

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73911; File No. 10-214)

December 22, 2014

Automated Matching Systems Exchange, LLC; Notice of Filing of Amendment No. 1 to an Application for Limited Volume Exemption from Registration as a National Securities Exchange Under Section 5 of the Securities Exchange Act of 1934

On July 7, 2014, Automated Matching Systems Exchange, LLC (“AMSE”) submitted to the Securities and Exchange Commission (“SEC” or “Commission”) an application seeking a limited volume exemption under Section 5 of the Securities Exchange Act (“Exchange Act”) from registration as a national securities exchange under Section 6 of the Exchange Act.¹ Notice of AMSE’s exemption application was published for comment in the Federal Register on July 29, 2014.² On October 23, 2014, the Commission issued an order instituting proceedings to determine whether to grant or deny AMSE’s exemption application.³ On November 10, 2014, AMSE submitted Amendment No. 1 to its exemption application. The Commission is publishing this notice in order to solicit views of interested persons on AMSE’s exemption application as amended by Amendment No. 1.

¹ The Commission notes that AMSE’s application only seeks a limited volume exemption under Section 5 of the Exchange Act from registration as a national securities exchange under Section 6 of the Exchange Act. AMSE’s application does not seek to register as a national securities exchange.

² See Securities Exchange Act Release No. 72661 (July 23, 2014), 79 FR 44070 (“Notice”).

³ See Securities Exchange Act Release No. 73419 (October 23, 2014), 79 FR 64421 (October 29, 2014) (“Order Instituting Proceedings”).

I. Description of AMSE's System

AMSE proposes to conduct business in reliance upon an exemption from registration as a national securities exchange pursuant to Section 5 of the Exchange Act.⁴ In general, AMSE seeks to operate as an exchange for alternative trading systems.⁵ AMSE proposes to operate solely on an “off-order-book” trading basis. AMSE does not intend to have a physical exchange trading floor, centralized order book, or specialists or market makers with affirmative and negative market making obligations. Each member of AMSE would maintain its own automated matching system or electronic order book. Each member of AMSE would adopt its own rules governing the execution and priority of orders on its system. Trades would occur when an order to buy and an order to sell match on a member's electronic order book. Each member would report its transactions to AMSE at such intervals as required by AMSE.

II. Amendment No. 1 to AMSE's Exemption Application

On November 10, 2014, AMSE submitted Amendment No. 1 to its exemption application. AMSE has represented that the only substantive change to its exemption application made by Amendment No. 1 is the addition of the following paragraph to Exhibit E:⁶

“The Exchange will bring together orders for multiple buyers and sellers and such will be done by the use of consolidated quotation systems which effect transactions for multiple buyers and sellers. The consolidated quotation systems will display, or otherwise represent, trading interests entered on the AMSE system

⁴ 15 U.S.C. 78e.

⁵ For more detail on AMSE's proposed system, see AMSE's full amended exemption application and exhibits, which are published with this notice on the Commission's website at <http://www.sec.gov/rules/other.shtml>.

⁶ See email from Michael Stegawski, Chief Regulatory Officer, AMSE, to SEC staff, dated November 14, 2014.

to its system users. AMSE may use a centralized order router which would match trading interests on the electronic order book of one member with the trading interests on the electronic order book of a second member.”

III. Additional Grounds for Denial Under Consideration

In the Order Instituting Proceedings, the Commission provided notice of the grounds for denial under consideration.⁷ Specifically, the Commission noted that it was concerned that AMSE’s exemption application does not meet a key threshold requirement for being granted an exemption from exchange registration – namely, that the applicant actually be an “exchange” as defined under Section 3(a)(1) of the Exchange Act and Rule 3b-16 thereunder.⁸ The Commission continues to have this concern.

The Commission is providing notice of additional grounds for denial under consideration. Specifically, the Commission is concerned that it would not be necessary or appropriate in the public interest or for the protection of investors to grant a limited volume exemption under Section 5 of the Exchange Act because it appears from the exemption application that the operation of the proposed exchange would be inconsistent with the Exchange Act.

AMSE’s exemption application states that AMSE would operate as a self-regulatory organization that would exercise self-regulatory authority over its members.⁹ A “self-regulatory

⁷ See Order Instituting Proceedings, supra note 3, at 64422.

⁸ See Regulation ATS Adopting Release, 63 FR at 70898-70901 (discussing the Commission’s revised interpretation of the “exchange” definition). Among other things, the Commission stated that “the first essential element of an exchange is the bringing together of orders of multiple buyers and sellers.” Id. at 70900.

⁹ See, e.g., AMSE Operating Agreement Article III, Section 1(e) (“In light of the unique nature of the Company, its operations, its status as a SRO....” (emphasis added)); Article XI, Section 2 (“All meetings of the Board (and any committees of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters)....” (emphasis added)); and Article XI, Section 3 (“to the extent necessary or appropriate to

organization” is defined under Section 3(a)(26) of the Exchange Act as “any national securities exchange, registered securities association, or registered clearing agency....”¹⁰ Section 5 of the Exchange Act provides that an exchange must be either (1) registered as a national securities exchange under Section 6 of the Exchange Act or (2) exempted from such registration on the basis of limited volume of transactions effected on the exchange.¹¹ An exchange can only become a “national securities exchange,” and thus a self-regulatory organization, by registering under Section 6 of the Exchange Act.¹² An exchange that is exempt under Section 5 of the Exchange Act on the basis of limited volume of transactions, however, is relieved from registering as a national securities exchange under Section 6 of the Exchange Act and therefore is not a self-regulatory organization.¹³ If the Commission were to grant AMSE’s exemption application, however, AMSE would not be a registered national securities exchange and, therefore, would not become a self-regulatory organization as defined under Section 3(a)(26) of the Exchange Act.¹⁴ Accordingly, it appears that any attempts by AMSE to hold itself out as a

discharge properly the self-regulatory responsibilities of the Company.” (emphasis added)).

¹⁰ 15 U.S.C. 78c(a)(26).

¹¹ 15 U.S.C. 78e.

¹² 15 U.S.C. 78f(a).

¹³ In an order granting a limited volume exemption from registration as a national securities exchange under Section 5 of the Exchange Act to Wunsch Auction Systems Inc., the Commission stated “[b]y virtue of this exemption from registration, the Wunsch System falls outside the definition of a national securities exchange because the term “national securities exchange” implies a registered entity (see, e.g., sections 3(a)(26) of the [Exchange] Act (defining the term “self-regulatory organization”) and section 6(a) of the [Exchange] Act.” See Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377, 8382 (February 28, 1991) (File No. 10-100).

¹⁴ The Commission notes that, even if AMSE’s exemption application were to be approved, the broker-dealer members of AMSE would not be able to satisfy their requirement to be members of a self-regulatory organization by their membership with AMSE; rather such

self-regulatory organization while simultaneously seeking an exemption under Section 5 would be contrary to the Exchange Act.

The Commission notes that it has not reached any conclusions with respect to AMSE's exemption application. Rather, the Commission seeks and encourages interested persons to provide additional comment on the exemption application as amended by Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning AMSE's exemption application as amended by Amendment No. 1, including whether AMSE's exemption application as amended by Amendment No. 1 is consistent with the Exchange Act.

1. While the Commission requests comment on all aspects of AMSE's exemption application as amended by Amendment No. 1, the Commission specifically requests comment on whether statements made in Amendment No. 1 are consistent with other statements in the exemption application, including those made in Exhibit E thereto. For example:

- In Amendment No. 1, in Exhibit E, AMSE states that “[t]he Exchange will bring together orders for multiple buyers and sellers and such will be done by the use of consolidated quotation systems which effect transactions for multiple buyers and sellers. The consolidated quotation systems will display, or otherwise represent, trading interests entered on the AMSE system to its system users. AMSE may use a centralized order

broker-dealers would be required to be members of a registered securities association or a national securities exchange if such broker-dealers effect transactions solely on that exchange, pursuant to Section 15(b)(1)(B) of the Exchange Act. See 15 U.S.C. 78o(b)(1)(B).

router which would match trading interests on the electronic order book of one member with the trading interests on the electronic order book of a second member.”¹⁵

- But Exhibit E to AMSE’s exemption application also states “[t]he Exchange has designed its System to allow its Exchange Members to individually determine the best method for display of quotations and entry of orders through the Exchange. Thus, Exchange Members may develop their own customized electronic order books and routing systems, but shall report their transactions to the Exchange at such intervals as required by the Exchange.” In addition, Exhibit E states “[t]rades shall occur when an order to buy and an order to sell match on the Exchange Member’s electronic order book. Each Exchange Member shall adopt rules to govern the execution and priority of orders.”

2. The Commission specifically requests comment on whether the following are sufficiently clear from AMSE’s exemption application, as amended by Amendment No. 1:

- How would AMSE’s consolidated quotation systems, which according to AMSE “will display, or otherwise represent, trading interests entered on the AMSE system to its system users,” effect transactions?
- If AMSE’s consolidated quotation systems do effect transactions, how is that consistent with the statement in Exhibit E that “[t]rades shall occur when an order to buy and an order to sell match on the Exchange Member’s electronic order book?”
- If AMSE’s consolidated quotation systems do effect transactions, what are the established non-discretionary methods (e.g., execution priority rules) by which orders from members interact with each other through AMSE’s consolidated quotation systems?

¹⁵ See supra note 5.

- Amendment No. 1 states that “AMSE may use a centralized order router” (emphasis added). Under what circumstances would AMSE use or not use the centralized order router? How would the centralized order router function? What methods (discretionary or non-discretionary) would determine how the centralized order router “would match trading interests on the electronic order book of one member with the trading interests on the electronic order book of a second member?”
- What does it mean for AMSE’s centralized order router to “match trading interest?” Does “match trading interest” mean bringing together orders using established non-discretionary methods in the consolidated quotation system, or does it mean routing an order from one member’s order book to another member’s order book for a transaction to occur on the member’s order book? If the former, what are the established non-discretionary methods by which orders from members interact with each other through the centralized router (e.g., execution priority rules)?
- What other functions, if any, does the centralized order router do other than provide the technology and systems to route trading interest from one member’s order book to another member’s order book? In particular, does the centralized order router decide when to send trading interest from one member’s electronic order book to another member’s electronic order book, or does the AMSE member have to take action to route the trading interest? If the centralized order router decides when to route trading interest from one member’s book to another member’s book, under what rules or protocols does it make such decisions?

- Would an AMSE member be required to use AMSE's consolidated quotations systems or would the AMSE member be allowed to display trading interest submitted to its order book through other means, including its own data feed?
- Are members required to use AMSE's centralized order router? Are members required to route trading interest to other members if an execution could occur, or is routing between members discretionary? For example, assume Member 1's order book has no sell interest in XYZ stock. If Member 1 receives buy interest in XYZ stock that could execute against sell interest in XYZ stock on Member 2's order book, would Member 1 be required to route such buy interest to Member 2 or could Member 1 post such buy interest to its order book?

3. The Commission specifically requests comment on whether statements made in AMSE's exemption application pertaining to its intent to operate as an SRO are consistent with statements in the application pertaining to its exemption request. As noted above, AMSE's application states that it intends to operate as an SRO. But, AMSE's application also states that it is seeking an exemption from registering as a national securities exchange. If AMSE were granted an exemption from registering as a national securities exchange, AMSE would not be a registered national securities exchange and hence would not be an SRO. The Commission seeks comment on the inconsistencies between these statements in AMSE's application.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 10-214 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 10-214. 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 website (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to AMSE's exemption application filed with the Commission, and all written communications relating to the application 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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 10-214 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(71)(ii).