

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73419; File No. 10-214)

October 23, 2014

Automated Matching Systems Exchange, LLC; Order Instituting Proceedings to Determine Whether to Grant or Deny an Application for an Exemption from Registration as a National Securities Exchange Under Section 5 of the Securities Exchange Act of 1934

I. Introduction

On July 7, 2014, Automated Matching Systems Exchange, LLC (“AMSE”) filed with the Securities and Exchange Commission (“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.<sup>1</sup> Notice of AMSE’s exemption application was published for comment in the Federal Register on July 29, 2014.<sup>2</sup> Although Section 5 of the Exchange Act does not require the Commission to institute proceedings on whether to grant or deny AMSE’s exemption application, the Commission has determined, in its discretion, to institute such proceedings in order to solicit further the views of interested persons on AMSE’s exemption application. This order institutes proceedings to determine whether to grant or deny the exemption application.

II. 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.<sup>3</sup> In general, AMSE

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<sup>1</sup> 15 U.S.C. 78e.

<sup>2</sup> See Securities Exchange Act Release No. 72661 (July 23, 2014), 79 FR 44070 (“Notice”). The Commission notes that Section 5 of the Exchange Act did not require publication of AMSE’s exemption application. The Commission determined, in its discretion, to publish the Notice in order to solicit the views of interested persons on AMSE’s exemption application.

<sup>3</sup> 15 U.S.C. 78e.

seeks to operate as an exchange for alternative trading systems.<sup>4</sup> 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.

### III. Proceedings to Determine Whether to Grant or Deny the Exemption Application and Grounds for Denial Under Consideration

The Commission is instituting proceedings to determine whether AMSE’s exemption application should be granted or denied. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the exemption application. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to

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<sup>4</sup> For more detail on AMSE’s proposed system, see AMSE’s full exemption application and Exhibits, which are published with the Notice on the Commission’s website at <http://www.sec.gov/rules/other.shtml>. The Commission notes that alternative trading systems are securities markets that meet the definition of exchange under the Exchange Act. Regulation ATS established an alternative regulatory regime for securities markets by giving them the choice to register as exchanges, or to register as broker-dealers and comply with Regulation ATS. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70847 (December 22, 1998) (“Regulation ATS Adopting Release”). Rule 300 of Regulation ATS defines an alternative trading system to mean “any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Rule 3b-16]; and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading.” See 17 CFR 242.300(a).

any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the exemption application.

The Commission is providing notice of the grounds for denial under consideration. Section 5 of the Exchange Act allows the Commission to exempt an exchange from the requirements of exchange registration if “in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.”<sup>5</sup> Section 3(a)(1) of the Exchange Act<sup>6</sup> defines an “exchange” to be “any organization, association, or group of persons, whether incorporated or incorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock market as that term is generally understood, and includes the market place and facilities maintained by such exchange.” Rule 3b-16 under the Exchange Act<sup>7</sup> further provides that “[a]n organization, association, or group of persons shall be considered to constitute, maintain, or provide ‘a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,’ as those terms are used in Section 3(a)(1) of the Act, (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons: (1) Brings together the orders of securities of multiple buyers and sellers; and (2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders

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<sup>5</sup> 15 U.S.C. 78e.

<sup>6</sup> 15 U.S.C. 78c(a)(1).

<sup>7</sup> 17 CFR 240.3b-16.

interact with each other, and the buyers and sellers entering such orders agree to the terms of the trade.”

As noted above, trades would occur on the separate systems of the individual members of AMSE. As described in the AMSE exemption application, it does not appear that the orders of the individual members of AMSE would interact with one another on any AMSE system, but rather on each distinct and separate system of AMSE’s members. That is, it does not appear that any AMSE system would operate as an exchange by bringing together purchasers and sellers of securities. As a result, the Commission is 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.<sup>8</sup>

Accordingly, the Commission believes that it is appropriate at this time to issue this order to institute proceedings to determine whether to grant or deny the exemption application on the grounds that the applicant does not meet the definition of an “exchange” under Section 3(a)(1) of the Exchange Act and Rule 3b-16 thereunder.

#### IV. Procedure: Request for Written Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as other relevant concerns. Such comments should be submitted by [insert 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register]. Although there do not appear to be any issues relevant to a grant or denial of the exemption application which

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<sup>8</sup> 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.

would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider any request for an opportunity to make an oral presentation.

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](mailto: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, 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 the exemptive application that are filed with the Commission, and all written communications relating to the exemptive 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 publicly available. 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]. Rebuttal comments should be submitted by [insert date 35 days from the date of publication in the Federal Register].

By the Commission.

Kevin M. O'Neill  
Deputy Secretary