applicable.¹³

Floor Officials

The Proposal is also silent on how DARTs will be expected to interface with the Amex’s Floor Officials, as for example, where there might be a dispute as to whether a trade is clearly erroneous. It is not clear, for example, whether a mechanism is in place to ensure that DARTs will be available and can be reached on short notice during market hours to allow for the resolution of disputes. While we assume the Amex has faced and resolved these issues in connection with its options program, which already allows participation from off-floor, we think it would be helpful were the Amex to incorporate these requirements into its rule book or, at the least, provide a description thereof.

¹³ Amex Rule 193 applies certain Amex provisions to affiliates of specialists while allowing an exemption from certain of those provisions for affiliates that have “established and obtained Exchange approval of procedures restricting the flow of material, non-public information between itself and the specialist.” In understanding the interplay of Rule 193 and proposed section (c)(ii) of Rule 110A-AEMI, we would be interested, by way of example, in whether the information barriers required by section (c)(ii) require pre-approval in accordance with Rule 193.

Nancy M. Morris
September 5, 2007

Surveillance

As is true of the Proposal generally, the Proposal's discussion of how DARTs will be surveilled by the Amex to ensure their compliance with regulatory requirements is long on generalities; short on specifics and, ultimately, evidences that the Amex has not really thought through this issue.

The Proposal begins its discussion of surveillance by, in effect, minimizing the significance of this issue by pointing to its existing surveillance procedures for Registered Traders on the Exchange. The Proposal does note, however, that "Amex technical staff" will need to make "changes to AEMI to capture required surveillance data. . . ." In other words, the Amex is not yet in a position to surveil DARTs for compliance with regulatory requirements and that, such surveillance requires changes to AEMI. At the very least, we would expect some form of confirmation by the Amex that these changes have been completed and tested, before the Commission could even consider approval of the Proposal.

Oddly, the Proposal also suggests that "Amex technical staff" will somehow be involved "in surveilling the increased number of market makers that the program is expected to attract." While its not clear how or why "Amex technical staff" would have any role in this regard, what is clear is that surveillance of DARTs, even if it is just like surveillance of existing Registered Traders, still means an increased surveillance or work load by the regulatory staff, though, of course, there is no acknowledgement of this fact or discussion of whether this might be problematic in any respect.

The Proposal then undermines its initial statement on the subject of surveillance, *i.e.*, its statement to the effect that surveillance of DARTs will be "consistent with current surveillance procedures for Registered Traders" by, finally, admitting that current surveillance procedures will, in fact, have to be adjusted due to "the fact that DARTs will not be physically located on the floor of the Exchange." Of course, and notwithstanding this admission, the Proposal provides no characterization of the scope or nature of adjustments that may be needed as a result of DARTs being located "upstairs." Indeed, by characterizing such adjustments as "likely" to be necessitated, the Proposal suggests strongly that the Amex has only begin to think this through.

Moreover, the Proposal is silent on whether the different asset classes affected by DARTs, *i.e.*, equities, might also require changes in the applicable surveillance to be performed. So, for example, there is no discussion of whether, or how, the Amex intends to surveil for compliance with Regulation M or compliance with the issuer repurchase provisions of Rule 10b-18 under the Exchange Act or other requirements that might be more likely to apply in an equity context rather than options or ETFs.

Nancy M. Morris
September 5, 2007

The Proposal is Lacking Detail Necessary to Allow Proper Evaluation

Before closing, we also note that the Proposal is largely silent on any number of critical elements of the DART program. For example, the Proposal provides no details with respect to the business standards to which DARTs will be held; the number of securities in which a DART will be allowed to make a market; the number of DARTs; or the benefits that members might receive for participating in this program. We suggest that a fuller and more detailed explanation of these points and others necessary to a fuller understanding of the DART program would be useful in allowing a more reasoned review and consideration of this matter.

Thank you for the opportunity to comment on this matter and for your consideration of these concerns.

Very truly yours,



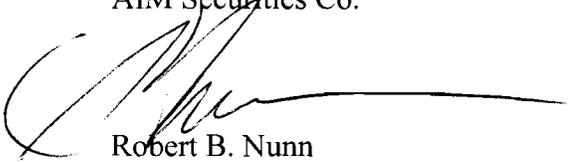
Brendan E. Cryan
Managing Member
Brendan E. Cryan & Company, LLC



Jonathan Q. Frey
Managing Partner
J. Streicher & Co.



Michael Marchisi
Managing Partner
AIM Securities Co.



Robert B. Nunn
Chief Operating Officer
Cohen Specialist, LLC