

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54413; File No. SR-Amex-2006-72)

September 7, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Adopt New Rules To Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform For Equity Products and Exchange Traded Funds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 8, 2006, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 7, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt new rules to implement an initial version of AEMISM, its proposed new hybrid market trading platform for equity products and Exchange Traded Funds (“ETFs”). According to the Exchange, this initial version of AEMI (referred to herein as “AEMI-One”) is expected to become operative prior to the final date set by the Commission for full operation of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS (“Trading Phase Date”).⁴ The rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces and supersedes the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) (extending compliance dates for Rules 610 and 611 of Regulation NMS).

change is being proposed on a pilot basis from the first day of operation of AEMI-One through the day prior to the Trading Phase Date.

The text of the proposed rule change is available on Amex's Web site (<http://www.amex.com>), at Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has previously filed a Form 19b-4 with the Commission (the "AEMI Rule Filing"),⁵ in which the Exchange described the implementation of a proposed new hybrid market structure for equity products and ETFs⁶ that would provide for a single marketplace that integrates automatic execution and floor-based auction trading. To facilitate the hybrid market, the Exchange is undertaking a major technology upgrade and will implement a new trading platform for equity products and ETFs. This platform, designated as AEMI, is aimed at

⁵ Securities Exchange Act Release No. 54145 (July 14, 2006), 71 FR 41654 (July 21, 2006) (File No. SR-Amex-2005-104).

⁶ As used herein, the term "equity products" includes equities and securities that trade like equities on the Exchange, such as listed and UTP stocks, closed-end funds, and certain structured products. The term "ETFs" includes Portfolio Depositary Receipts, Index Fund Shares, Trust Issued Receipts, and Partnership Units.

providing easy and fast access to automated order execution, as well as encompassing auction market capabilities for those situations in which there are order imbalances that require additional liquidity, or price improvement from the auction process is desired. The proposed operation of AEMI is described in detail in the AEMI Rule Filing, which includes in Amendment 5 thereto the text of the proposed new rules that would be applicable (the “AEMI Rules”). The Exchange believes that the operation of AEMI under the AEMI Rules would comply in all respects with the requirements of Regulation NMS, including the trade-through provisions of Rule 611.

The Exchange proposes to adopt, prior to the Trading Phase Date, currently set for February 5, 2007, a slightly modified version of the AEMI Rules (the “AEMI-One Rules”) in connection with the implementation of the AEMI-One version of AEMI as a limited pilot program (the “AEMI-One Pilot”). The Exchange recognizes that, during the period between the start of its rollout of AEMI and the Trading Phase Date, other SROs may also be in the process of deploying new or modified systems intended to achieve full compliance with Rule 611 and other provisions of Regulation NMS by the Trading Phase Date. Consequently, the Exchange has designed the AEMI-One Pilot with the objective in mind of protecting market quality and avoiding market disruptions during this critical period of change, in addition to assuring that investor protections are not compromised.

The Exchange intends to deploy AEMI in a controlled manner during the AEMI-One Pilot, commencing with two listed equities and two ETF UTP securities. Following a successful ten-day period of trading, up to four listed ETFs would be added for an additional five days of trading. The Exchange would then accelerate the deployment of all equity products and ETFs on

a per-post basis and give notice to members and publish on its Web site the timing for each group of securities being migrated to the AEMI platform.

Because the AEMI Rules are based on the assumption that all provisions of Regulation NMS are fully operative, the proposed AEMI-One Rules that appear in Exhibit 5 to the proposed rule change filed with the Commission are slightly modified from their AEMI Rule counterparts to reflect the different regulatory environments in effect before and after the Trading Phase Date. The Exchange expects that the AEMI-One Pilot would be in effect for only a few months up until the Trading Phase Date, at which time the AEMI Rules would become effective and supersede the AEMI-One Rules. The Exchange would then delete the AEMI-One Rules from its rulebook via a filing with the Commission.

The operation of AEMI-One would be, in most respects, consistent with the operation of AEMI as described in the AEMI Rule Filing, except for the specific provisions discussed below. To further highlight these differences, the Exchange is providing as Exhibit 4 to the proposed rule change filed with the Commission a marked version of the AEMI-One Rules that illustrates the changes from the corresponding AEMI Rules.

The key provisions of the AEMI-One Rules that differ from the AEMI Rules are as follows:

- “Protected quotations” for trade-through purposes in AEMI-One would consist of (1) all quotations, whether manual or automated, at the national best bid or offer (“NBBO”)⁷ that are at a better price than the next trade that would occur on AEMI; and (2) quotations not at the NBBO, but priced better than the next trade that would occur on AEMI, that are the best bid or

⁷ Because of the inclusion of manual quotes at the NBBO in the definition of “protected quotations,” the term “automated NBBO” in the AEMI Rules would not be relevant during the AEMI-One Pilot.

offer of an automated trading center that is not displaying a manual quote condition. In contrast, a “protected quotation” under the AEMI Rules (proposed to be effective on and after the Trading Phase Date) is defined to be consistent with Rule 611 of Regulation NMS⁸ and must be an automated quotation that is the best bid or offer of an automated trading center whether or not at the NBBO.

- An “automated trading center” under AEMI-One for order-routing decision purposes would be based on a determination made by the Exchange that would be publicly available. The Exchange would look first at whether the away market is publishing quote conditions that distinguish the away market’s quotations as manual or automated for all of the away market’s securities. If the away market were publishing such quote conditions, the away market would be identified by AEMI-One as an automated trading center, and order routing to that market for trade-through purposes would be determined according to the quote condition (i.e., such orders would be routed to quotations displayed by that market that are not at the NBBO, unless those quotations were identified by that market as manual quotes). If the away market were not publishing such quote conditions, the determination of whether it were an automated trading center for purposes of order routing decisions would be based on whether the Exchange deems the away market to be executing all incoming orders immediately and without human intervention. AEMI-One would contain a “routing table,” which also would be published on the Exchange’s Web site and updated on an inter-day basis to reflect any changes, listing those markets that are not considered by the Amex to be automated trading centers. In contrast,

⁸ See 17 CFR 242.600(b)(58) (defining “protected quotation”); see also 17 CFR 242.600(b)(57) (defining “protected bid” and “protected offer”).

an automated trading center under the AEMI Rules would be based upon the Regulation NMS definition of that term⁹ and would not be determined independently by the Exchange.

▪ During the period of the AEMI-One Pilot, not all away market centers that trade a particular security and whose quotes are “protected quotes” under the AEMI-One Rules may be capable of receiving intermarket sweep orders (“ISOs”), as such orders are defined in Regulation NMS.¹⁰ In such circumstances, AEMI would not utilize ISOs and instead would generate “away market obligations.” An “away market obligation” is defined in the AEMI-One Rules as an immediate or cancel limit order generated by AEMI in connection with the execution of an order by AEMI and routed to one or more away market centers to execute against all better-priced protected quotations displayed by other market centers up to their displayed size. If an away market that trades a particular security were capable of receiving ISOs prior to the Trading Phase Date, then the Exchange could choose to require AEMI to generate and utilize ISOs as the away market obligations for that market. In contrast, the AEMI Rules effective on and after the Trading Phase Date would provide for the use of ISOs exclusively to comply with the trade-through provisions of Rule 611 for better-priced protected quotations displayed at other market centers. However, during the AEMI-One Pilot, AEMI would accept and trade all ISOs received by the Exchange that involve securities traded on the Exchange that have made the transfer from Amex’s legacy systems to the AEMI platform, similar to the way AEMI would operate following the AEMI-One Pilot.

Amendment No. 1

Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 made a number of revisions to the text of the proposed rule change. Among other things,

⁹ See 17 CFR 242.600(b)(4) (defining “automated trading center”).

¹⁰ See 17 CFR 242.600(b)(30) (defining “intermarket sweep order”).

Amendment No. 1 (1) adds a new proposed rule 126B–AEMI-One that relates to the Exchange’s order-routing services for orders routed to other trading centers; (2) requires that, during the period of the AEMI-One Pilot, a member of the Exchange sending an intermarket sweep order to the AEMI platform must simultaneously send an intermarket sweep order (or a comparable order) for the full displayed size of the top of book of every other market center displaying a better-priced quotation;¹¹ and (3) adds requirements that “self-help” be invoked by the Exchange pursuant to objective industry-wide established interpretations and policies and be based on repeated failures to respond within one second to orders attempting to access another trading center’s protected automated quotations, where such failures are attributable to that trading center and where the Exchange notifies the non-responding trading center of its determination to invoke self help.¹² The aforementioned proposed Rule 126B–AEMI-One (Order Routing Services) provides, among other things, for (1) certain related agreements (e.g., on “give-ups” and on the licensing of the routing technology); (2) the equitable allocation of dues, fees, and other charges; (3) Exchange control of the routing logic; and (4) the establishment and maintenance of procedures and internal controls designed to protect confidential and proprietary information. Finally, the amendment also makes a number of relatively minor corrections to the proposed rule text, including certain provisions related to Nasdaq securities that conform to recent changes in the Exchange’s current rules.

¹¹ See proposed Rule 131–AEMI-One, heading Intermarket sweep order.

¹² See proposed Rule 126A–AEMI-One.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5),¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2006-72 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Amex-2006-72. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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 SR-Amex-2006-72 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).