

**SR Amex 2005-104  
Amendment No. 5  
EXHIBIT 5**

**AMERICAN STOCK EXCHANGE LLC**

**Proposed Rule Change**

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It is proposed that the following provisions of the American Stock Exchange Rules be amended as set forth below. Underlining indicates text to be added. [Brackets] indicate text to be deleted.

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**Hours of Business**

**Rule 1–AEMI.** Except as otherwise determined by the Board of Governors, the Exchange shall be open for the transaction of business on every business day, Monday through Friday. At 9:00 a.m., official announcement shall be made that the Exchange is open for trading in options on debt securities. At 9:30 a.m., official announcement shall be made that the Exchange is open for all other business purposes. The Exchange shall remain open until closed by official announcement at 4:00 p.m.; provided however, that option transactions in debt options may be effected on the Exchange only until 3:00 p.m. and all other option transactions may be effected on the Exchange until 4:00 p.m. each business day at which times no further debt or other options transactions may be made.

Except as may be otherwise determined by the Board of Governors, the Chief Executive Officer of the Exchange, or his designee, shall have the power to halt, extend or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, extension, suspension or closing, when he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange; (2) a request by a governmental agency or official; or (3) a period of mourning or recognition for a person or event. In considering such action, the Chief Executive Officer of the Exchange, or his designee, shall consult with the Vice Chairman or Senior Supervisory Officer on the Floor, if available, and such available Floor Governors as he deems appropriate under the circumstances. The Chief Executive Officer of the Exchange, or his designee, shall notify the Board of Governors of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

**...Commentary**

.01 Holidays.—The Board has determined that the Exchange will not be open for business on New Year's Day, Martin Luther King, Jr. Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. Martin Luther King, Jr. Day, President's Day, and Memorial Day will be observed on the third Monday in January, the third Monday in February and the last Monday in May, respectively, in accordance with Federal legislation.

The Board has also determined that, when any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday, and that when any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time.

.02 Options Trading after 4:00 p.m.—The Board has determined that no option series shall freely trade after 4:00 p.m. except that broad stock index group options and options on select Exchange-Traded Fund Shares shall freely trade until 4:15 p.m. each business day. However, one trading rotation in any class of options contracts may be effected even though employment of the rotations will result in the effecting of transactions on the Exchange after 4:00 p.m., provided:

(1) Trading in the underlying security opens or re-opens after 3:30 p.m. (N.Y. time); and promptly thereafter, the Exchange commences an opening or re-opening rotation in the corresponding options;

(2) Such rotation was initiated due to unusual market conditions pursuant to Rule 918, and (i) notice of such rotation is publicly disseminated no later than the commencement of the rotation or 4:00 p.m. (N.Y. time), whichever is earlier; or (ii) notice of such rotation is publicly disseminated after 4:00 p.m., and the rotation does not commence until five minutes after news of such rotation is publicly disseminated; or

(3) For those option classes trading on the ANTE System, an automated trading rotation will be held at the close of each trading day and shall commence as soon as practicable after 4:00 p.m. or 4:15 p.m. for select index options and options on select Exchange-Traded Fund Shares.

(4) A trading rotation commenced under either (1) or (2) above, must be authorized by two (2) Floor Officials.

If prior to 4:00 p.m., a trading rotation is in progress and a Senior Floor Official and a Floor Official determine that a final trading rotation is needed to assure a fair and orderly market, the rotation in progress shall be halted and such final rotation begun as promptly as possible after 4:00 p.m. Except for a trading rotation held pursuant to (3) above, any trading rotation commenced after 4:00 p.m. must be approved by a Senior Floor Official.

.03 Transactions in unit investment trust securities listed pursuant to Section 118B of the Company Guide may be effected on the Exchange until 4:15 p.m. each business day.

.04 The Exchange shall be open for trading in EUROTOP 100 Index options at 8:30 a.m. and shall cease trading in such options at 11:30 a.m. on each business day.

.05 The hours of business for a security traded on the Exchange pursuant to unlisted trading privileges shall generally be the same as the hours during which the security is traded in the primary market for such security, provided, however, that Exchange specialists in Nasdaq securities may send quotations to the SIP between 9:25 and 9:30 a.m., and such quotations shall be for test purposes only. Notwithstanding the foregoing, in accordance with Rules 1000 and 1000A, Portfolio Depositary Receipts and Index Fund Shares trading on the Exchange pursuant to unlisted trading privileges may trade until 4:00 p.m. or 4:15 p.m. as specified by the Exchange.

.06 Unless provided otherwise, each reference to time in this and every other rule applicable to transactions in AEMI is to New York time (Eastern Time).

### **General Prohibitions and Duty to Report**

**Rule 3—AEMI.** (a) No member or member organization shall effect on the Exchange purchases or sales for any account in which he is directly or indirectly interested, which purchases or sales are excessive in view of his financial resources or in view of the market for such security.

#### **...Commentary**

The Exchange expects that all trading by members and member organizations will have a constructive effect on the market by adding to its orderliness and liquidity. In this regard, there are certain kinds of trading activity and trading patterns which should be avoided and which may be excessive in view of the market for a security. Among these would be a series of transactions for the purpose of hitting the AEMI system tolerance constraints and repeatedly disabling Auto-Ex. Such prohibited “gaming” behavior might otherwise be attempted for the purpose of removing the Exchange’s quotation from the automated NBBO so that it could be traded through, or to make it ineligible for tape revenue.

#### **Trading with non-member**

(b) No regular or options principal member shall effect, in the rooms of the Exchange, a transaction with an associate member or with a non-member, in any security dealt in on the Exchange; but this rule shall not prohibit transactions permitted by Rule 118—AEMI, Rule 152—AEMI or by Section 7 of Part II of the Rules of the Exchange or with an employee of the Exchange or American Stock Exchange Clearing Corporation engaged in carrying out arrangements approved by the Board of Governors to facilitate the borrowing and lending of money.

#### **Rumors**

(c) No member or member organization shall circulate, in any manner, rumors of a sensational character which might affect market conditions on the Exchange. A report shall be promptly made to the Exchange of any such rumors. This rule does not prohibit discussion of unsubstantiated information widely published or broadcast by public media, provided its source and unverified nature are disclosed.

#### **...Commentary**

As general guidelines to assist member organizations in formulating procedures to ensure compliance with this rule, the Exchange suggests that:

(1) any sensational rumors which might affect market conditions on the Exchange be referred to the office of a senior official in the member organization;

(2) all personnel be advised of the procedures to follow to comply with this Rule, and the office to contact;

(3) a record be maintained of the dates, times, sources and names of those reporting rumors, along with other pertinent information;

(4) if the rumor cannot be verified, (a) member organization personnel be advised accordingly; and (b) the rumor be reported promptly, by telephone, to the Exchange's Market Surveillance Department in compliance with Rule 3—AEMI(c); and

(5) action taken by a member organization to verify or, if untrue, to quash the rumor also be reported to the Exchange.

Guidelines covering written information prepared by member organizations pertaining to specific securities, industries or general market conditions which is shown or distributed to the public or is used in making recommendations to customers are set forth in ¶9495 of Exchange Rules.

This is not an area in which the Exchange can delineate precise procedures for any member organization. A firm's type of business, size, location and internal organization will dictate its own procedures. An out-of-town introducing firm might wish to enlist the aid of its New York correspondent in verifying or reporting rumors to the Exchange, but its responsibility under Rule 3—AEMI(c) is in no way diminished thereby.

### **Confidential Information**

(d) No member or member organization shall utilize to his or its own advantage or improperly disclose confidential information entrusted to him or it by a customer or another member or member organization.

### **Quoting Nominal Market**

(e) No member or member organization shall quote a nominal market for a security dealt in on the Exchange.

### **Refusal to testify**

(f) No member or member organization shall refuse, in any legal proceeding whether civil or criminal, to give testimony or to produce his books and papers concerning his transactions as a broker on the ground that such testimony or the production of such books and papers will tend to incriminate or degrade him.

### **Betting**

(g) No member or member organization, shall make any public announcement regarding monies held for the purpose of betting.

(h) It shall be deemed an act detrimental to the interest or welfare of the Exchange for any member, member organization or employee thereof to fail to report immediately to the Exchange any fraudulent or manipulative conduct in connection with the trading of securities on the Floor (i) of which the member, member organization or employee thereof has knowledge, or (ii) that the member, member organization or employee thereof has been asked to perform.

Reports to the Exchange of fraudulent or manipulative conduct shall be made in such form and to such person(s) as the Exchange shall prescribe from time to time in a notice to the membership.

(i) It shall be inconsistent with just and equitable principles of trade for a member or member organization to split trading interest into multiple orders for any purpose other than seeking the best execution of the entire order.

### Authority of Floor Officials

**Rule 22—AEMI. (a) Senior Supervisory Officer.**—The person serving as the senior supervisory officer on the Floor, shall have general authority

1. to supervise the Floor Officials and the Senior Floor Officials in the performance of their responsibilities on the Floor;
  2. to redelegate his powers on the Floor to Senior Floor Officials and Floor Officials appointed pursuant to Rule 21;
  3. to promote fair and orderly operations on the Floor;
  4. to effect compliance with accepted and established standards of conduct and decorum on the Floor;
  5. to advise the Chief Executive Officer in connection with Floor facilities and administration;
  6. to exercise any authority conferred upon Senior Floor Officials or Floor Officials;
- and shall have such other and additional authority on the Floor as the Board, either upon recommendation of the Chief Executive Officer or upon its own initiative, may, by rule or otherwise, prescribe.

**(b) Powers in Special Circumstances.**—Where unusual circumstances other than those set forth in Rule 27 call for prompt action, the Senior Supervisory Officer on the Floor, in consultation with the available Senior Floor Officials and the Chief Executive Officer or his designee, may reallocate any security to another specialist pending action by the Board as soon as practicable thereafter. In an emergency, the Senior Supervisory Officer on the Floor, the Senior Floor Officials, and the Chief Executive Officer or his designee, or such of them as may then be available, acting jointly, may halt or suspend any or all trading on the Exchange, or may reopen after a halt or reinstate after a suspension any trading previously halted or suspended pursuant to this paragraph, and such decision shall remain in effect until and unless changed by the Board at a meeting to be held as soon as practicable thereafter.

**(c) Floor Officials.**—A Floor Official shall be an officer of the Exchange, and in addition to such other powers and duties as the Board may prescribe, by rule or otherwise, or as the Chairman, or the Chief Executive Officer if delegated by the Chairman, subject to the approval of the Board may delegate, shall have authority

1. to supervise openings and reopenings of securities;
2. to halt or to reopen trading in a security,
3. to resolve market disputes submitted to him by members;
4. to regulate and supervise unusual situations which may arise in connection with the making of bids, offers or transactions; and
5. to supervise the operation of the applications of the System as defined and described in Section 7 of Part II of the Rules of the Exchange (“ITS Rules”), including the authority to resolve market disputes involving ITS Rules arising between Exchange members and members of other ITS participating market centers.

In addition, a Senior Floor Official may restrict or ban trading by Registered Traders with respect to any securities.

A member of the regulatory staff shall advise and participate in any Floor Official decision or ruling with respect to:

1. The application of the Unusual Market Exceptions to the SEC's Firm Quote Rule (Rules 115-AEMI; 958A (d); 958-ANTE (d));
2. ITS disputes (Rule 22-AEMI (c)(5));
3. Member disputes (Rule 22-AEMI (c)(3));
4. Cancellation or revisions to trades (Rules 118-AEMI (k); 135A-AEMI; 155-AEMI, Commentary .03).

(d) Review of Rulings.—Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a Floor Official's market decision, shall, forthwith and in the presence of the ruling Floor Official, present the matter to an Exchange Official who shall confirm, amend, or overrule the decision. The Exchange Official's decision in a matter may be promptly presented on appeal to a panel of three Senior Floor Officials who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Senior Floor Official. Any remaining vacancies on the panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials.

Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Senior Floor Officials who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Senior Floor Official. In the event that three Senior Floor Officials are not available, Exchange Officials who have not already ruled on the matter may serve on a panel in order of their seniority as Exchange Officials.

A member of the regulatory staff shall advise and participate in any review of a Floor Official decision or ruling that required the advice and participation of a member of the regulatory staff in the initial Floor Official ruling.

The decision or ruling of a Floor Official or Officials, Exchange Official, or three Senior Floor Official panel shall be binding on members. Notwithstanding the foregoing, at any point after establishing a loss (or profit) through clearance and complying with the highest decision (if any) made in a matter, either party to the matter may elect to submit it to arbitration pursuant to Article VIII of the Constitution. The final decision or ruling on the Trading Floor shall not be binding on the arbitrators, but they may give it such weight as they feel is appropriate. Not all decisions or rulings on the Trading Floor may be subject to arbitration.

(e) Two Floor Officials in consultation with a designated senior executive officer of the Exchange may summarily exclude a member or person associated with a member or member organization from the Exchange premises for not longer than the remainder of the trading day for the following violations:

- Physical violence
- Unbusinesslike conduct
- Harassment (as set forth in Amex Rule 16)
- Failure to abide by a Floor Official's ruling
- Property damage

- Enabling/Assisting suspended member or associated person to gain improper access to the Floor
- Failure to supervise a visitor

Any action taken by Floor Officials under this paragraph (e) shall not preclude additional disciplinary action under Article V of the Exchange Constitution, or Exchange Rules 345 or 590.

Where a member or persons associated with a member or member organization is summarily excluded from the Floor pursuant to this paragraph (e), that member or associated person shall have the right to request reinstatement from Floor Officials after a sufficient "cooling-off" period has elapsed. If, in the judgment of two Floor Officials (at least one of whom must have participated in the initial decision to exclude), the member or associated person no longer poses an immediate threat to the safety of persons or property, or the orderly conduct of business, the member or associated person shall be permitted to return to the Floor.

### ...Commentary

.01 A Floor Official who halts or reopens trading shall immediately notify the Senior Supervisory Officer or Senior Floor Official available, and the Market Operations Division, and, in the case of a non-regulatory halt or a reopening following a non-regulatory halt, the Floor Official shall receive the prior concurrence of a Senior Floor Official or Exchange Official.

.02 A written record of all Floor Official decisions or rulings must be made on a form provided by the Exchange. The written record should be prepared as soon as practicable after the decision or ruling is made. Failure to prepare the written record may result in the removal of a Floor Official or a Floor Official becoming ineligible for reappointment. The term "written record" shall include any record made electronically on a system maintained by the Exchange. Floor Officials must document and authenticate all decisions or rulings in the manner and form prescribed by the Exchange.

The need for Floor Official approval of a particular action with respect to a security may be indicated to the specialist electronically on a system maintained by the Exchange. A specialist shall not respond to an electronic message alerting the specialist that Floor Official approval is required for a particular action in a manner that would permit such action to occur unless such approval has been obtained.

.03 A Floor Official should report any problems regarding Floor facilities and administration to the Senior Supervisory Officer or to the Market Operations Division, and should consult with the Senior Supervisory Officer or Senior Floor Official available or the Rulings, Legal and Regulatory, or Listing Qualifications Departments concerning the interpretation or application of rules or policies in unusual circumstances. In addition, a Floor Official may consult those Departments regarding any other market decision or dispute.

### Vendor Liability Disclaimer

**Rule 60–AEMI.** In connection with member or member organization use of any electronic system, service, or facility provided by the Exchange to members for the conduct of their business on the Exchange (i) the Exchange may expressly provide in the contract with any vendor providing all or part of such electronic system, service, or facility to the Exchange, that such vendor and its subcontractors shall not be liable to the member or member organization for any damages sustained by a member or member organization growing out of the use or enjoyment thereof by the member or member organization, and (ii) members and member organizations shall indemnify the Exchange and any vendor and subcontractor covered by subsection (i) above (and

their directors, officers, employees and agents) with regard to any and all judgements, damages, costs, or losses of any kind (including reasonable attorneys' fees and expenses), as a result of any claim, action, or preceeding that arises out of or relates to the member or member organization's use of such electronic system, service, or facility.

### **Applicability, Definitions, References and Phase-In**

**Rule 1A-AEMI** (a) The Exchange's new trading platform, designated as AEMI<sup>SM</sup>-- the "Auction & Electronic Market Integration" platform, (pronounced "Amy" and referred to hereinafter as the "AEMI platform" or "AEMI"), will be rolled-out over a period of time anticipated to begin 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"). By the Trading Phase Date, all Exchange Traded Fund shares, equities, and securities that trade like equities that are traded on the Exchange, will be on the AEMI platform. During the roll-out period, while the Exchange has securities trading on its legacy and AEMI platforms, current rules (as they are amended from time to time) will apply to those securities continuing to trade on the legacy platform, while the AEMI rules will apply to those securities trading on the new trading platform.

These AEMI rules cover the operation of the AEMI platform effective on and after the Trading Phase Date. Prior to the Trading Phase Date, a somewhat modified early version of the AEMI platform will be in operation starting with the initial roll-out and continuing through the day prior to the Trading Phase Date. This earlier version of the AEMI platform will be referred to as AEMI-One and the Amex will file a separate set of AEMI-One rules in the near future to cover the operation of the system up until the Trading Phase Date.

(b) Once the roll-out of AEMI is complete for all securities that had been subject to a particular Exchange legacy rule, the corresponding AEMI rule shall govern all transactions in those securities. The legacy rule will no longer have any applicability and the Exchange will delete that rule from its rulebook via a filing with the Commission.

(c) The AEMI platform is being enabled with respect to ETFs, equities, and securities that trade like equities, and any references to "securities" in these AEMI rules shall mean these particular securities.

(d) Except to the extent that specific rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and of all other Rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of securities traded through the AEMI platform. In addition, the following Rules Principally Applicable to Floor Transactions shall apply to the trading of securities on the AEMI platform: 100, 101, 102, 103, 104, 105, 117, 120, 122, 125, 128, 129, 153A, 171, 172, 173, 175, 176, 177, 183, 184, 185, 186, 190, 191, 192, 193, 208, 221, 222, and 230 through 236.

(e) The following rules are not applicable to transactions in AEMI and will be rescinded via a rule filing with the Commission upon the full implementation of AEMI: 24, 25, 111, 116, 121, 130, 134, 181, 201, 202, 203, 204, and 1300 through 1306. The Amex has made a rule filing with the Commission to revise current Rule 114 to provide appropriate requirements for Registered Equity Market Makers when AEMI is implemented

(f) Members, member organizations and persons associated with members and member organizations shall participate in AEMI training and may only use AEMI technology at such times as may be specified by the Exchange. Any failure to participate in AEMI training or use

AEMI technology when specified by the Exchange may result in (i) a prohibition on use of the AEMI platform, (ii) disciplinary action pursuant to Part 1 of Amex Rule 590, and/or (iii) remedial action by the either the Committee on Floor Member Performance or the Market Quality Committee.

(g) The following terms as used in the rules of this Chapter shall have the meanings specified herein unless the context otherwise indicates:

**Amex Published Quote (“APO”).** The “Amex Published Quote” is the highest bid and lowest offer disseminated by the American Stock Exchange.

**AEMI Book.** The “AEMI Book” is the part of the AEMI platform that holds and automatically matches orders, bids and offers submitted to it electronically by specialists, Registered Traders, Floor Brokers and off-Floor members in accordance with these rules.

**Automated Quotation, Automated Bid, Automated Offer.** An “automated quotation”, “automated bid”, or “automated offer” is a bid and/or offer disseminated by a trading center (as defined in Regulation NMS) that: (1) permits an incoming order to be marked as immediate or cancel (“IOC”), (2) immediately and automatically executes an order marked as IOC against the displayed quotation up to the displayed size, (3) immediately and automatically cancels any unexecuted portion of an order marked as IOC without routing the order elsewhere, (4) immediately and automatically transmits a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to such order, and (5) immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.

**Automated National Best Bid and Offer (“automated NBBO”).** The “automated national best bid and offer” is the highest automated bid and lowest automated offer calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.

**Broker/Dealer.** The term “broker/dealer” means a registered broker or dealer and any foreign person that either is registered as a broker or dealer where it operates or would be required to register with the Commission as a broker or dealer if it were operating in the United States.

**Crowd Order.** A “Crowd Order” is (1) an order in the AEMI Book that is represented by a broker standing in the crowd or (2) a bid or offer in the AEMI Book entered by a Registered Trader standing in the crowd.

**Customer.** The term “customer” means any person who is not a broker/dealer.

**Exchange Traded Funds (“ETFs”).** The terms Exchange Traded Funds or ETFs include any Portfolio Depository Receipt, Index Fund Share, Trust Issued Receipt or Partnership Unit.

**May Trade Order.** A “may trade order” is an order limited to the price of an opening, reopening or closing that is eligible to be executed on an opening, reopening or closing but is not required to be executed.

**Must Trade Order.** A “must trade order” is a market or marketable limit order that is eligible to be executed on an opening, reopening or closing and is required to be executed on the opening, reopening, or closing.

**Message Queue.** A “Message Queue” refers to an accumulation of messages (e.g., orders, status requests, cancels, cancel/replaces) that have entered AEMI but are not permitted by the system to enter the AEMI Book. AEMI shall initiate a Message Queue only during an Opening or Reopening Pair-off Session, a Cash Closing Pair-off Session (in ETFs), a pair-off to execute an order imbalance following a breach of a Spread or Momentum Tolerance or a “gap trade”, or a pair-off to execute an order imbalance that caused the dissemination of a gap quote. During a Message Queue, messages come into the AEMI queue and do not enter the AEMI Book. A Message Queue shall last no longer than three seconds at which point it will automatically terminate and all queued messages will enter the AEMI Book. No member or person associated with a member shall see messages in a Message Queue.

**NMS Security.** An “NMS security” is any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

**NMS Stock.** An “NMS stock” is any NMS security other than an option.

**Protected Bid or Protected Offer.** A “protected bid” or “protected offer” means a quotation in an NMS stock that (i) is displayed by an automated trading center (as defined in Regulation NMS), (ii) is disseminated pursuant to an effective national market system plan, and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange or a national securities association.

**Protected Quotation.** A “protected quotation” is a protected bid or a protected offer.

**Public Order.** A “public order” is an order, initiated either on the Floor by a Floor Broker (e.g., a percentage order or a limit order) or off the Floor by a member, that is entered directly into the Specialist Order Book. A Crowd Order can never be a public order.

**Registered Trader.** A “Registered Trader” is a member who is authorized by the Rules of the Exchange to initiate trades while on the Floor for his or her account. Transactions by Registered Traders on the Floor in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide (“Other Securities”), Trust Issued Receipts listed pursuant to Rules 1200 et seq., and Partnership Units listed pursuant to Rules 1500 et seq. shall be effected in accordance with the provisions of Rule 110–AEMI, and shall only be effected by Registered Traders who are regular members. Transactions by Registered Traders on the Floor in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) shall be effected in accordance with the provisions of Rule 110–AEMI. Registered Trader transactions in securities traded in AEMI may only be effected in accordance with the provisions of Rule 110–AEMI.

**Specialist Order Book.** The “Specialist Order Book” is the accumulation of orders on the AEMI Book that is not represented by a broker standing in the crowd or other party. It is a subset of the AEMI Book. The Specialist Order Book does not include the bids and offers of Registered Traders in the crowd.

**Automatic Conversion.** This term refers to “automatic conversion” (or “auto conversion”) of percentage orders by AEMI. Auto conversions will be governed by certain conditions in the AEMI Book which would qualify a percentage order to be converted. The parameters that trigger auto conversions will be configurable. Auto conversions will also take place during an opening, a re-opening and the closing pair-off.

**Manual Conversion.** The term “manual conversion” references the fact that specialist may manually convert percentage orders depending on the instruction on the percentage order. The AEMI platform will permit both active and passive manual conversions.

**Active Manual Conversion.** An “active manual conversion” is a manually converted percentage order that becomes an IOC order and immediately aggresses the AEMI Book.

**Passive Manual Conversion.** A “passive manual conversion” is a manually converted percentage order that becomes a limit order at the APQ. It may set a new APQ or join the existing APQ.

**Trade Event.** Every execution due to an aggressing order is considered to be a “trade event” by the AEMI platform. The election of a percentage order, stop order or stop limit order is based on a trade event.

**Specialist Emergency Quote.** A “specialist emergency quote” is a firm, automated quote automatically generated by AEMI when the Specialist’s mandatory quote is reduced to or below a configured size in order to ensure continuity of price and assist the specialist in meeting his quoting obligations under Rule 170—AEMI. Such a quote is generated according to parameters set by the specialist, and is obligatory if the specialist is utilizing an AEMI “front end” device to generate quotes. This feature is disabled if quotes are streamed in from a proprietary system.

**Stabilizing Quote.** A “stabilizing quote” is a non-firm quote that is automatically generated by AEMI when Auto-Ex is disengaged following a tolerance breach or gap trade (see Rule 128A—AEMI(g)) and no orders exist on the contra side of the AEMI Book. Under those circumstances, AEMI will automatically publish a quote for one round lot at one tick away from the price of the automated NBBO on the contra side.

### **Priority and Parity at Openings and Reopenings**

**Rule 108—AEMI.** (a) Orders, bids and offers received by the AEMI Book prior to the commencement of the opening pair-off will be eligible to participate in the opening pair-off. At an opening, all market orders shall have precedence over limit orders and shall be executed at one price.

**(b) In connection with an opening:**

**(1) A limited price order to buy which is executable at a higher price than the price at which the security is to be opened, and a limited price order to sell which is executable at a lower price than the price at which the security is to be opened, are to be treated as market orders.**

**(2) A market order to sell short a security designated under the SEC’s short sale rules and regulations as subject to short sale price test restrictions is not to be treated as other market**

orders, but is to be treated as a limited price order to sell at the price of the first permissible short sale under Amex rules. A limited price order to sell short a security designated under the SEC's short sale rules and regulations as subject to short sale price test restrictions which is at a lower price than the price at which the security is to be opened, is to be treated as a limited price order to sell at the price of the first permissible short sale under Amex rules. Such orders are to be treated as market orders only if the opening price is higher than the first permissible short sale price under Amex rules. The same requirements apply to other tick sensitive sell orders.

(3) A tick sensitive order to buy at the market is not to be treated as other market orders, but is to be treated as a limited price order to buy at the first permissible buy minus price. A limited price tick sensitive buy order which is at a higher price than the price at which the security is to be opened, is to be treated as a limited price order to buy at the first permissible buy minus price. Such orders are to be treated as market orders only if the opening price is lower than the first permissible buy minus price.

(c) AEMI shall execute all orders, bids and offers priced at the market (including limited price orders treated as market orders pursuant to paragraph (b) above) on the opening (Must Trade Orders). AEMI shall execute orders, bids and offers limited to the opening price (May Trade Orders) provided that there is sufficient interest in AEMI to execute such orders, bids and offers, and provided further that, in the case of ETFs, all customer orders to buy shall be executed before any broker/dealer bids or buy orders are executed and all customer orders to sell shall be executed before any broker/dealer offers or sell orders are executed. Limit orders and tick sensitive orders limited to the opening price shall be deemed to be on parity, provided, however, that orders on the Specialist Order Book shall be executed in the sequence in which they were received by the AEMI Book. ITS Pre-Opening Responses shall be handled pursuant to the requirements of Rule 232(b)(ii).

(d) The specialist shall initiate an opening pair-off session in AEMI at or as soon after 9:30 a.m. as practicable. AEMI will permit the opening pair-off session to last no more than three seconds. During the opening pair-off session, the specialist shall select a single opening pair-off price at which AEMI will execute all market and marketable limit orders as well as all orders, bids, and offers in the AEMI Book that are both eligible for execution and capable of being executed at that price, given the interest in the AEMI Book. During the opening pair-off session, incoming orders, bids, offers, cancellations, amendments, and other messages will be held in a Message Queue and will not be included in the opening pair-off, provided, however, that if the specialist does not complete the opening pair-off within three seconds of the time that it is initiated, the pair-off session will terminate, all messages in the Message Queue will enter the AEMI Book and will be on parity with the orders that were part of the unsuccessful pair-off effort, and the specialist will have to reinitiate the opening pair-off session to open the stock. During the actual pair-off itself, orders that are being processed as part of the pair-off cannot be altered or cancelled. In the event that there are no bids, offers or orders in the AEMI Book that are eligible for execution on the open, the specialist will open the security on a quote without a trade.

(e) In the event that there is a Message Queue during the opening pair-off session, the messages held in the Message Queue will enter the AEMI Book after the opening pair-off has been completed, with the exception of "at the opening" orders, which expire upon successful completion of the opening pair-off. AEMI will then attempt to automatically pair-off any marketable orders from the Message Queue at the opening price unless this would cause a trade-through of a protected quotation in another market center, in which case AEMI will effect the pair-off at whichever price would result in the largest trade and would not result in a trade-through of a protected quotation. If such a post-opening pair-off cannot be effected or there are orders from the Message Queue that do not participate in the pair-off, the remaining orders from

the Message Queue that enter the AEMI Book will be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required.

(f) The above provisions of this Rule 108—AEMI shall also apply to a reopening after a halt in trading.

**••• Commentary**

.01 The manner and extent to which commitments and obligations to trade issued from other market centers may participate in the opening transaction is set forth in Rule 232.

**“Stopping” Stock**

**Rule 109—AEMI.** No specialist, broker or Registered Trader shall grant or accept a stop with respect to a security traded in AEMI.

**Registered Traders and Floor Trading**

**Rule 110—AEMI.** (a) No member, except as provided in this Rule, shall initiate a transaction for a security traded in AEMI, while on the Floor, for an account in which he has an interest.

(b) No member shall be registered as a Registered Trader unless he shall have passed a Registered Trader Examination prescribed by the Exchange.

(c) In addition to such capital as Exchange requirements may prescribe for his other activities, a Registered Trader who is not subject to SEC Rule 15c3-1 shall meet an initial minimum capital requirement of \$25,000 and at all times thereafter shall meet the minimum capital maintenance requirement of \$15,000.

No capital shall be withdrawn by a Registered Trader if such withdrawal would reduce the value of his account to an amount less than the applicable initial minimum capital required.

(d) If a Registered Trader shall at any time fail to comply with the applicable minimum capital maintenance requirement specified in paragraph (c), his registration as a Registered Trader shall be automatically suspended, and he shall immediately notify the Secretary of the Exchange in writing of his failure so to comply. Such suspension shall continue until and unless his resignation as a Registered Trader has been reinstated by the Exchange.

(e) Registered Traders who wish to initiate purchases or sales while on the Floor for accounts in which they have an interest shall not:

- (1) individually or as a group, intentionally or unintentionally, dominate the market in a particular security; or
- (2) effect such purchases or sales except in a reasonable and orderly manner; or
- (3) be conspicuous in the general market or in the market in a particular security.

(f) No Registered Trader shall effect, on the Floor of the Exchange, a transaction for an account in which he has an interest and execute as broker an off-Floor order in the same security during the same trading session.

(g) No Registered Trader shall, in establishing or increasing a position for an account in which he has an interest, while on the Floor of the Exchange, retain priority over an off-Floor customer order.

(h) Paragraphs (a) through (g) of this Rule shall not apply to:

(1) any transaction by a registered specialist in a security in which he is so registered; or

(2) any stabilizing transaction effected in compliance with Rule 104 of Regulation M under the Securities Exchange Act of 1934 to facilitate a distribution of a security in which a member is participating; or

(3) any bona fide arbitrage transaction; or

(4) any transaction, other than a transaction for an account in which a Registered Trader has an interest, made with the prior approval of a Floor Official to permit a member to contribute to the maintenance of a fair and orderly market in a security, or any purchase or sale to reverse any such transaction; or

(5) any transaction to offset a transaction made in error.

(i) Reserved.

(j) Specialists registered in rights may, while on the Floor, initiate transactions in a security which is the subject of the rights for the purpose of acquiring or liquidating a bona fide hedge position against the rights, and the provisions of paragraphs (a) through (g) of this Rule shall not apply to such transactions.

(k) Subject to Rule 175, equity specialists may, while on the Floor, initiate transactions in any security overlying a security in which they are registered for the purpose of acquiring or liquidating a bona fide hedge position, and the provisions of paragraphs (a) through (g) of this Rule (as made applicable to options by Rule 950(a) and Rule 958 shall not apply to such transactions. Option specialists (as that term is used in the Exchange's options rules) may, while on the Floor, initiate transactions in any security underlying a security in which they are registered for the purpose of acquiring or liquidating a bona fide hedge position, and the provisions of paragraphs (a) through (g) of this rule shall not apply to such transactions. Registered Traders may, while on the Floor, initiate transactions in any security underlying a security in which they are acting as a market maker pursuant to Rule 958 for the purpose of acquiring or liquidating a bona fide hedge position, and the provisions of paragraphs (a) through (g) of this Rule shall not apply to such transactions. The term "bona fide hedge" shall have the meaning ascribed to it in Securities Exchange Act Rule 11a1-3(T) and pages 33-35 of Securities Exchange Act Release No. 15533 (January 29, 1979). Pages 33-35 of Securities Exchange Act Release No. 15533 are reprinted in Commentary .01 to this Rule.

(l) For the purposes of this Rule, the term "on the Floor" means the Trading Floor of the Exchange; the rooms, lobbies and other premises immediately adjacent thereto made available by the Exchange for use by members generally; other rooms, lobbies and premises made available by the Exchange primarily for use by members generally; and the telephone and other facilities in any such place.

The provisions of this Rule do not apply to transactions initiated by a Registered Trader for an account in which he has an interest unless such transactions are initiated by a Registered Trader while on the Floor. However, an off-Floor order for an account in which a member has an interest is to be treated as an on-Floor order if it is executed by the member who initiated it.

Notwithstanding anything in this paragraph (l) to the contrary, the provisions of this Rule shall not apply to the issuance of commitments or obligations to trade from the Floor of the Exchange.

(m)(i) A member using a communication facility located on the Floor of the Exchange to enter an order for his own account will be deemed to be initiating an off-Floor order if such order is routed through a clearing firm's order room, where a time-stamped record of the order is maintained, before such order is re-transmitted to the Floor for execution.

(ii) Any order entered by a member organization for any account in which it, or any member, allied member, or approved person in such organization or officer or employee thereof is directly or indirectly interested, or for any discretionary account serviced by the member organization, following a conversation with the member or employee in that organization who is on the Floor, shall be deemed to be an off-Floor order, provided (A) that such order is transmitted to the Floor through an order room or other facility regularly used for the transmission of public orders to the Floor; where a time-stamped record of the order is maintained; or (B) an exception is available in paragraphs (h), (i), (j) or (k) of this Rule.

(iii) No member or member organization shall execute or cause to be executed, on the Exchange, any order for any account in which such member, member organization, or any member, allied member, or approved person in such organization or officer or employee thereof, is interested or for any discretionary account serviced by the member or member organization, in contravention of any Exchange policy against front-running of transactions that the Exchange may from time to time adopt and make known to its members.

(iv) Members who are not regular members (as described in Article IV of the Exchange Constitution) may enter orders in accordance with this paragraph (m) only in securities which members of their class are otherwise entitled to trade while on the Floor of the Exchange.

(n) An on-Floor order given by a Registered Trader to a Floor Broker or specialist, for an account in which the Registered Trader has an interest, is subject to all the rules restricting Registered Traders. When a Registered Trader gives out such an order on the Floor to another member (1) to buy "long" stock, (2) to sell "short" stock, (3) to sell "short exempt" stock, (4) to sell "long" stock, or (5) to buy to cover a "short" position, the order must be so marked and indicated as being for an account in which the Registered Trader has an interest, unless it is exempt under the provisions of Rule 110-AEMI(h), in order that the other member may know the order's priority status.

(o) Transactions by Registered Traders in AEMI shall be limited to transactions in index warrants, currency warrants, securities listed pursuant to Section 107 of the Company Guide ("Other Securities"), Trust Issued Receipts listed pursuant to Rules 1200 et seq., Partnership Units listed pursuant to Rules 1500 et seq., and derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution).

(p) Transactions by Registered Traders in AEMI in index warrants, currency warrants, Other Securities, Trust Issued Receipts listed pursuant to Rules 1200 et seq., and Partnership Units listed pursuant to Rules 1500 et seq. may only be effected by Registered Traders who are regular members. Transactions by Registered Traders in AEMI in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) may be effected by Registered Traders who are regular members, Options Principal Members, or limited trading permit holders.

(q) Each Registered Trader electing to engage in transactions in AEMI shall be assigned by the Exchange one or more securities from the categories specified in paragraph (o) above, and transactions in AEMI initiated by such Registered Trader for any account in which he has an

interest shall to the extent prescribed by the Exchange be in such assigned security(ies). A Registered Trader shall only actively quote ETFs traded on the same or contiguous panels (i.e., ETFs traded by the same specialist or adjoining specialists), for a maximum of three (3) contiguous panels. A Registered Trader also shall not actively quote more than fifteen (15) ETFs. A Senior Floor Official may modify the foregoing restrictions if he determines that a Registered Trader is able to appropriately fulfill his obligations to the market due to the level of activity in the ETFs and their proximity.

(r) Registered Trader transactions should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no Registered Trader should enter into transactions or make bids or offers that are inconsistent with such a course of dealings.

(s) Whenever a Registered Trader enters the trading crowd in other than a Floor brokerage capacity, or is called upon by a Floor Official or a Floor Broker acting in an agency capacity, the Registered Trader is required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market and shall engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for, or a temporary distortion of the price relationships between, the product(s) in which he is trading and the security(ies) underlying or otherwise related to such product(s).

(t) A Registered Trader, when establishing or increasing a position in the securities described in paragraph (o) above for any account in which he has an interest, must initiate such transactions in AEMI for those transactions to be considered Registered Trader transactions. Except as otherwise determined by the Exchange, a minimum of 25% of a Registered Trader's share volume and a minimum of 25% of a Registered Trader's total number of transactions in any calendar quarter must be executed in person and not through the use of orders entrusted to a broker or specialist, provided, however, that for any calendar quarter in which a Registered Trader receives Registered Trader treatment for off-floor orders in accordance with Commentary .02 of this Rule, in addition to satisfying the requirements of Commentary .03 of this Rule, the Registered Trader must execute in person, and not through the use of orders entrusted to a broker or specialist, at least 80% of his total transactions and share volume.

(u) Registered Traders and specialists are required to compete with each other to improve the quoted markets in all securities which they trade. Unless otherwise provided for in Exchange rules, it shall be a violation of just and equitable principles of trade for Registered Traders and specialists to determine by agreement the spreads or prices at which they will trade any security, or the allocation of orders in any security. In complying with this Rule, the Registered Traders and specialist must make independent decisions to determine the spreads or prices at which they will quote and trade any security. There are, however, certain specific circumstances where to make fair and orderly markets that are competitive with other exchanges and responsive to the needs and expectations of investors, some communication among the specialist and Registered Traders may be necessary and appropriate. Therefore, notwithstanding the foregoing:

(i) Registered Traders are expected to participate in and support Exchange-sponsored automated systems such as automatic quote and execution systems or Exchange-approved equivalents.

(ii) The obligation of Registered Traders to make competitive markets does not preclude Registered Traders and specialists from making a collective response to

a request for a market provided the member representing such order requests such response and the size of the order is larger than the size disseminated in AEMI. In addition, the specialist may unilaterally give a single bid (offer) in response to a request for a market and subsequently discuss with the Registered Traders whether they wish to participate in volume executed in accordance with that bid (offer). The allocation of shares executed in accordance with this paragraph will be done in accordance with the Exchange's rules of priority and parity set forth in Rule 126—AEMI; and

(iii) In conjunction with their obligation as the responsible broker or dealer pursuant to Rule 602 under Regulation NMS under the Securities Exchange Act of 1934, specialists and Registered Traders may collectively agree to the best bid, best offer and aggregate quotation size required to be communicated to AEMI.

### •••Commentary

.01 The following is a reprint of pages 33 through 35 of Securities Exchange Act Release No. 15533 regarding bona fide hedging (January 29, 1979):

Section 11(a)(1)(D) also provides an exemption for "any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security. . . ." The Act does not otherwise specify what type of transaction will result in a "bona fide hedge." While the application of that term is largely a matter of custom and practice, the Commission believes that it implies that an appreciable offset of risk, for all or part of the position being hedged, must be involved. \*

A bona fide hedge may be established either by contemporaneous transactions in two securities where each position acquired reduces the risk of the other\*\*, or by a single transaction in which a position acquired in one security reduces the risk of a previously established position in another security.\*\*\* To the extent, however, that a position does more than offset the risk of the position or positions on the other side, the excess position is not part of a "bona fide hedge" for purposes of Section 11(a)(1)(D). Where a bona fide hedge has been established, the exemption under Section 11(a)(1)(D) also applies to the transaction or transactions that liquidate the hedge.\*\*\*\*

\*For example, while the risk of a short stock position might theoretically be reduced by a "deep-out-of-the-money" long call position, there generally would not be any realistic expectation that the call would offset any appreciable amount of the risk assumed in the short stock position. In such a case the two positions would not involve a bona fide hedge for purposes of Section 11(a)(1)(D). At the same time, a transaction establishing an "in-the-money" or "near-the-money" long call position covering 100 underlying shares of stock could be a hedge transaction for purposes of Section 11(a)(1)(D) for part of a preexisting short stock position of much greater size.

The question whether particular combinations of stock positions and options positions result in risk reduction in each of the positions involves subjective judgments as to the volatility and risk characteristics of those positions. For example, "ratio" hedges are frequently used when the risk involved in a stock position is offset by the writing of options. In such ratio hedges, the number of underlying shares deliverable upon exercise of the options exceeds the number of shares in the stock position that is being

hedged. The hedge ratio reflects a calculation of the relative degree of risk involved in each position. In establishing a suitable ratio, some industry participants use the "delta factor" derived from the Black-Scholes pricing formula; the delta factor predicts price movements in an option as a function of movements in the underlying stock. Other industry participants have developed their own models. The Commission recognizes that the calculation of volatility and risk can only be approximate, and believes that, for purposes of Section 11(a)(1)(D), the determination of what constitutes an offset may be made by the use of any responsible method of calculating the risk of stock and options positions.\*

\*\*For example, a bona fide hedge may involve essentially contemporaneous transactions in a stock and in one or more options to buy or sell that stock where the stock and option positions so acquired reduce the risks of each other. Where a bona fide hedge position is established by contemporaneous transactions, each such transaction qualifies for the hedge exemption.

In addition, the Commission recognizes that the "legging in" technique discussed above is used also in establishing hedges and that a similar "legging out" technique is used in liquidating some hedges. The Commission believes that, where either technique is used, the hedging exemption should apply on the same basis as is discussed above in connection with bona fide arbitrage. See text accompanying nn. 51-53, supra.\*\*

\*\*\*A transaction to hedge a previously established position does not retroactively confer a hedge exemption on the transaction that established the original position. For example, a short stock position that had been established on February 1 could be hedged by a long call transaction on March 1. In that example, only the March 1 long call transaction could qualify as a bona fide hedge transaction. The February 1 short stock transaction would not, even though it later became involved in a hedge; if the transaction establishing the February 1 position had violated Section 11(a), the violation would not be cured by the March 1 transaction.\*\*\*

\*\*\*\*When a hedge is liquidated, the hedge exemption applies to the transaction or transactions that eliminate the hedge, regardless of whether the transaction that originally established the position being liquidated was an exempt bona fide hedge transaction. If a hedge is eliminated by liquidating all the positions at the same time, or by legging them out, each liquidating transaction qualifies for the hedge exemption. For example, where a short stock position established on February 1 was hedged contemporaneously by a long call position, or was hedged at a later time (e.g., on March 1) by such a position, both positions could be liquidated, or "legged out," under the hedge exemptions. If, on the other hand, a hedge is eliminated by liquidating only one of the positions that constitute the hedge, only that liquidating transaction qualifies for the hedge exemption; transactions liquidating the remaining positions that had formerly been, but were no longer, part of an existing hedge would not qualify for the hedge exemption (unless a hedge had been reestablished involving those positions). For example, where the hedge referred to above was eliminated by the liquidation of only the February 1 short stock position, that transaction would qualify for the hedge exemption, but the later liquidation of the March 1 long call position would not qualify under the hedge exemption (unless a hedge had been reestablished by acquiring a third position -- e.g., another short stock position. \*\*\*\*)

.02 (a) A Registered Trader electing to engage in transactions in AEMI under this Rule is designated as a specialist on the Exchange for all purposes under the Securities Exchange Act of

1934 and the rules and regulations thereunder with respect to transactions initiated and effected by him in AEMI in his capacity as a Registered Trader.

(b) A Registered Trader electing to engage in transactions in AEMI under this Rule will also be designated as a specialist on the Exchange for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder with respect to transactions initiated by him from off the Floor in his capacity as a Registered Trader if he elects to receive Registered Trader treatment for off-Floor orders; provided, however, he must meet an 80% in person requirement instead of the 25% requirement described in paragraph (t) of this Rule and provided further that at least 75% of the Registered Trader's activity (measured in terms of share volume) must be in the Registered Trader's assigned securities. The off-Floor orders for which the Registered Trader receives Registered Trader treatment shall be subject to the obligations of this Rule and shall be effected only for the purpose of hedging, reducing risk of, rebalancing or liquidating positions of the Registered Trader.

.03 The Exchange has determined for purposes of paragraph (q) of this Rule that, except for unusual circumstances, at least 50% of the trading activity in any quarter (measured in terms of share volume) of a Registered Trader shall ordinarily be in securities to which he is assigned. Temporarily undertaking the obligations of paragraph (s) at the request of a Floor Official in a non-assigned security shall not be deemed trading in a non-assigned security. The Exchange may, in computing the percentage specified herein, assign a weighting factor based upon relative inactivity to one or more securities. Registered Traders receiving Registered Trader treatment for off-Floor orders in accordance with Commentary .02 of this Rule, must have at least 75% of their trading activity (measured in terms of share volume) in the securities in which they are assigned.

.04 The obligations of a Registered Trader with respect to those securities to which he is assigned shall take precedence over his other Registered Trader activities.

.05 The Exchange will assign Registered Traders to act in one or more securities. In making such assignments, the Exchange shall give attention to (a) the preference of applicants; (b) assuring that financial resources available to a Registered Trader enable him to satisfy the obligations set forth in this Rule; (c) the applicant's expertise in trading; and (d) the applicant's prior market performance. The Exchange may suspend or terminate any assignment of a Registered Trader under this Rule and may make additional assignments whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action.

### **Suspension of Registration of Registered Trader**

**Rule 112—AEMI.** The Exchange may suspend the registration of any Registered Trader who is found to have violated the provisions of Rules 108–AEMI, 109–AEMI, or 110–AEMI. Such suspension may be imposed in addition to or in lieu of any penalty which may be imposed under Article V of the Constitution.

### **Exchange Procedures for Use of Unusual Market Exception**

**Rule 115—AEMI.** Pursuant to Rule 602 under Regulation NMS governing the dissemination of quotations for equity securities reported on the consolidated tape, if the Exchange determines, in accordance with the procedures set forth in the commentary to this rule, that the level of trading activity or the existence of unusual market conditions is such that the

Exchange cannot collect, process and make available quotation data in a manner which accurately reflects the current state of the market on the floor of the Exchange, the Exchange shall immediately notify the persons specified in paragraph 3 of the commentary and, upon such notification, the obligation imposed upon Exchange members and the Exchange by Rule 602 under Regulation NMS shall be suspended, pending a determination by the Exchange that the unusual market activity or condition has terminated and renotification of the specified persons.

### **...Commentary**

#### .01 Exchange Procedures for Use of “Unusual Market Exception” Provided by Rule 602 under Regulation NMS

1(a). If a specialist or Registered Trader is unable to update his quotations on a timely basis owing to the high level of trading activity or the existence of an unusual market condition, he shall promptly notify a Floor Official. An example of an unusual market condition affecting a specialist's ability to promptly communicate quotation data would be a situation where the high level of activity in one security affects the specialist's ability to update quotation data in any other security for which he has responsibility, or where, due to unforeseen circumstances beyond the specialist's control, he is temporarily required to assume responsibility for an unusually large number of securities assigned to his specialist unit.

1(b). Upon notification by a specialist or Registered Trader, the Floor Official, with the advice and participation of a member of the regulatory staff, shall promptly verify the existence of the unusual market activity or condition and if, in his judgment, the specialist or Registered Trader is unable to update his quotations on a timely basis, the Floor Official shall promptly notify the Market Operations Division of the Exchange. If a Floor Official, independent of notification by a specialist or Registered Trader, becomes aware of any unusual market activity or condition which adversely affects a specialist's or Registered Trader's ability to promptly communicate quotation data, he shall likewise, with the advice and participation of a member of the regulatory staff, promptly advise the Market Operations Division. If the existence of the unusual market activity or condition should result in a specialist not publishing a quotation for one or more of its specialty securities, the Floor Official shall consult with the Market Operations Division to determine whether to declare a non-regulatory halt in such security or securities based on the absence of the specialist from that market. In the absence of such a non-regulatory halt, incoming orders would continue to execute against orders for the security or securities in the AEMI Book. If a Registered Trader, on the other hand, is unable to publish a quotation in a security, he may withdraw or cancel his quotation and inform the Market Operations Division afterward, since he does not have the same quoting obligations of a specialist as specified in Rule 170—AEMI(d). In addition, the absence of a quotation from a Registered Trader would not be a basis for a non-regulatory halt in the related security.

1(c). In the event that quotes being generated for the specialist or a Registered Trader by AEMI's Auto-Quote function are determined by the Service Desk or by the specialist or Registered Trader to be incorrect, the Market Operations Division will disable the operation of Auto-Quote. If the specialist is utilizing Auto-Quote at the time it is disabled, AEMI shall automatically input the then current automated NBBO as the specialist's bid and offer to facilitate the specialist's continuity responsibility under Rule 170—AEMI(d) (an obligation a Registered Trader does not have). Further updates to the specialist's quotation shall be entered by the specialist without utilizing Auto-Quote until the problem causing the unusual market condition is resolved. Similarly, in the event that streaming quotes being

generated by a proprietary system and submitted to AEMI on behalf of the specialist or a Registered Trader are determined by the Service Desk or by the specialist or Registered Trader to be incorrect, the Market Operations Division will instruct AEMI to reject new streamed-in quotations. If the specialist is utilizing streaming quotations at the time that rejection of such quotations is implemented, AEMI shall automatically input the then current automated NBBO as the specialist's bid and offer to facilitate the specialist's continuity responsibility under Rule 170—AEMI(d) (an obligation a Registered Trader does not have). Further updates to the specialist's quotation shall be entered by the specialist without utilizing streaming quotations until the problem causing the unusual market condition is resolved. In each of the foregoing instances, the action taken by the Market Operations Division with respect to the unusual market condition may be implemented on any of the following bases: (i) by individual specialist or Registered Trader, (ii) by firm, (iii) for all AEMI users, or (iv) by symbol or symbol category.

2. If the Exchange (as opposed to the specialist or a Registered Trader) is unable to accurately collect, process, and/or disseminate quotation data in one or more securities owing to the high level of trading activity or the existence of unusual market conditions, AEMI shall immediately disable Auto-Ex and disseminate the indicator "N" to indicate that the Amex's quotation, if a trading halt has not been declared and quotations are being published for such security or securities, is not firm. (See Rule 123—AEMI(h) regarding the circumstances under which bids and offers in AEMI are firm and when a non-firm indicator would be disseminated.) An unusual market condition affecting the Exchange's ability to disseminate quotation data would include, but not be limited to, situations where the equipment used to collect, process, and disseminate quotations data becomes inoperable.

3. The Market Operations Division, either upon receiving notification from a Floor Official with respect to a specialist or Registered Trader as provided in paragraph 1(b) or when AEMI disseminates the indicator "N" to indicate that the Amex's quotation is not firm because the Exchange is unable to accurately collect, process and/or disseminate quotations data, shall notify the Securities Industry Automation Corporation ("SIAC") (and request that it notify quotation vendors) or, with respect to Nasdaq securities to which the Exchange has extended unlisted trading privileges, the Processor for Nasdaq securities, regarding the Exchange's inability to accurately collect, process, and make available the quotation data for the particular security or securities required by Rule 602 under Regulation NMS.

4. After a Floor Official has given notification with respect to a specialist or Registered Trader as provided in paragraph 1(b) or AEMI disseminates the indicator "N" to indicate that the Amex's quotation is not firm because the Exchange is unable to accurately collect, process and/or disseminate quotations data, the Floor Official, with the advice and participation of a member of the regulatory staff, or the Market Operations Division (as the case may be) shall monitor the unusual market activity or condition until it has terminated. Thereupon, the Market Operations Division shall immediately renotify SIAC (and request that it renotify quotations vendors) or, with respect to Nasdaq securities to which the Exchange has extended unlisted trading privileges, the Processor for Nasdaq securities, that the Exchange is once again capable of disseminating the quotation data for the particular security or securities required by Rule 602 under Regulation NMS.

## **Trading in Nasdaq Securities**

### **Rule 118—AEMI. (a) Definitions**

(i) The term “Nasdaq security” shall mean any security (i) designated as an Eligible Security pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“Plan”), as amended, filed with and approved by the Commission pursuant to SEC Rule 11Ac1-1 (subsequently replaced by Rule 600 of Regulation NMS) and (ii) that is either listed on the Exchange pursuant to the Company Guide or as to which the Exchange has extended unlisted trading privileges pursuant to Section 12(f) of the Securities Exchange Act of 1934.

(ii) The term “Nasdaq System” shall mean the Nasdaq's Automated Quotation System and any system operated by the Nasdaq Stock Market.

(b) Except to the extent that the provisions of Rule 118–AEMI govern, or unless the context otherwise requires, the provisions of the Constitution and Rules of the Exchange are applicable to trading in Nasdaq securities.

(c) The Exchange will display on its trading floor the quotations distributed by any Nasdaq System market maker in Nasdaq securities. Exchange specialists may send orders from the Floor of the Exchange for execution to any Nasdaq System market maker in each Nasdaq security in which it displays quotations. Quotations in Nasdaq securities from other market centers shall have no standing in the trading crowds on the Floor.

(d) Pursuant to the Plan, the Exchange shall report to the Plan Processor intermarket transactions effected on the Exchange for which the Exchange member is the seller.

(e) Registration of Specialists—Specialists who wish to trade Nasdaq securities must be registered and qualified by the Exchange.

(f) Non-Liability of Exchange—Article IV, Section 1(e) of the Exchange Constitution shall apply to trading of Nasdaq securities on the Exchange pursuant to unlisted trading privileges, and the Exchange, its affiliates, and any of its or their respective officers, governors, committee members, employees or agents shall not be liable to a member of the Exchange, a member organization, or a person associated with a member or member organization to the extent provided in Article IV, Section 1(e).

(g) Specialists in Nasdaq securities are subject to the financial requirements set forth in Rule 171, Commentary .04.

(h) Odd-Lot Orders—Odd lot orders in Nasdaq securities shall be executed pursuant to the procedures in Rule 205–AEMI (“Manner of Executing Odd-Lot Orders”).

(i) Expiration Day Auxiliary Procedures for the Opening--The Exchange has adopted auxiliary procedures for expiration days in order to integrate stock orders in Nasdaq securities relating to expiring index contracts into the Amex's opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices in the underlying security, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation) and the four end-of-calendar-quarter trading days when index options expire. The

twelve expiration Fridays are “Expiration Fridays” which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month. Orders relating to index contracts whose settlement pricing is based upon the “Expiration Fridays” or the end-of-calendar-quarter trading day's opening prices must be received by AEMI by 9:00 a.m. These orders may be cancelled or reduced in size. Firms canceling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 153–ATS provides. Stock orders relating to index contracts whose settlement pricing is not based upon the “Expiration Fridays” or the end-of-calendar-quarter trading day's opening prices may be entered before or after 9:00 a.m. To facilitate early order entry, AEMI will begin accepting orders at 7:30 a.m.

### **Order Identification**

Stock orders relating to opening-price settling contracts must be identified “OPG” and marked with an audit trail code identifying them as related to an index related derivative.

### **Dissemination of Order Imbalances**

On expiration days, for any stocks having a market order imbalance of 25,000 shares or more at 9:00 a.m., the Exchange will disseminate the size of the order imbalance via a structured communication process established with major news vendors as promptly as practicable after 9:00 a.m. Imbalances of less than 25,000 shares may be disseminated at that time with Floor Official approval. A “no imbalance” status will not be published for any stock.

Except for the auxiliary procedures described above, all stocks are subject to the regular Amex opening procedures, including price indications where a 10 percent price change from the prior close is anticipated. Ten minutes must elapse between a first indication and a stock's opening. However, when more than one indication is necessary, a stock may open five minutes after the last indication provided that ten minutes must have elapsed from the dissemination of the first indication.

### **Indications**

Indications before the opening should be disseminated at 9:15 a.m., if possible, but any indications disseminated prior to 9:30 a.m. require the approval of a Floor Governor or Exchange Official, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day. Indications will be disseminated via a structured communication process established with major news vendors.

(j) Market-on-Close and Limit-on-Close Orders—The following procedures apply to market-on-close (MOC) and limit-on-close (LOC) orders in Nasdaq securities. Notwithstanding the foregoing, the following procedures will not apply to any Nasdaq security the pricing of which is based on another security or an index (e.g., Exchange Traded Funds). Members and member organizations must enter all MOC and LOC orders into AEMI if they want them to be eligible to participate in the closing. MOC and LOC orders not entered in AEMI by the applicable deadlines will not participate in the closing. Orders entered after the deadline that do not offset a published imbalance will be rejected.

(i) A market at the close (MOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price. If the MOC order cannot be executed in its entirety at the

Exchange closing price it will be cancelled. A limit at the close (LOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price if that closing price is at the order's limit price, or better. If the LOC order cannot be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. AEMI will cancel MOC and LOC orders only in certain circumstances such as (1) when trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the Amex closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

(ii) In an attempt to minimize price volatility on the close, all market-on-close (MOC) and limit-on-close (LOC) orders should be entered as early in the day as possible to provide market participants an opportunity to better ascertain possible order imbalances that might exist at the close.

Between 3:00 and 3:40 p.m. (Eastern Time), imbalances of any size may be published with Floor Official approval. These are informational only and do not limit MOC/LOC order entry before 3:40 p.m.

(a) At or as soon after 3:40 p.m. as possible, AEMI shall publish MOC order imbalances of 25,000 shares or more. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders will result in a closing price which exceeds the price change parameters of Rule 154—AEMI(e) (the 1%, \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. A "No Imbalance" notice will only be published for any stock at 3:40 p.m. if there had been a prior informational imbalance publication.

(1) MOC Imbalance Calculation Policy (3:40 p.m. calculation): Marketable LOC orders to buy (that is, LOC buy orders with limit prices above the consolidated last sale at 3:40 p.m.) are added to MOC orders to buy. Marketable LOC orders to sell, (that is, LOC orders with limit prices below the consolidated last sale at 3:40 p.m.) are added to MOC orders to sell. The buy orders are then matched against sell orders to calculate the imbalance. If there is a buy imbalance, it is offset and reduced by any tick-sensitive MOC orders to sell and tick-sensitive, marketable LOC orders to sell. If there is a sell imbalance, it is offset and reduced by any tick-sensitive MOC orders to buy and tick-sensitive, marketable LOC orders to buy. Tick-sensitive MOC and LOC orders whose execution would violate customer restrictions or the SEC's short sale rules at the time of publication will not be reflected in the closing imbalances.

At or as soon after 3:50 p.m. as possible, AEMI shall publish MOC order imbalances of 25,000 shares or more. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders will result in a closing price which exceeds the price change parameters of Rule 154—AEMI(e) (the 1%, \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. If there had been an imbalance publication at 3:40 p.m. and the imbalance at 3:50 p.m. is less than 25,000 shares, either a

"No Imbalance" notice will be published, or the size and side of the imbalance may be published with Floor Official approval.

MOC Imbalance Calculation Policy (3:50 p.m. calculation): Procedures for the 3:50 p.m. calculation are the same as the 3:40 p.m. calculation, except that the consolidated last sale at 3:50 p.m. would be used to determine whether or not a LOC order is marketable.

(2) Between 3:40 p.m. and 3:50 p.m., no MOC or LOC orders may be entered except to offset a published MOC imbalance at 3:40 p.m.

Between 3:40 p.m. and 3:50 p.m., MOC and LOC orders are irrevocable, except to correct an error (e.g., incorrect stock, side, size, or price, or a duplication of a previously entered order). Properly cancelled MOC and LOC orders may not be replaced after 3:40 p.m. unless the replacement order offsets a published MOC imbalance.

After 3:50 p.m., no MOC or LOC orders may be entered except to offset a published MOC imbalance at 3:50 p.m.

Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. will not be permitted for any reason, including in case of legitimate error.

(b) Publication of Imbalances Following Trading Halt of Any Type: AEMI shall publish MOC order imbalances of 25,000 shares or more in the event a stock reopens after 3:50 p.m. following a trading halt of any type. An imbalance of less than 25,000 shares may be published with the concurrence of a Floor Official. Trading will not resume in the event a trading halt in a stock occurs after 3:55 p.m., and MOC/LOC orders in that stock shall be cancelled by AEMI.

(c) Entry of MOC/LOC Orders During a Regulatory Halt. If a regulatory halt is in effect at 3:40 p.m. or occurs after that time, the entry of MOC/LOC orders is permitted until 3:50 p.m. or until the security reopens, whichever occurs first. If an order imbalance is published following a regulatory halt and reopening after 3:40 p.m., the entry of MOC/LOC orders is permitted only to offset the published imbalance.

(d) Cancellation of MOC/LOC Orders During a Regulatory Halt. When a regulatory halt (news pending or news dissemination) is in effect at 3:40 p.m. or occurs after that time, cancellation of MOC/LOC orders is permitted until 3:50 p.m. or the reopening of the security, whichever occurs first. This policy does not apply to non-regulatory (e.g., order imbalance or equipment changeover) halts, and cancellation of orders in such cases is prohibited after 3:40 p.m. except to correct an error.

Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. will not be permitted for any reason, including in case of legitimate error.

(iii) Printing the Close:

Where there is an imbalance between the buy and sell MOC and marketable LOC orders, the specialist shall, at the close or as soon after the close of trading in the security as practicable, execute the imbalance at an auction price under prevailing market conditions that is consistent

with auction market procedures. The specialist shall conduct a post trade allocation with respect to the shares necessary to off-set the imbalance of buy/sell interest at the closing price, and AEMI will then send notification of individual trades to active crowd participants, consisting of Registered Traders in the crowd with a bid or offer on the AEMI Book on the contra side of the imbalance and Floor Brokers with a Crowd Order on the contra side of the imbalance, in each case at the time of the trade (e.g., brokers with offers in AEMI when there is an imbalance of buy orders).

Following the printing of the imbalance, AEMI shall pair-off and execute the remaining executable buy and sell orders against each other at the price of the imbalance trade described above. The "pair-off" transaction shall be reported to the tape with an appropriate indicator.<sup>1</sup> Subsequently, AEMI shall execute at that same price stop orders and percentage orders on the AEMI Book elected by the execution of the MOC and marketable LOC imbalance at the price of the imbalance trade as provided below if they are executable.

Where the aggregate size of the MOC (and marketable LOC, i.e., orders with limits above the closing price) orders to buy equals the aggregate size of the MOC (and marketable LOC, i.e., orders with limits below the closing price) orders to sell, the specialist shall pair-off the buy orders and sell orders and execute them at the price of the last regular way consolidated sale prior to the close of trading in that stock on that day. The transaction shall be reported to the tape with the same indicator as the pair-off transaction discussed in the prior paragraph. Stop orders and percentage orders will not be elected by the execution of the pair-off trade.

(iv) Order of Execution of Orders, Bids and Offers on the Close

AEMI shall execute orders, bids and offers in the AEMI Book in the following order:

1. Market orders, including market on-close orders.
2. Buy limit orders (including LOC orders) and bids with limit prices greater than the closing price, and sell limit orders (including LOC orders) and offers with limit prices below the closing price,
3. Regular and on-close buy minus orders and bids executable higher than the closing price, and regular and on-close sell plus and sell short orders executable below the closing price
4. Limit orders (including LOC orders), bids and offers with limit prices equal to the closing price,
5. Regular and on-close buy minus orders limited to the closing price.
6. For securities that are subject to the "tick" test of Amex Rule 7, an order to sell short limited to the closing price,
7. On-close sell long plus orders limited to the closing price.

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<sup>1</sup> Such indicator is intended to alert other market participants that (i) there is trading ahead of limit orders, bids or offers on AEMI and (ii) such market participants with orders, bids or offers limited to the price of the transaction being reported are not eligible to participate in the print.

Orders, bids and offers listed in items 1 through 3 above, including any reserve size of such orders, are Must Trade Orders and shall be executed by AEMI at the closing price. Orders, bids and offers listed in items 4 through 7 are May Trade Orders and shall be executed by AEMI only if there is sufficient contra interest in AEMI to execute them. AEMI shall execute all customer orders in ETFs in items 4 through 7 above collectively before it executes any broker/dealer orders in any of these four categories.

Stop and percentage orders in the AEMI Book elected by the execution of the imbalance trade shall be executed in the following sequence:

8. Buy stops with stop prices equal to or less than the closing price, and sell stops with stop prices equal to or greater than the closing price,
9. Buy stop limits with stop prices equal to or less than the closing price and with limit prices greater than the closing price; and sell stop limits with stop prices equal to or greater than the closing price and with limit prices less than the closing price,
10. Buy stop limit orders with stop prices equal to or greater than the closing price and with limit prices equal to the closing price, and sell stop limit orders with stop prices equal to or less than the closing price and with limit prices equal to the closing price,
11. Buy percentage orders with a limit price equal to the closing price and sell percentage orders with a limit price equal to the closing price.

Stop orders listed in items 8 through 9 above are Must Trade Orders and shall be executed by AEMI at the closing price. Stop and percentage orders listed in items 10 and 11 are May Trade Orders and shall be executed by AEMI only if there is sufficient interest in AEMI to execute them. AEMI, moreover, shall execute all customer orders in ETFs in items 10 and 11 above collectively before it executes any broker/dealer orders in either of these two categories.

(k) Clearly Erroneous Transactions in Nasdaq Securities –

(i) A Floor Official shall, pursuant to the procedures set forth below, have the authority to review any transaction in a Nasdaq security that is claimed to be clearly erroneous arising out of the use or operation of any facility of the Exchange. A member of the regulatory staff shall advise and participate in all steps of the Floor Official's review of the transaction. In reviewing a trade in a Nasdaq security that is claimed to be clearly erroneous, a Floor Official shall review the transaction with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the Floor Official shall decline to "break" or modify a disputed transaction if the Floor Official believes that the transaction under dispute is not clearly erroneous. If the Floor Official determines the transaction in dispute is clearly erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Floor Official shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(ii) Any member who seeks to have a transaction reviewed pursuant to subparagraph (i) above shall submit the matter to a Floor Official and deliver a written complaint to Service Desk and the other member(s) who were part of the trade within 30 minutes of the transaction. Once a complaint has been received, the complainant shall have up to thirty 30 minutes, or such longer period as the Floor Official may specify, to submit any supporting written information concerning the complaint necessary for a review of the transaction. The other member(s) that were part of the trade shall have up to thirty minutes after being notified of the complaint, or such longer period as specified by the Floor Official, to submit any supporting written information concerning the complaint necessary for a review of the transaction. Any member on a disputed trade may request the written information provided by the other member(s) pursuant to this subparagraph. Once a member communicates that he or she does not intend to submit any further information concerning a complaint, the member may not thereafter provide additional information unless requested to do so by the Floor Official. If the member(s) involved in a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately considered by a Floor Official. Members or persons associated with members and member organizations involved in the transaction shall provide the Floor Official with any information that he or she requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth above. Once a member has applied to a Floor Official for a ruling, the Floor Official, with the advice and participation of a member of the regulatory staff, shall review the transaction and make a ruling unless all members on the transaction agree to withdraw the application for review prior to the time that the Floor Official makes the ruling. A member may seek review of a Floor Official's ruling pursuant to the procedures described in Rule 22(d) and Commentary .02 to Rule 22.

(iii) In the event of (1) a disruption or malfunction in the use or operation of any facility of the Exchange, (2) a disruption or malfunction in the use or operation of any facility of Nasdaq that results in Nasdaq nullifying or modifying trades in the Nasdaq market pursuant to its rules, or (3) extraordinary market conditions or other circumstances in which the nullification or modification of transactions executed on the Exchange in Nasdaq securities may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, a Senior Floor Official may review any transactions arising out of or reported through any facility of the Exchange; provided, however, that a Senior Floor Official may not review transactions arising out of the use or operation of any execution or communication system owned or operated by Nasdaq. A Senior Floor Official shall review the transaction with the advice and participation of a member of the regulatory staff. Prior to the nullification or modification of transactions as a result of a disruption or malfunction in the use or operation of any facility of Nasdaq, the Exchange must receive confirmation from NASD or Nasdaq that there is a disruption or malfunction on Nasdaq's market that has resulted in the nullification or modification of trades in that market. A Senior Floor Official acting pursuant to this subsection may declare any Amex transaction null and void or modify the terms of any such transactions if the Senior Floor Official determines that (1) the transaction is clearly erroneous, or (2) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the Senior Floor Official must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction, but in no event later than 3:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. A member may seek review of a Senior Floor Official's ruling from a three Senior Floor Official Panel as described in Rule 22(d) and Commentary .02 to Rule 22 without first seeking review of the ruling from a Floor Official or Exchange Official.

(l) Half-Point Error Guarantee. The provisions of Rule 129 shall not apply to orders for Nasdaq securities of 1,000 shares or less received by the specialist through AEMI. As to such orders, erroneous execution reports sent by the specialist via AEMI shall be binding except that (i) if the erroneous report is at a price which is more than \$.50 away from the execution price, then the price of the execution shall be binding, and (ii) if the member organization that entered the order requests a correction from the specialist prior to the opening on the second business day following the day of the transaction, the specialist shall correct the execution report to the price of the execution and that price shall be binding. If the erroneous execution report sent by the specialist is at a price which is more than \$.50 away from the execution price and if a transaction has appeared on the tape at the price of the erroneous report and in a quantity equal to or exceeding the amount reported, the specialist must render a corrected report no later than noon on the business day following the day of the transaction. If not so corrected, the specialist will be responsible for any resulting loss. However, as to limit orders, erroneous execution reports sent by the specialist shall also not be binding where the subject security did not trade at or below (or above, as the case may be) the limit price specified on the order on that trading day.

(m) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to Nasdaq securities after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his account.

### **••Commentary**

.01 The following rules refer to trading in Nasdaq securities and should be consulted by members and member organizations trading Nasdaq securities on the Floor: Rule 1 (Commentary .05); Rule 3; Rule 7 (Commentary .02); Rule 115—AEMI (Commentary .01); Rule 131—AEMI (Commentaries .02 and .03); Rule 170—AEMI (Commentary .10); Rule 175; Rule 190 (Commentary .06); and Rule 205—AEMI (Commentary .05).

.02 Notwithstanding any of the foregoing provisions of this rule to the contrary, with respect to Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges, the Exchange specialist registered in such a security shall have the discretion to determine whether or not to publish order imbalances in that security.

### **Indications, Openings and Reopenings**

**Rule 119—AEMI.** Except as provided elsewhere in the Constitution and Rules of the Exchange, this Rule shall govern indications, openings and (re)openings of securities traded on the Exchange.

(1) Mandatory Indications: When Commencement is Permitted — A specialist is required to disseminate indications of interest prior to (re)opening trading in a previously halted stock or in the event of a delayed opening as follows:

(a) Regulatory Halts – A specialist may commence disseminating indications of interest in a stock subject to a Regulatory Halt when the Exchange determines that an adequate publication or disclosure of information has occurred so as to permit the termination of the halt and a Floor Official approves the dissemination of indications of interest for the stock. In the case of an inter-day Regulatory Halt (i.e., a halt which remains in effect from the preceding trading day) such approval may include disseminations of interest before the Exchange opens for business.

(b) Non-Regulatory Halts – A specialist may commence disseminating indications of interest in a stock subject to a Non-Regulatory Halt when an Exchange Official or Floor Governor approves such dissemination, in consultation with a Floor Official when appropriate. In the case of an inter-day Non-Regulatory Halt, such approval may include disseminations of interest before the Exchange opens for business.

(c) Delayed Openings – A specialist may commence disseminating indications of interest in a stock subject to delayed opening other than by reason of an inter-day Regulatory Halt, when an Exchange Official or Floor Governor approves. An opening shall be considered delayed for purposes of this Rule if the specialist has not opened the security within one half hour of its regularly scheduled opening.

(d) "Regulatory Halt" Defined – For the purposes of this policy, "Regulatory Halt" has the meaning that the CTA Plan assigns to it.

(e) "Circuit Breaker" Halts – Dissemination of an indication shall be mandatory prior to the reopening of trading following a "circuit breaker" halt under Rule 117 if such reopening will result in a price change constituting the lesser of 10% or three points from the last sale reported on the AMEX, or five points if the previous reported last sale is \$100 or higher. No indications would be required if the price change is less than one point. If, on any day that Rule 117 halt is in effect, trading in a security has not reopened by one-half hour after resumption of trading on the Exchange, the matter should be treated as a delayed opening, and would require an indication as well as a Floor Official's supervision.

(f) Gap Openings – Dissemination of an indication shall be mandatory prior to an opening if such opening would result in a price change of 10% or more from (1) the last sale reported on the Amex, (2) the offering price of the security in the case of an initial public offering, or (3) the last reported sale on a securities market from which the security is being transferred.

(2) Optional Indications

(a) Spin-Offs, IPOs, Etc. – Prior to the commencement of trading in a stock for which there has been no prior public market, the specialist in the stock may disseminate indications of interest for the stock if an Exchange Official or Floor Governor approves. In the case of a spin-off, any Floor Official may approve such dissemination which may include dissemination before the Exchange opens for business.

(b) Other Opening Situations – In any opening situation not specified above, the specialist in the affected stock may disseminate indications of interest for the stock before the Exchange opens for business if an Exchange Official or Floor Governor approves, and thereafter if any Floor Official approves.

(3) Waiting Periods Before (Re)Opening

(a) Periods Specified – The specialist may not (re)open a stock that has been the subject of an indication pursuant to paragraphs (1) and (2) above until:

- (i) Ten minutes after an indication is displayed, except that the minimum halt period shall be five minutes after an indication is displayed in the case of an equipment change over halt condition, in each case, unless clause ii applies;
- (ii) Five minutes after an indication is displayed if one or more indications preceded it. However, regardless of the number of indications disseminated, the minimum waiting period is ten minutes. For example, if only 3 minutes elapsed from the time of the first indication to the second indication, the minimum waiting period after the second indication would be 7 minutes.
- (iii) With respect to a post-opening trading halt, a minimum of five minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open three minutes after the last indication, provided that at least five minutes must have elapsed from the dissemination of the first indication.
- (iv) With respect to an equipment changeover trading halt during which no price dislocation is anticipated, five minutes must elapse between notice of the halt before trading may resume, but no indication or other publication other than the dissemination of the reason for the halt shall be necessary prior to the resumption of trading.

In the case of inter-day Non-Regulatory Halts, the Exchange Official or Floor Governor involved may dispense with the waiting period if no unusual situation exists prior to the opening of the affected stock. In the case of indications made pursuant to paragraph 2(b), the Exchange Official or Floor Governor involved may alter the applicable waiting periods to take into account the circumstances of the particular opening situation.

If during an equipment changeover trading halt in a stock, a significant order imbalance develops or a regulatory condition occurs (i.e., news pending or news dissemination) then the nature of the halt condition shall be changed accordingly, and notice of such change shall be disseminated. The minimum halt period prior to the resumption of trading in this case shall be ten minutes following the first indication after the new halt condition is disseminated.

“Significant Order Imbalance” Defined - For purposes of this subparagraph, a “significant order imbalance” is one which would result in a reopening at a price change constituting the greater of 1% or two points away from the last previous sale in a stock selling at \$20 or more, one point or more away from the last previous sale in a stock selling at \$10 or more (but less than \$20), and one/half point or more away from the last previous sale in a stock selling at less than \$10.

### **Manner of Bidding and Offering**

**Rule 123—AEMI.** (a) AEMI shall accept electronic bids and offers from the specialist and Registered Traders and include them in the AEMI Book. All bids and offers must state the number of shares bid for or offered. AEMI shall also accept orders from Floor Brokers standing in the crowd (Crowd Orders) and other orders transmitted to AEMI electronically and file all such orders in the AEMI Book. On the basis of this input of bids, offers and orders, AEMI shall disseminate the best quote on the Amex together with associated visible size to the tape. AEMI also shall disseminate an indicator to the tape whenever the Amex quote is not firm.

A Registered Trader who is not in the crowd for a security shall not submit a bid or offer to AEMI for that security but may give an order to a Floor Broker (a Crowd Order) or place an order on the Specialist Order Book for his account.

A Floor Broker who is not in the crowd for a security shall not submit a Crowd Order to AEMI for that security.

Members may make verbal bids and offers in the trading crowd provided that these bids/offers are deemed withdrawn if not immediately executed. Accordingly, verbal bids and offers will not be reflected in the APQ. All verbal bids and offers shall be deemed for a unit of trading unless the number of shares is expressed in the bid or offer. Since AEMI shall not recognize a verbal bid or offer in the crowd, trades executed in AEMI may trade through a verbal bid/offer without satisfying it.

(b) Specialists and Registered Traders may stream bids and offers into AEMI at one or multiple price points. Specialists may add resident liquidity to the AEMI Book at up to five price levels including the quote that each specialist provides to comply with the provisions of Rule 170—AEMI(d), and Registered Traders will also be permitted to add liquidity at five price levels on both sides of the market. All quotes provided by specialists and Registered Traders shall be two-sided quotes. Specialists and Registered Traders may also manually update their bids and offers in AEMI. No specialist or Registered Trader shall stream in a quote that locks or crosses an existing quote that the same specialist or Registered Trader has previously streamed in for the same security.

(c) When Auto-Ex is enabled, AEMI shall allow specialists to automatically generate proprietary bids and offers (Auto-Quote) based upon: (1) the Intra-day optimized Portfolio Value for ETFs, (2) the automated away market best bid, minus or without a price adjustment, or (3) the automated away market best offer, plus or without a price adjustment. If the specialist elects to Auto-Quote based upon the automated away market best bid or offer, the contra side of the specialist's quote shall be based upon a programmable spread to the bid or offer (a specified number of trading increments) selected by the specialist. AEMI shall not allow the specialist to generate bids and offers based upon both sides of the automated away market best bid or offer. A specialist also shall be able to program AEMI to set the parameters of the specialist emergency quote that AEMI will generate (a bid or offer or both) on the specialist's behalf in the event that he does not stream quotes and one or both sides of his quote are reduced below a size specified by the specialist.

(d) When Auto-Ex is enabled, AEMI shall allow Registered Traders to Auto-Quote based upon: (1) the Intra-day optimized Portfolio Value for ETFs, (2) the best bid or offer published by

the Amex, (3) the automated away market best bid, minus or without a price adjustment, or (4) the automated away market best offer, plus or without a price adjustment. If the Registered Trader elects to Auto-Quote based upon the automated away market best bid or offer, the contra side of the quote shall be based upon a programmable spread to the bid or offer (a specified number of trading increments) selected by the Registered Trader. AEMI shall not allow a Registered Trader to generate bids and offers based upon both sides of the APQ or the automated away market best bid or offer. If (i) a Registered Trader elects to Auto-Quote based on the APQ and (ii) that Registered Trader's quotation at any time represents the only interest on one side of the APQ, then AEMI, in determining the Auto-Quote prices for that Registered Trader, will exclude the APQ bid or offer quotation that is comprised solely of the Registered Trader's interest and will substitute the next best Amex bid or offer quotation.

(e) Except when Auto-Ex is disabled, AEMI shall immediately display any regular way limit order, bid or offer that would improve or add to the size of the APQ that is not executed upon receipt in the AEMI Book except for immediate or cancel, fill or kill, on-close, 4:00 p.m. cash close, or odd lot orders. AEMI also shall not display the reserve size of a Crowd Order until it is eligible for display.

(f) In the event that AEMI ships one or more orders, bids or offers to away markets to comply with Rule 611 or Rule 610 of the Commission's Regulation NMS, AEMI shall (1) suspend the shipped order, bid or offer, and (2) remove (or not incorporate) the suspended order, bid or offer from the Amex quote to the extent that it has been shipped. An order that has been shipped to another market is deemed to have been removed from the AEMI Book and, consequently, may not be traded against and may be traded through. If one or more of the shipped orders are returned unexecuted in whole or part by the away markets, the unexecuted portion of the suspended order, bid, or offer shall be incorporated or reinserted into AEMI and quoted or requoted with the same order time priority as it would have had if it had not been shipped; provided, however, that additional intermarket sweep orders to away markets shall be generated as required under Rule 611 of Regulation NMS in connection with the reaggregating of the AEMI Book by the unexecuted portion of the suspended order.

(g) The Exchange shall deem Floor members whose orders, bids and offers are incorporated into the APQ as the responsible broker or dealer for such quote pursuant to Rule 602 under Regulation NMS to the extent of such order, bid or offer. A Floor Broker shall be responsible for any Crowd Order that he enters into AEMI even if he leaves the crowd without withdrawing the Crowd Order. Failure to withdraw a Crowd Order when leaving the crowd, however, is not consistent with just and equitable principles of trade.

(h) Automated bids and offers disseminated through AEMI are firm until revised or withdrawn. Other bids and offers disseminated through AEMI, such as when the Exchange is conducting an auction or is unable to accurately collect, process and/or make available quotations under certain circumstances, are non-firm, and AEMI will disseminate a specified indicator<sup>2</sup> whenever the APQ is not firm. In conjunction with publishing a non-firm quote, AEMI will

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<sup>2</sup> The Exchange will use the indicator "N" to denote a non-firm quote in connection with the circumstances described in subsection (h)(i) above and the indicator "U" to denote a non-firm quote (and that the specialist is arranging an auction) in connection with either of the circumstances described in subsections (h)(ii) and (h)(iii) above. These quote indicators are not to be confused with the indicators "A," "B" and "H," which are for firm quotes and denote that a market center is not meeting the SEC's Regulation NMS definition of an automated market even though Auto-Ex is on.

disable Auto-Ex. The specific circumstances under which such a non-firm indicator will be disseminated are:

(i) The Exchange is incapable of collecting, processing and/or making available quotations in one or more securities due to the high level of trading activity or the existence of unusual market conditions (See Rule 115A—AEMI), or

(ii) Auto-Ex has been disabled due to the breach of a Tolerance (as defined in Rule 128A—AEMI(g)), and Auto-Ex and the dissemination of an automated quotation have not yet resumed (see conditions for Auto-Ex resumption described in Rule 128A—AEMI(g)), or

(iii) A gap quote situation exists due to an order imbalance, as described in Rule 170—AEMI(f).

**•••Commentary**

.01 Each AEMI user must follow the procedures set forth by the Exchange with regard to AEMI usage.

.02 Each AEMI user may access AEMI only by inputting his or her unique user profile. At no time may any AEMI user access AEMI through a user profile that is not his or her own. Each AEMI user is responsible for all actions performed under his or her user profile.

**Types of Bids and Offers**

**Rule 124—AEMI.** Bids and offers may specify only the following conditions:

**Regular way**

(a) “Regular way,” i.e., for delivery in accordance with the normal settlement cycle for the security, which can be either:

1. “Cash,” meaning delivery on the day of the contract. Bids and offers in expiring equity securities use “cash” as regular way delivery in accordance with procedures set forth in Rules 17 and 179;

2. “Next day,” meaning delivery on the next business day following the day of the contract. Bids and offers in expiring rights and warrants use “next day” as regular way delivery in accordance with procedures set forth in Rule 17; or

3. On the third business day following the day of the contract;

**Additional settlement periods**

(b) Any additional settlement periods as the Exchange may from time to time determine; or

**“When issued” and “when distributed”**

(c) “When issued” and “when distributed,” i.e., for delivery “when issued” or “when distributed” as determined by the Exchange.

### Precedence of Bids and Offers

Rule 126—AEMI. The following rules of precedence shall be observed with respect to all bids and offers:

1. Unless otherwise provided in these rules, the highest bid and lowest offer shall have priority.
2. As between bids (offers) at the same price, the following rules shall govern priority and parity in executing an aggressing order that cannot fill all interest at that price point.

(a) Establishing parity. A bid (offer) at a price shall be deemed to have the same priority as a prior-submitted bid (offer) at the same price (i.e., shall be "in parity" with the prior-submitted bid (offer)) in the following circumstances:

(i) If a bid (offer) in a security establishes a new highest bid (lowest offer), any bid (offer) in that security communicated to AEMI within 2 seconds of AEMI's receipt of the original bid (offer) shall be in parity with the original bid (offer) for the next trade.

(ii) If AEMI effects a trade in a security, all visible bids and offers in that security at each price point shall be on parity for the next trade, as well as any bid (offer) in that security communicated to AEMI within 2 seconds of the original trade.

(iii) If all bids (offers) at the APQ are canceled, all visible bids (offers) at each lower (higher) price point shall be in parity for the next trade, as well as any bid (offer) in that security communicated to AEMI within 2 seconds of the cancellation of the last remaining bid (offer). However, priority and parity of offers (bids) shall not be affected by the cancellation of the bids (offers) at the APQ.

(iv) Exceptions. Notwithstanding paragraphs (a)(i) to (iii) above, a bid (offer) in a security shall not be in parity with a prior-submitted bid (offer) in accordance with the following:

A. For a listed stock, UTP stock, or closed-end fund:

- I. An in-parity specialist bid (offer) shall yield to a public bid (offer).
- II. A specialist bid (offer) shall not participate in parity with a crowd bid (offer) if AEMI receives a public bid (offer) outside the in-parity time window contemplated by paragraph 2(a)(i), 2(a)(ii) or 2(a)(iii) above.
- III. If a specialist bid (offer) was or would have participated in parity but for the submission of one or more public bids (offers) pursuant to paragraph 2(a)(iv)(A)(I) or 2(a)(iv)(A)(II) above, and all such public bids (offers) are subsequently canceled before the next trade in that security, the specialist bid (offer) shall, for the next trade, regain the priority and parity status it held or would have held.

B. For an ETF or other equity-traded product that is not a listed stock, UTP stock, or closed-end fund:

- I. An in-parity broker/dealer bid (offer) (including that of a specialist) shall yield to a public customer bid (offer) or a crowd customer bid (offer).

II. If a specialist bid (offer) was or would have participated in parity but for the submission of one or more public customer bids (offers) or crowd customer bids (offers) pursuant to paragraph 2(a)(iv)(B)(I) above, and all such public customer bids (offers) and crowd customer bids (offers) are subsequently canceled before the next trade in that security, the specialist bid (offer) shall, for the next trade, regain the priority and parity status it held or would have held.

(v) Parity of refreshed size of reserve orders. If an aggressing order exhausts all visible size at a price and there are two or more reserve orders at that price at a priority level, the reserve orders shall refresh and the refreshed sizes of those reserve orders shall be in parity with each other. AEMI shall continue to execute the aggressing order until all size resulting from the first refreshment is exhausted. If the aggressing order has not yet been completely filled, the reserve orders shall refresh again and the refreshed sizes shall again be in parity with each other. AEMI shall repeat this process as necessary until (A) the aggressing order is fully executed or (B) the refreshed size at the priority level has been exhausted and no reserve size remains at that priority level.

The foregoing is illustrated by the following example. Assume an aggressing order trades out all visible size and there are 2,000 shares to execute as it gets to the reserve size. Both A and B have 10,000 shares in reserve. A refreshes the visible size 1,000 shares at a time; B refreshes the visible size 200 shares at a time. A and B each refresh, so A is now 1,000 up and B is now 200 up. The sequence of execution would be: A gets 100, B gets 100, A gets another 100, B gets another 100, and A gets 800 more, consuming the remainder of the first round of refreshed size. A and B now refresh, leaving 800 shares to allocate from the aggressing order. A is now 1,000 up and B is now 200 up again. A gets 100 more, B gets 100 more, A gets another 100, B gets another 100, and A gets the remaining 400. In total, A gets 1600 and B gets 400 even though both had the same amount in reserve.

(b) Allocation when executing aggressing order for a listed stock, UTP stock, or closed-end fund.

(i) If there are no public orders, priority is established as follows:

- A. visible size of crowd order(s) and/or specialist quote in parity
- B. visible size of crowd order(s) and/or specialist quote not in parity, based on time priority
- C. replenished reserve size (subject to paragraph 2(a)(v) above)
- D. portions of percentage orders elected by the above trade event<sup>3</sup>

(ii) If there are public order(s) that are in parity and no public orders outside the in-parity time window, priority is established as follows:

- A. visible size of public order(s) (includes passive manual conversion percentage orders)<sup>4</sup>, visible size of crowd order(s), and specialist quote in parity
- B. visible size of crowd order(s) and/or specialist quote not in parity, based on time priority

<sup>3</sup> Percentage orders are elected on a trade-by-trade basis and the elected size must be exhausted prior to the aggressing order moving to subsequent price levels on the AEMI Book. Elected percentage orders only trade after all visible and reserve size trades at a price point no matter the priority level.

<sup>4</sup> Percentage orders that are passive manually converted always join or form the APQ, so they are included in the public bucket.

- C. replenished reserve size (subject to paragraph 2(a)(v) above)
- D. portions of percentage orders elected by the above trade event

(iii) If there are no public orders in parity and one or more public orders that were received by AEMI outside the in-parity time window, priority is established as follows:

- A. visible size of crowd order(s) in parity
- B. visible size of crowd order(s) and public order(s) not in parity, based on time priority, until all public order(s) are executed in full
- C. specialist quote and any remaining crowd order(s) not in parity, based on time priority
- D. replenished reserve size (subject to paragraph 2(a)(v) above)
- E. portions of percentage orders elected by the above trade event

(iv) If there are public order(s) in parity and public order(s) that were received by AEMI outside the in-parity time window, priority is established as follows:

- A. visible size of public order(s) (includes passive manual conversion percentage orders) and crowd order(s) in parity
- B. visible size of public order(s) and crowd order(s) not in parity, based on time priority, until all public order(s) are executed in full
- C. specialist quote and any remaining crowd order(s) not in parity, based on time priority
- D. replenished reserve size (subject to paragraph 2(a)(v) above)
- E. portions of percentage orders elected by the above trade event

(c) Allocation when executing an aggressing order in an ETF or other equity-traded product that is not a listed stock, UTP stock, or closed-end fund.

(i) If there are no public customer orders or crowd customer orders at that price point, priority is established as follows:

- A. specialist quote, visible size of public non-customer order(s), and visible size of crowd non-customer order(s) in parity
- B. specialist quote and visible size of public non-customer order(s) and crowd non-customer order(s), not in parity, based on time priority
- C. replenished reserve size (subject to paragraph 2(a)(v) above)
- D. portions of percentage orders elected by the above trade event

(ii) If there are one or more public customer orders or crowd customer orders at that price point, priority is established as follows:

- A. visible size of public customer order(s) (includes passive manual conversion percentage orders)<sup>5</sup> and crowd customer order(s) in parity
- B. visible size of public customer order(s) and crowd customer order(s) not in parity, based on time priority
- C. specialist quote, visible size of public non-customer order(s), and visible size of crowd non-customer order(s) in parity

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<sup>5</sup> AEMI supports only customer percentage orders in ETFs. AEMI supports both customer and non-customer (broker/dealer) percentage orders in equities, UTP stocks and closed-end funds, but the system does not differentiate between the handling of customer and non-customer public orders for these securities.

- D. specialist quote, visible size of public non-customer order(s), and visible size of crowd non-customer order(s) not in parity, based on time priority
- E. replenished reserve size of crowd customer order(s) (subject to paragraph 2(a)(v) above)
- F. replenished reserve size of crowd non-customer order(s) (subject to paragraph 2(a)(v) above)
- G. portions of percentage orders elected by the above trade event

(d) Allocation for bids (offers) that are in parity at the same priority level. If the size of an aggressing order is smaller than the cumulative size of two or more bids (offers) at a priority level that are in parity, AEMI shall parity allocate the aggressing order quantity as follows:

(i) Allocation pursuant to paragraph 2(b)(i)(A) above.

- A. First, AEMI shall count all of the crowd orders in parity at the price point.<sup>6</sup> The specialist quote shall count as a single crowd order for this purpose.
- B. AEMI shall divide the size of the aggressing order by the number of crowd orders in parity as determined in paragraph A. The number of shares to be allocated to the specialist is arrived at by rounding the result up to the nearest round lot.
- C. AEMI shall then allocate the remaining amount of the aggressing order, after subtracting the allocation to the specialist determined in paragraph B, to the individual crowd orders in parity pursuant to an allocation wheel as provided in paragraph 2(d)(vii) below.

(ii) Allocation pursuant to paragraph 2(b)(ii)(A) above.

- A. First, AEMI shall count all of the crowd orders in parity at the price point. All of the public orders on the Specialist Order Book and the specialist quote shall together count as a single crowd order for this purpose.
- B. AEMI shall divide the size of the aggressing order by the number of crowd orders in parity as determined in paragraph A. The total number of shares to be allocated to the specialist quote and the public orders in parity, considered as a group, is arrived at by rounding the result up to the nearest round lot. From that quantity, the individual public orders in parity will be allocated shares in order time priority. The specialist quote shall not receive an allocation until all in-parity public orders have been filled.
- C. AEMI shall allocate the remaining amount of the aggressing order, after subtracting the total allocation to the specialist quote and public orders as determined in paragraph B, to the individual crowd orders in parity pursuant to an allocation wheel as provided in paragraph 2(d)(vii) below.

(iii) Allocation pursuant to paragraph 2(b)(iii)(A) above.

Because the specialist quote is not in parity and no in-parity public orders exist on the AEMI Book, AEMI shall allocate the aggressing order quantity to the in-parity crowd orders pursuant to an allocation wheel as provided in paragraph 2(d)(vii) below.

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<sup>6</sup> Crowd participants are allowed only one crowd order per price point, so AEMI uses the number of crowd orders on the AEMI Book as a proxy for determining the number of crowd participants. Crowd participants are prevented from receiving multiple in-parity allocations.

(iv) Allocation pursuant to paragraph 2(b)(iv)(A) above.

- A. First, AEMI shall count all of the crowd orders in parity at the price point. All of the public orders on the Specialist Order Book shall together count as a single crowd order for this purpose.
- B. AEMI shall divide the size of the aggressing order by the number of crowd orders in parity as determined in paragraph A. The total number of shares to be allocated to the public orders in parity is arrived at by rounding the result up to the nearest round lot. From that quantity, the individual public orders in parity will be allocated shares in order time priority.
- C. AEMI shall allocate the remaining amount of the aggressing order, after subtracting the total allocation to the public orders as determined in paragraph B, to the individual crowd orders in parity pursuant to an allocation wheel as provided in paragraph 2(d)(vii) below.

(v) Allocation pursuant to paragraph 2(c)(ii)(A) above.

- A. AEMI shall first count all of the crowd customer orders in parity at the price point. All of the public customer orders on the Specialist Order Book shall count as a single crowd customer order for this purpose.
- B. AEMI shall divide the remaining size of the aggressing order by the number of crowd customer orders in parity as determined in paragraph A. The total number of shares to be allocated to the public customer orders in parity is arrived at by rounding the result up to the nearest round lot. From that quantity, the individual public customer orders in parity will be allocated shares in order time priority.
- C. AEMI shall allocate the remaining amount of the aggressing order, after subtracting the allocation to the public customer orders as determined in paragraph B, to the individual crowd customer orders in parity pursuant to an allocation wheel as provided in paragraph 2(d)(vii) below.

(vi) Allocation pursuant to paragraph 2(c)(i)(A) and 2(c)(ii)(C) above.

- A. AEMI shall first count all of the crowd non-customer orders in parity at the price point. All of the public non-customer orders on the Specialist Order Book shall count as a single crowd non-customer order for this purpose.
- B. AEMI shall calculate the allocation to the specialist by multiplying the remaining size of the aggressing order by the percentage in the “Specialist Allocation” column of the specialist allocation table (set forth below), using the number determined in paragraph A for the “Number of Crowd Participants” in the table. The table may be revised by the ETF Trading Committee. The number of shares to be allocated to the specialist is arrived at by rounding the result down to the nearest round lot.

<u>Number of Crowd Participants</u>	<u>Specialist Allocation</u>	<u>Crowd/Public Allocation</u>
1	60%	40%
2-4	40%	60%
5-7	30%	70%
8-15	25%	75%
16+	20%	80%

- C. After subtracting the allocation to the specialist as determined in paragraph B, AEMI shall divide the remaining size of the aggressing order by the number of crowd non-customer orders in parity as determined in paragraph A. The total number of shares to be allocated to the public non-customer orders in parity is arrived at by rounding the result up to the nearest round lot. From that quantity, the individual public non-customer orders in parity will be allocated shares in order time priority.<sup>7</sup>
- D. AEMI shall allocate the remaining amount of the aggressing order, after subtracting the allocation to the public non-customer orders as determined in paragraph C, to the individual crowd non-customer orders in parity pursuant to an allocation wheel as provided in paragraph 2(d)(vii) below.
- (vii) Standard allocation wheel.<sup>8</sup> The following provisions shall govern the allocation of executions to in-parity crowd bids (offers) where indicated in this paragraph 2(d) above.

- A. First, AEMI shall rank all bids (offers) in parity by time priority. The bid (offer) with the highest time priority shall receive one round lot. If the aggressing order has remaining size, the bid (offer) with the second highest time priority shall receive one round lot, and so on until the aggressing order is exhausted or all bids (offers) in parity receive an allotment of one round lot (thus completing a "round").
- B. If the aggressing order has not been exhausted at the end of the round, the allocation wheel shall commence another round, allocating one round lot to each bid (offer) in descending time priority and performing additional rounds as necessary until the aggressing order is exhausted.
- C. Notwithstanding paragraphs 2(d)(vi)(A) and (B) above, an allocation wheel shall commence with a bid (offer) that does not have the highest time priority if, at an earlier point in the same day, an allocation wheel was performed and two or more orders participating in that allocation wheel are still on the AEMI Book and in parity for the current allocation wheel. In such case, AEMI shall still rank the bids (offers) in parity by time priority, but the allocation wheel shall commence with the bid (offer) having the highest time priority in the prior allocation wheel not to receive an allocation in the final

<sup>7</sup> Any shares allocated to the public (crowd) orders in excess of the total available interest will be reallocated to the crowd (public) orders.

<sup>8</sup> The standard allocation wheel applies only to the allocation among individual crowd participants, excluding any public orders on the Specialist Order Book and the specialist quote.

round of that allocation wheel, and the round shall end with the in-parity bid (offer) immediately above that bid (offer) in time priority.

3. Revision of order treated as cancellation and resubmission. A bid (offer) that is revised shall lose its priority and parity status and shall be treated as a newly submitted bid (offer). However, a reduction in order/quote size shall not result in a loss of parity status.

4. Odd lots.

(i) For purposes of executing any partial round-lot order pursuant to the priority and parity rules above, AEMI will round the size of any bid (offer) down to the next round lot.

(ii) If the round-lot portion of a partial round-lot bid (offer) is completely executed by AEMI, the odd-lot portion will be executed against the specialist at the price of the round-lot trade.

### **••• Commentary**

.01 (Precedence Based on Size) Orders to cross 5,000 shares or more valued at \$100,000 or more, where one or both sides of such cross is for the account of a member or member organization, will be permitted to establish precedence based on size so long as the orders are represented at the post when a sale takes place or a new higher automated bid or lower automated offer is established on the Amex. Once the precedence of such orders of 5,000 shares or more valued at \$100,000 or more has been established (i.e., the cross size is greater than each individual Crowd Order as well as greater than the aggregate size of all orders on the Specialist Order Book at the cross price), the broker handling the cross must then bid and offer the security in accordance with Rule 152—AEMI.

.02 (Clean Agency Cross) When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 5,000 shares or more and are for the accounts of persons who are not brokers or dealers (including, all U.S. registered and foreign registered brokers or dealers), the member may (a) "cross" those orders at a price within the APQ or (b) "cross" the orders at the APQ if they are also valued at \$100,000 or more. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price, provided that the size of such an order crossed at the APQ must be greater than the largest customer order on the Specialist Order Book at the cross price. The member shall follow the crossing procedures of Rule 151—AEMI, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price. No specialist or Registered Trader may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this Commentary .02. A transaction effected at the cross price in reliance on this Commentary .02 shall be printed to the tape with the same indicator used for printing the paired-off transactions discussed in Rule 118—AEMI(j)(iii).

.03 If prior to presenting a cross transaction in a Nasdaq security involving 5,000 shares or more, a broker requests that the specialist and market makers at the post quote their current

market for the subject security, the broker may execute a cross transaction at a price between the quoted market without interference by a specialist or market maker.

With respect to listed and UTP stocks and closed end funds, in no event shall an agency order in the AEMI Book, having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

With respect to ETFs and other equity-traded products that are not listed or UTP stocks or closed end funds, in no event shall a customer order in the AEMI Book, having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

.04 The operation of an allocation wheel is illustrated in the following example. Suppose there are public bids for a common stock (including the specialist's bid) that total 1,000 shares at \$25.00 and which are on parity with the following Crowd Orders: Floor Broker A bidding for 300 shares, Floor Broker B bidding for 500 shares, and Floor Broker C bidding for 300 shares. Even though Floor Brokers A, B and C are all in parity, Floor Broker A has the highest order time priority, followed by Floor Broker B and then Floor Broker C. Assume an aggressing sell order at the market of 700 shares. The total allocation for the in-parity public orders is 25% of the 700 shares based on the fact that there are three crowd participants plus the aggregated public/specialist bids treated as a single unit for purposes of the computation. The public/specialist bids therefore get a total collective allocation of 200 shares due to the fact that the system will round up to the nearest round lot when computing the public allocation. This leaves 500 shares to be allocated among the three crowd participants, which takes place in the following sequence and is based on the time priority among the bids of Floor Brokers A, B and C because none of the individual Crowd Orders has received a parity allocation: 100 to A, 100 to B, 100 to C, 100 to A and 100 to B. If another aggressing sell order for 300 shares at the market were to immediately follow, the public/specialist bids would be allocated 100 shares collectively (25% of 300 shares, rounded up), and the remaining 200 shares would be allocated to the crowd participants in the following sequence: 100 to C and 100 to A.

.05 The allocation of in-parity visible size of public orders and Crowd Orders is illustrated in the following example. Suppose there are three visible in-parity public bids for a common stock in the Specialist Order Book for a total of 400 shares at \$13.00, which price is at the APQ and the NBB. Also assume an in-parity bid by the specialist for 1,000 shares at the same price, as well as in-parity Crowd Order bids of 1,000 shares each by Floor Broker A and Floor Broker B. If there is an aggressing sell order at the market for 1,000 shares, the total allocation for the in-parity public orders and the specialist bid (which are aggregated and treated as a single participant for computational purposes) is 1/3 of the 1,000 shares based on two crowd participants plus the aggregated public/specialist bids treated as a third participant. The public/specialist bids therefore receive collectively a total of 400 shares because AEMI will round up to the nearest round lot when computing the allocation to the public orders. Within the public/specialist group of orders, the specialist is at the back of the line and must yield to all of the public orders. In this example, the three public bids for 400 shares will consume the entire public allocation, leaving none for the specialist. The remaining 600 shares are allocated to the two Crowd Orders in the amount of 300 shares to each.

### Protected Bids and Offers of Away Markets

**Rule 126A—AEMI.** (a) Except when one or more of the following eight circumstances exist, AEMI shall generate an intermarket sweep order to any away market displaying a protected quotation simultaneously with the execution of a transaction on the Amex that would constitute a trade-through. All such intermarket sweep orders shall be generated for the account of the bid, offer or order that caused the generation of the intermarket sweep order:

- (1) The transaction that constituted the trade-through was effected when the trading center displaying the protected quotation that was traded through was experiencing a failure, material delay, or malfunction of its systems or equipment.
- (2) The transaction that constituted the trade-through was not a “regular way” contract.
- (3) The transaction that constituted the trade-through was a single-priced opening, reopening, cash closing, or closing transaction by the Amex.
- (4) The transaction that constituted the trade-through was executed at a time when a protected bid was priced higher than a protected offer in the NMS stock.
- (5) The transaction that constituted the trade-through was the execution of an order identified as an intermarket sweep order.
- (6) At the time the Amex effected the transaction that constituted the trade-through, it simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through.
- (7) The transaction that constituted the trade-through was the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.
- (8) The trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the transaction that constituted the trade-through, a best bid or best offer, as applicable, for the NMS stock with a price that was equal or inferior to the price of the trade-through transaction.

An intermarket sweep order shall be generated if an order that is entered on the Amex would lock or cross a protected quotation in an away market. Each outbound intermarket sweep order will be issued as an immediate or cancel order but will also carry an expiration delay timer.

Amex will actively monitor all systems relating to private linkage at all times to ensure that systems are functioning correctly. Amex will also ensure that the private linkage provider is responsible for the active monitoring of all connections relating to private linkage and for providing immediate notification regarding system problems. In the event that AEMI does not receive any response at all to an outbound intermarket sweep order, and assuming that no system errors have been detected, AEMI will issue a cancellation at the expiration of the expiration delay timer. This action will release the corresponding order that had been suspended on the AEMI

Book pending the response to the intermarket sweep order, and the released order will re-aggress the AEMI Book (including the generation of intermarket sweep orders to other away markets, if necessary).

In the event that AEMI receives a rejection (i.e., a no-fill or partial fill cancellation) in response to an outbound intermarket sweep order and the quotation at the away market is not updated, AEMI will release the corresponding order that had been suspended on the AEMI Book so that it may re-aggress the AEMI Book as described in the immediately prior paragraph (including the generation of intermarket sweep orders to other away markets, if necessary). Other intermarket sweep orders will still continue to be routed to that particular away market's protected quotation in that security.

### **Minimum Price Variations**

**Rule 127—AEMI.** The minimum price variation for quotations and orders in equity-traded securities priced at or above one dollar per share shall be one cent (\$.01). The minimum price variation for quotations and orders in equity-traded securities priced below one dollar per share shall be one one-hundredth of a cent (\$.0001). The minimum price variation for quotations and orders in a security that has been exempted by the SEC from Rule 612 of Regulation NMS shall be the minimum price variation set forth in the SEC's exemption order for that security.

### **Automatic Execution**

**Rule 128A—AEMI.** (a) AEMI shall automatically execute Auto-Ex Eligible Orders, Bids and Offers in Auto-Ex Eligible Securities in accordance with the provisions of these rules. An "Auto-Ex Eligible Order, Bid or Offer" is a round lot or partial round lot order, bid or offer for regular way delivery received by AEMI electronically. Auto-Ex Eligible Securities consist of all ETFs, equities, and securities that trade like equities traded on the Exchange. Auto-Ex is the functionality of AEMI that automatically executes orders, bids and offers in the AEMI Book. Bids (offers) in the AEMI Book shall remain firm following (i) the establishment of a higher bid (lower offer) in AEMI, (ii) a trade in AEMI, or (iii) cancellation of all bids (offers) that are at the APQ.

(b) Hours of Automatic Execution: AEMI shall automatically execute orders, bids and offers in the AEMI Book following the opening or reopening of a security on the Exchange.

For Auto-Ex Eligible Securities that trade until 4:00 p.m., Auto-Ex shall be turned-off at 3:59:59 p.m. if there are any on-close orders in the AEMI Book. If there are no on-close orders in the AEMI Book, Auto-Ex shall be turned-off at 4:00 p.m.

For Auto-Ex Eligible Securities that trade until 4:15 p.m., Auto-Ex shall be turned-off at 3:59:59 p.m. if there are any on cash close orders in the AEMI Book and shall remain off until the cash close is performed. Once the specialist performs the cash close, AEMI shall resume automatic execution. Auto-Ex shall continue until 4:14:59 if there are on-close orders in the AEMI Book. If there are no on-close orders in the AEMI Book, Auto-Ex shall be turned-off at 4:15 p.m.

(c) Interaction of Bids and Offers in AEMI and the Open Outcry Market. (i) A bid or offer in AEMI shall not be deemed accepted by a member making a verbal acceptance in the

trading crowd and, as a result, no contract shall be created, until the specialist has entered a trade into AEMI.

(ii) Trades executed by AEMI may trade through a verbal bid or offer in the crowd without satisfying the verbal bid or offer.

(d) Trade Execution. (i) AEMI shall automatically execute a new Auto-Ex Eligible Order, Bid or Offer against contra side orders, bids or offers residing in the AEMI Book at the price of such resident orders, bids or offers in accordance with the rules of precedence of bids and offers until the new order, bid or offer is filled in full, the size of the orders, bids or offers residing in the AEMI Book is exhausted, or the execution of the order breaches a Spread or Momentum Tolerance in the security or a gap trade occurs. Automated execution will not occur without protected quotations at away markets being satisfied through the issuance of one or more intermarket sweep orders. AEMI will not publish a bid (offer) equal to or higher (lower) than the National Best Offer (Bid) without sending intermarket sweep orders to execute against the full displayed size of the protected quotations in the away markets.

(ii) When a Registered Trader or specialist moves his quote to match the APQ on the other side of the market (e.g., a Registered Trader raises his bid to match the offer side of the APQ), AEMI shall automatically execute the trade at the price of the APQ for the lesser of the size of the APQ or the size of the bid/offer that hit the APQ; provided, however, that any trade execution resulting from the specialist moving his quote must be consistent with the requirements of Rule 170–AEMI.

(iii) AEMI shall automatically execute a trade when a member uses the hit or take functionality of AEMI to initiate an order against the APQ or otherwise initiates an order to trade with the bid/offer displayed in the APQ. Such an order may be entered by the member from on or off the Floor of the Exchange. Members who wish to use the hit or take functionality must specify the price and quantity of the hit or take order. When a member uses the hit or take functionality, AEMI shall validate that the specified price is equal to or better than the contra Amex quote and automatically generate a limit order at that price. Equity specialists who use the hit or take functionality must do so in a manner consistent with the requirements of Rule 170–AEMI. An order initiated by a member using the hit or take functionality is an order that expires if not immediately executed but that is capable of generating intermarket sweep orders to clear better away markets before executing on the Amex.

(iv) Any quotation in a non-ETF Amex-listed security or a non-Nasdaq UTP equity security entered into the AEMI platform by the specialist while Auto-Ex is enabled that would cause the APQ to be crossed will automatically be rejected.<sup>9</sup> Any quotation in an ETF or a Nasdaq UTP equity security entered into the AEMI platform by the specialist or a Registered Trader while Auto-Ex is enabled that would cause the APQ to be locked or crossed will be automatically executed. For all securities, when Auto-Ex is disabled due to the breach of a Spread or Momentum Tolerance or a gap trade (see section (f) below), orders and quotations (with the exception of the specialist's quotation) that enter the AEMI Book and are priced better than the contra side of the APQ will participate in the auction trade to eliminate the locked or crossed market and will result in the dissemination of an automated APQ.

<sup>9</sup> See Rule 170—AEMI, Commentaries .01 and .02, regarding the requirements with respect to such quotations entered into the AEMI platform by the specialist that would cause the APQ to be locked but not crossed.

(e) Processing of Message Queue. Following the termination of a Message Queue, the AEMI Book shall first process any cancellations or order amendments. AEMI then shall attempt to automatically execute any marketable orders in a Message Queue at the pair-off price unless this would cause a trade-through of a protected quotation, in which case, AEMI shall attempt to effect the pair-off at whichever price would result in the largest trade and would not result in a trade-through of a protected quotation, provided, however, that AEMI shall not automatically execute orders that accumulated in a Message Queue after the close. If such a pair-off cannot be effected or there are orders from the Message Queue that do not participate in the pair-off, the remaining orders from the Message Queue that enter the AEMI Book will be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required.

(f) Auto-Ex Unavailability. AEMI shall not execute trades automatically in the following situations.

- (i) The automatic execution of a single order causes a breach of the Spread Tolerance in the security. The Spread Tolerance for securities trading under \$5 per share shall be five cents; for securities trading at \$5 to \$15 per share, the Spread Tolerance shall be 15 cents; and for securities trading for more than \$15 per share, the Spread Tolerance shall be 25 cents. The Spread Tolerance shall be calculated from the price of the first execution of the order on the Amex.
- (ii) The automatic execution of one or more orders within a 30-second window causes a breach of the Momentum Tolerance in the security. The Momentum Tolerance is breached when the price of a security, as a result of trades on the Amex, has moved an amount equal to or more than the greater of 15 cents or 1% within 30 seconds. The Momentum Tolerance high price is established with reference to the price of the lowest Amex trade in the security during the previous 30 seconds. The Momentum Tolerance low price is established with reference to the price of the highest Amex trade in the security during the previous 30 seconds.
- (iii) The opening is delayed, the Amex is disseminating a gap quote (See Rule 170—AEMI(f)), or trading is halted in a security. Members may not trade in the open outcry market (other than to consummate an auction trade to remove a condition that caused Auto-Ex to be disabled) while Auto-Ex is disabled as a result of a delayed opening, gap quote or trading halt but may enter and cancel bids, offers and orders in AEMI during these times.
- (iv) The automatic execution of an order has exceeded the price change parameters of the “1%, 2, 1, ½ point” rule (“gap trade”). This rule does not apply to ETFs. (See Rule 154—AEMI(e).) Members may not trade in the open outcry market (other than to consummate an auction trade to remove a condition that caused Auto-Ex to be disabled) while auto-ex is disabled because a trade has exceeded the price change parameters of the “1%, 2, 1, ½ point” rule but may enter and cancel bids, offers and orders in AEMI during this time.

- (v) The Amex is conducting the cash close pair-off in an ETF. (See Rule 131—AEMI, Commentary .03). Members may not trade in the open outcry market (other than to consummate an auction trade to remove a condition that caused Auto-Ex to be disabled) while Auto-Ex is disabled because the Cash Close Pair-off in an ETF is being performed but may enter and cancel bids, offers and orders in AEMI during this time.
- (vi) When the Exchange has determined that (1) “unusual market conditions” exist in one or more securities as described in Amex Rule 115—AEMI, or (2) a Senior Floor Official determines that the market(s) where securities trade representing more than 25% of the index value of an ETF are experiencing communications or system problems, “unusual market conditions” as described in Rule 602 under Regulation NMS, or delays in the dissemination of quotes.

(g) If a buy or sell imbalance that locks or crosses the AEMI Book exists in a security and Auto-Ex has been disabled for any of the reasons listed in items (i) through (iv) of paragraph (f) of this Rule, the specialist must perform an auction pair-off of any remaining imbalance in order to re-enable Auto-Ex. If Auto-Ex has been disabled due to the breach of a Spread Tolerance (under (f)(i) above), a Momentum Tolerance (under (f)(ii) above), or the Exchange's gap trade rule price change parameters (under (f)(iv) above), each of the three foregoing parameters being referred to herein as a "Tolerance," the procedures for re-enabling Auto-Ex shall operate in the following manner.

When a Tolerance is breached, Auto-Ex and the dissemination of an automated APQ are automatically disabled in that security for an initial period of 10 seconds. The re-enabling of Auto-Ex and the dissemination of an automated APQ are contingent on the AEMI Book not being in a locked or crossed condition during, or at the end of, this initial 10-second time period. The specialist will be required to pair off the remainder of an aggressing order that results in a locked or crossed AEMI Book to re-enable Auto-Ex prior to the expiration of the 10-second time period. The contra interest applied against the aggressing order in the pair-off will come from marketable orders on the contra side of the AEMI Book. Any portion of the aggressing order that is not paired off against marketable orders on the AEMI Book will be parity-allocated against the specialist and/or eligible crowd participants represented electronically on the contra side of the AEMI Book. Upon the specialist's performance of this pair-off, AEMI will automatically disseminate a new automated APQ. Alternatively, the specialist may re-enable Auto-Ex prior to the expiration of the 10-second period through a “front end” device if the remainder of the aggressing order (if any) is expired or cancelled or the AEMI Book is not locked or crossed. Following the breach of the Tolerance, the remainder of the aggressing order (if any) shall be reflected in the APQ at the price of the automated NBBO on the same side corresponding to the aggressing order (e.g., automated national best bid for an aggressing buy order), with the contra side of the quote reflecting the best bid, offer or order in AEMI (both sides being non-firm). If there is no remainder due to the fact that the aggressing order is cancelled or expired (e.g., it is an IOC order) or is filled upon the breach of the Tolerance, the APQ shall reflect the best bid and offer in the AEMI Book with both sides non-firm. If there are no orders left on the contra side of the AEMI Book, a stabilizing quote will be generated automatically so that a two-sided non-firm quotation is published, with a round lot at one tick away from the price of the automated NBBO on the contra side.

During the 10-second time period following the breach of the Tolerance, if the specialist has not resolved the locked or crossed AEMI Book along with AEMI disseminating a new automated APQ, incoming orders, amendments and cancels shall continue to enter the AEMI Book but shall not update the APQ. On the expiration of the 10-second time period following the breach of the Tolerance, if the AEMI Book is not locked or crossed, Auto-Ex and the dissemination of an automated Amex quote shall resume automatically.

If the AEMI Book remains locked or crossed following the expiration of the 10-second period, Auto-Ex and the dissemination of an automated quotation shall not resume until the specialist takes action to pair-off the remainder of the aggressing order (i.e., to resolve the locked or crossed condition). AEMI will perform a recursive check every subsequent 10 seconds to determine if the locked or crossed condition has been eliminated and, if it has been eliminated, Auto-Ex and the dissemination of an automated Amex quote shall resume automatically. Members may not trade in the open outcry market (other than to consummate an auction trade to remove a condition that caused Auto-Ex to be disabled) while Auto-Ex is disabled as a result of the breach of a Tolerance but may enter and cancel bids, offers and orders in AEMI during this time.

If Auto-Ex has been disabled for either of the reasons listed in item (vi) of paragraph (f) of this Rule, the Exchange will disseminate the indicator “N” to indicate that the Amex’s quotation, if a trading halt has not been declared and quotations are being published in the particular security, is not firm (see Rule 115—AEMI, Commentary .01). Once the condition that caused Auto-Ex to be disabled has been eliminated, the specialist, with Floor Official approval as described in Rule 115—AEMI, Commentary .01, paragraph 4, may resume the publication and dissemination of automated quotations in that security by manually re-enabling Auto-Ex or conducting an auction if the AEMI Book is locked or crossed. However, if a trading halt had been declared in the security in conjunction with the disabling of Auto-Ex, the specialist must conduct a normal reopening of the security, which may include a reopening pair-off, in order to re-enable Auto-Ex. (See Rules 108—AEMI and 119—AEMI with respect to the procedures for reopening a security.)

### **Auction Trades**

**Rule 128B—AEMI.** (a) An auction trade is (1) a trade executed between or among members on the Floor by open outcry (which trade could incorporate orders on the AEMI Book), or (2) a cross trade executed by a member on the Floor by open outcry.

(b) A specialist shall immediately enter an auction trade into AEMI if he participates in the trade. If the specialist is not part of an auction trade, the member who initiates the trade shall report the trade to the specialist for input into AEMI.<sup>10</sup> Upon input, AEMI shall immediately send a report of the trade to the tape (less the size of any intermarket sweep order(s) to be immediately sent to away markets), execute any bids, offers or orders on the AEMI Book that were able to be executed at the price of the auction trade, generate intermarket sweep order(s) to away markets, and disseminate a new automated APQ if Auto-Ex is not then enabled.<sup>11</sup> For

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<sup>10</sup> See Rule 128A—AEMI(c) regarding the requirement that the specialist must enter a verbal trade into AEMI in order for the trade to be consummated and have standing.

trades with more than one contra-side member, the specialist shall conduct a post trade allocation, and AEMI will then send notification of individual trades to active crowd participants upon the specialist's confirmation of the post trade allocation. This requirement that the specialist confirm the initial post trade allocation (which is an estimate computed by AEMI based on assumed participation by all of the active crowd participants and the Exchange's priority and parity rules) is to allow the active crowd participants to verbally confirm their participation or non-participation. Any necessary adjustments by the specialist would result in a reallocation, also computed by AEMI. If the specialist has not confirmed the allocation within a three-minute period following the trade, the default allocation will be AEMI's estimated allocation to the specialist and the active crowd participants. Active crowd participants consist of Registered Traders in the crowd with a bid or offer on the AEMI Book on the contra side of the aggressing order and Floor Brokers with a Crowd Order on the contra side of the aggressing order, in each case at the time of the trade. The Floor Brokers that are a party to the auction trade, both on the side of the aggressing order and the contra side, shall each have 20 seconds following notification by AEMI of their respective individual trades to complete an additional allocation to the existing orders in their hand held terminals. If such a trade allocation is reported to AEMI more than 20 seconds later, it will be deemed "late" but will still be permitted.

(c) If one or more of the intermarket sweep orders generated by an auction trade are unexecuted in whole or in part by away markets, AEMI will release the remaining portion of any order, bid or offer in AEMI that was suspended at the time the intermarket sweep orders were generated, and the released order, bid or offer will re-aggress the orders, bids and offers in the AEMI Book (including the generation of intermarket sweep orders to away markets, if necessary); provided, however, that intermarket sweep orders generated by a trade having only a single member on the buy side and a single member on the sell side ("negotiated trade") that are not executed by an away market will be automatically expired and not executed at the Amex. In the event that AEMI (i) does not receive any response to an outbound intermarket sweep order by the time the expiration delay timer has expired (assuming that no system errors have been detected), or (ii) receives a rejection (i.e., a no-fill or partial fill cancellation) in response to such order and the quotation at the away market is not updated, the Exchange will follow the procedures described for such circumstances in Rule 126A—AEMI, which will include the release of the suspended portion of the order on the AEMI Book that was represented by the unexecuted (or partially executed) outbound intermarket sweep order and the re-aggressing of the AEMI Book by the released order.

(d) AEMI will process a cross executed by a member in the crowd in the same manner as other auction trades provided, however, that only the member who executed the cross will receive a trade notification from AEMI in the event that the cross is not "broken-up" at the cross price by the crowd (verbally) or by resting bids, offers or orders in AEMI and provided further that (i) a clean agency cross that satisfies the size and value parameters in Commentaries .02 and .03 to Rule 126—AEMI may not be broken-up at the cross price by the crowd (verbally) or by resting bids, offers or orders in the AEMI Book, and specialists and Registered Traders may not interfere with such trades and (ii) a cross that takes precedence based on size (Commentary .01 to Rule 126—AEMI) may not be broken-up at the cross price by resting bids, offers or orders in the AEMI Book. In executing a cross trade by open outcry, members shall follow the crossing procedures set forth in Rule 152—AEMI (if a member or member organization is taking or supplying stock to fill a customer's order) or Rule 151—AEMI (in all other situations).

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<sup>11</sup> See paragraph (e) below regarding the circumstances under which a new APQ will be disseminated if Auto-Ex is already enabled.

(e) An auction trade or a cross executed by a member in the crowd may only be executed, while Auto-Ex is enabled, at a price equal to or inside the APQ. A new updated APQ will be published under these circumstances only if the auction trade takes place at the APQ and involves bids, offers or orders on the AEMI Book that are executed at the price of the trade.

### **Locking or Crossing Quotations in NMS Stocks**

**Rule 128C—AEMI.** (a) Definitions. For purposes of this Rule, the following definitions shall apply:

(1) The terms “automated quotation,” “effective national market system plan,” “intermarket sweep order,” “manual quotation,” “NMS stock,” “protected quotation,” “regular trading hours,” and “trading center” shall have the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.

(2) The term “crossing quotation” shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(3) The term “locking quotation” shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, members of the Exchange shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(c) Manual quotations. If a member of the Exchange displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member of the Exchange shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(d) Exceptions.

(1) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.

(2) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(3) The locking or crossing quotation was an automated quotation, and the member of the Exchange displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(4) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the member of the Exchange displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

### **...Commentary**

.01 The Rule addresses intentional locks/crosses by requiring that all locks/crosses of protected quotations be reasonably avoided (i.e., an intentional lock/cross clearly can be reasonably avoided) and prohibiting a pattern or practice of locks/crosses. The Rule also restricts the display of manual quotations that would lock or cross any type of quotation, whether automated or manual. There is no restriction on the display of automated quotations that lock or cross manual quotations.

Inevitably, unintentional locks/crosses will continue to occur even after adoption of the Rule, often because of rapid updating of quotations in active stocks. Other locks/crosses may result from use of the “ship and post” exception in paragraph (d)(3) of the Rule, which allows an automated quotation to lock or cross another quotation if intermarket sweep orders are routed to execute against the full displayed size of any previously displayed protected quotations. For example, if there is reserve size behind the displayed size of the previously displayed protected quotation, its price may not change even after execution of the intermarket sweep order. In addition, the “ship and post” exception in paragraph (d)(4) of the Rule allows a manual quotation to lock or cross another manual quotation if an intermarket sweep order is routed to execute against the full displayed size of the locked/crossed manual quotation.

The Rule does not specify any procedures for reconciling unintentional locks/crosses when both quotations are automated. This reflects a determination that the best way to handle a lock/cross between automated quotations is to continue trading and rely on market forces to reconcile the lock/cross, rather than attempting to mandate which trading center must either withdraw its quotation or route an order elsewhere. Because automated quotations are immediately accessible, market forces are likely to generate orders that will quickly resolve the lock/cross quotations (particularly crossed quotations).

With respect to manual quotations, however, paragraph (c) of the Rule specifies a procedure for reconciling unintentional locks/crosses when the manual quotation has locked or crossed any type of quotation, whether automated or manual. The Rule requires the Exchange member responsible for the manual quotation to promptly either withdraw the quotation or route an intermarket sweep order to execute against the full displayed size of any quotation that the manual quotation has locked/crossed.

## Types of Orders

### Rule 131—AEMI. Market order

(a) A market order is an order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the Trading Crowd or is received in the AEMI Book.

### Limit, limited order or limited price order

(b) A limited price order is an order to buy or sell a stated amount of a security at a specified price, or at a better price, if obtainable after the order is represented in the Trading Crowd or is received in the AEMI Book. A buy (sell) limited price order will be immediately executed in AEMI if its limit price is equal to or higher (lower) than the best offer (bid) on the Amex. A buy (sell) limited price order will result in the generation of one or more intermarket sweep orders to access protected quotes at away markets if its limit price is equal to or higher (lower) than the Automated National Best Offer (Bid). The unexecuted remainder of a limited price order will be posted on the AEMI Book.

### At the close order

(d) A market at the close (MOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price. If the MOC order cannot be executed in its entirety at the Exchange closing price it will be cancelled. A limit at the close (LOC) order is an order to buy or sell a stated amount of a security at the Exchange's closing price if that closing price is at the order's limit price, or better. If the LOC order cannot be so executed, in whole or in part, the amount of the order not so executed is to be cancelled. AEMI will cancel MOC and LOC orders only in the following circumstances: (1) when trading has been halted in the security and does not reopen prior to the close of the market; (2) for tick sensitive orders whose execution will violate customer instructions (i.e., to buy only on a minus or zero minus tick or to sell only on a plus or zero plus tick) or Exchange Rule 7; (3) for LOC orders, when the Amex closing price is not at the limit price or better, or (4) for tick sensitive MOC/LOC orders and LOC orders, all of which are limited to an execution at the closing price, the limited quantity of shares to be traded and the rules of priority as to which orders would trade first left these orders unexecuted in whole or in part.

### At the opening order

(e) An at the opening or at the opening only order is a market or limited price order which is to be executed on the opening trade in the stock on the Exchange or not at all, and any such order or the portion thereof not so executed is to be treated as cancelled. An at the opening or at the opening only order shall be cancelled in the event that a security opens on a quote without a trade.

### Day order

(f) A day order is an order to buy or sell which, if not executed, expires at the end of trading in the security on the day on which it was entered.

### Do not reduce or "DNR" order

(g) A do not reduce or "DNR" order is a limited price order to buy, a stop order to sell, or a stop limit order to sell a round lot or odd lot which is not to be reduced by the amount of an

ordinary cash dividend on the ex-dividend date. A do not reduce order applies only to ordinary cash dividends; it should be reduced for other distributions such as when a stock goes “ex” a stock dividend, a special cash dividend or ex rights.

#### **Fill or kill order**

(h) A fill or kill order is a market or limited price order which is to be executed in its entirety as soon as it is received in the AEMI Book or is represented in the Trading Crowd, and such order, if not so executed, is cancelled. A fill or kill order will not be routed to another market center.

#### **Good 'til cancelled or open order**

(i) A Good 'Til Cancelled (“G.T.C.”) or open order is an order to buy or sell which remains in effect until it is either executed or cancelled.

#### **Immediate or cancel order**

(j) An immediate or cancel (IOC) order is a market or limited price order which is to be executed in whole or in part as soon as such order is received in the AEMI Book or is represented in the Trading Crowd, and the portion not so executed is to be treated as cancelled.

Except as otherwise provided in the Plan, a “commitment to trade” received in the AEMI Book through ITS shall be treated in the same manner (unless such commitment specifies an extended expiration time), and entitled to the same privileges, as would an immediate or cancel order that is received by the AEMI Book at the same time (i.e., the commitment shall be executed in whole or in part as soon as it is received by the AEMI Book and any portion not so executed shall be cancelled).

An immediate or cancel order received by the AEMI Book shall not be routed to another market center. If the side of the APQ contra to the aggressing order is not the automated national best bid or automated national best offer, as the case may be, the order will expire without being executed unless the IOC order is also an intermarket sweep order.

#### **Intermarket sweep order**

(k) An intermarket sweep order is a limit order for an NMS stock (1) received on the Exchange by AEMI from a member or another market center which is to be executed (i) immediately at the time such order is received in the AEMI Book, (ii) without regard for better-priced protected quotations displayed at one or more other market centers, and (iii) at prices equal to or better than the limit price, with any portion not so executed to be treated as cancelled; provided, however, that an order that is received through the communications network operated pursuant to the Intermarket Trading System (ITS) Plan or any successor to the ITS Plan will only trade at a single price, or (2) 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 the other market centers up to their displayed size. Intermarket sweep orders must be marked as such to inform the receiving market center that they can be immediately executed without regard to protected quotations in other markets.

#### **Not held order**

(l) A not held order is a market or limited price order marked “not held,” “disregard tape,” “take time,” “buy on the print” or “sell on the print” or which bears any such qualifying notation. AEMI will not accept a not held order.

An order marked “or better” is not a not held order.

**Percentage order**

(m) (1) A percentage order is a public, limited price, round lot, day order to buy (or sell) 50% of the Amex volume of a specified stock after its entry into the Specialist Order Book. Only a Floor Broker may enter a percentage order, which, in the case of ETFs and other equity-traded products that are not listed or UTP stocks or closed end funds, must be on behalf of a customer and not a broker/dealer. Although this percentage is fixed, market circumstances may prevent a percentage order from buying (or selling) this percentage through election.

(2) The elected portion of every percentage order is to be executed immediately in whole or in part at the price of the electing transaction, or better. Any elected portion not so executed shall revert to its status as an unelected percentage order and be subject to subsequent election or conversion.

(3) Each Amex trade at or within the limit price of the percentage order and subsequent to the electronic receipt of the percentage order by the Specialist Order Book will independently determine the volume of the elected portion of each percentage order. A percentage order shall be elected to the lesser of the balance of the percentage order or the full amount of the electing transaction, except that a percentage order shall not be elected by any portion a trade which results from the execution of the previous election or conversion of that or any other percentage order on the same side of the market in the same security.

(4) A type of election must be designated as one of the following:

(i) "Last Sale" Percentage Orders --The elected portion of such an order becomes a limited price order to be executed at the last sale price or at a better price.

(ii) "Buy Minus" --"Sell Plus" Percentage Orders --The elected portion of an order to "buy minus" becomes a limited price order to be executed on a "minus" or "zero minus" tick only. The elected portion of an order to "sell plus" becomes a limited price order to be executed on a "plus" or "zero plus" tick only, and is handled in the same manner as an order to sell short in a security in which the "tick test" applies.

(5) A percentage order will be automatically converted into an IOC order, or manually converted into either an IOC order (active manual conversion) or a regular limit order (passive manual conversion). The automatically converted portion of every percentage order is to be executed immediately in whole or in part at the price of the conversion, or better. Any automatically converted portion not so executed shall revert to its status as an unelected percentage order and be subject to subsequent election or conversion. A Floor Broker entering a percentage order must specify the maximum conversion amount per trade and the maximum total amount of the order that may be converted during the trading session.

**Sell "plus"—Buy "minus" order**

(n) A market order to sell "plus" is a market order to sell a stated amount of a stock provided that the price to be obtained is not lower than the last sale if the last sale was a "plus" or "zero plus" tick, and is not lower than the last sale plus the minimum fractional change in the stock if the last sale was a "minus" or "zero minus" tick. A limited price order to sell "plus" would have the additional restriction of stating the lowest price at which it could be executed.

A market order to buy “minus” is a market order to buy a stated amount of a stock provided that the price to be obtained is not higher than the last sale if the last sale was a “minus” or “zero minus” tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a “plus” or “zero plus” tick. A limited price order to buy “minus” would have the additional restriction of stating the highest price at which it could be executed.

### **Stop order**

(o) A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is received by the AEMI Book or is represented in the Trading Crowd. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is received by the AEMI Book or is represented in the Trading Crowd. Provided, however, if a stop order is “too marketable” (i.e., a buy stop received during the regular trading session with a stop price equal to the bid or lower, or a sell stop received during the regular trading session with a stop price equal to the offer or higher), the order will automatically be rejected. A stop order to buy or sell an ETF also may be elected by a quotation as provided in Rule 154—AEMI(c). The Exchange cannot guarantee that an elected stop order will be executed at the electing price. In an ETF, a “too marketable” buy stop order would be one received during the regular trading session with a stop price lower than the bid, and a “too marketable” sell stop order would be one received during the regular trading session with a stop price higher than the offer. “Too marketable” ETF stop orders will be rejected. An ETF stop order received during the regular trading session with the buy stop price equal to the bid or the sell stop price equal to the offer is not “too marketable” and will be immediately executed rather than being rejected.

### **Stop limit order**

(p) A stop limit order to buy becomes a limit order executable at the limit price, or at a better price, if obtainable, when a transaction in the security occurs at or above the stop price after the order is received by the AEMI Book or is represented in the Trading Crowd. A stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the security occurs at or below the stop price after the order is received by the AEMI Book or is represented in the Trading Crowd. Provided, however, if a stop limit order is “too marketable” (i.e., a buy stop limit received during the regular trading session with a stop price equal to the bid or lower, or a sell stop limit received during the regular trading session with a stop price equal to the offer or higher), the order will automatically be rejected. A stop limit order to buy or sell an ETF also may be elected by a quotation as provided in Rule 154—AEMI(c). In an ETF, a “too marketable” buy stop limit order would be one received during the regular trading session with a stop price lower than the bid, and a “too marketable” sell stop limit order would be one received during the regular trading session with a stop price higher than the offer. “Too marketable” ETF stop limit orders will be rejected. An ETF stop limit order received during the regular trading session with the buy stop price equal to the bid or the sell stop price equal to the offer is not “too marketable” and will be immediately elected rather than being rejected.

### **Passive price improvement order**

(q) Reserved.

**Cross order**

(r) A cross order is an order submitted by a member or member organization to AEMI with buy and sell interest specified in a single order. AEMI shall only accept the following types of electronic cross orders in ETFs and Nasdaq securities admitted to dealings on an unlisted basis. Members and member organizations must submit the following information with each cross order:

Price (unless the order is designated as a mid point cross)

Size (the buy and sell size must be the same)

Type of cross order (cross, cross only, mid-point cross, IOC cross, PNP cross, and auction cross)

Qualifier (Cross and Post (“CNP”) or not)

Give up(s)

AEMI shall automatically execute the following types of electronic cross orders at the cross price as follows:

Cross

If the cross price is equal to or better than the automated NBBO and is between the APQ, AEMI shall execute the cross order at the cross price.

If the cross price is equal to the automated NBBO and equal to the APQ, AEMI shall (1) execute one side of the cross against pre-existing bids, offers, and orders in the AEMI Book at the APQ, (2) execute the remainder of the cross order, if any, at the cross price, and (3) cancel the remainder of the cross order unless it is designated CNP in which case the unexecuted balance of the cross order shall be added to the AEMI Book.

If the cross price is outside the automated NBBO and between the APQ, AEMI shall (1) send intermarket sweep orders to markets displaying protected quotations, (2) execute the remainder of the cross order, if any, at the cross price, and (3) cancel the remainder of the cross order unless it is designated CNP in which case the unexecuted balance of the cross order shall be added to the AEMI Book.

If the cross price is outside the automated NBBO and equal to the APQ, AEMI shall (1) send intermarket sweep orders to markets displaying protected quotations, (2) execute one side of the cross against pre-existing bids, offers, and orders in the AEMI Book at the APQ, (3) execute the remainder of the cross order, if any, at the cross price, and (4) cancel the remainder of the cross order unless it is designated CNP in which case the unexecuted balance of the cross order shall be added to the AEMI Book.

If the cross price is outside the automated NBBO and outside the APQ, AEMI shall reject the order.

<u>Cross only</u>	<p><u>If the cross price is equal to or better than the automated NBBO and is between the APQ, AEMI shall execute the cross order at the cross price.</u></p> <p><u>If the cross price is equal to the automated NBBO and equal to the APQ, AEMI shall reject the order.</u></p> <p><u>If the cross price is outside the automated NBBO and between the APQ, AEMI shall reject the order.</u></p> <p><u>If the cross price is outside the automated NBBO and equal to the APQ, AEMI shall reject the order.</u></p> <p><u>If the cross price is outside the automated NBBO and outside the APQ, AEMI shall reject the order.</u></p>
<u>Midpoint cross</u>	<p><u>AEMI shall execute a midpoint cross order at the mid-point of the automated NBBO. The midpoint is the arithmetic mean of the automated NBBO. If the arithmetic mean is not a valid trading increment, AEMI shall round up the value to the nearest valid trading increment. If the rounded up nearest valid trading increment matches the APQ, AEMI shall cancel the cross order.</u></p>
<u>IOC cross</u>	<p><u>If the cross price is equal to or better than the automated NBBO and is between the APQ, AEMI shall execute the cross order at the cross price.</u></p> <p><u>If the cross price is equal to the automated NBBO and equal to the APQ, AEMI shall execute one side of the cross against pre-existing bids, offers, and orders in the AEMI Book at the APQ, execute the remainder of the cross order, if any, at the cross price, and cancel the remainder of the cross order</u></p> <p><u>If the cross price is outside the automated NBBO and between the APQ, AEMI shall reject the order.</u></p> <p><u>If the cross price is outside the automated NBBO and equal to the APQ, AEMI shall reject the order.</u></p> <p><u>If the cross price is outside the automated NBBO and outside the APQ, AEMI shall reject the order.</u></p>
<u>PNP Cross</u>	<p><u>If the cross price is equal to or better than the automated NBBO and is between the APQ, AEMI shall execute the cross order at the cross price.</u></p> <p><u>If the cross price is equal to the automated NBBO and equal to the APQ, AEMI shall execute one side of the cross against pre-existing bids, offers, and orders in the AEMI Book at the APQ, execute the remainder of the cross order, if any, at the cross price, and cancel the remainder of the cross order unless it is designated CNP in which case the unexecuted balance of the cross order shall be added to the AEMI Book.</u></p> <p><u>If the cross price is outside the automated NBBO and between the APQ, AEMI shall reject the order.</u></p> <p><u>If the cross price is outside the automated NBBO and equal to the APQ, AEMI shall reject the order.</u></p>

If the cross price is outside the automated NBBO and outside the APQ, AEMI shall reject the order.

Auction Cross     A person entering an auction cross order must specify the side(s) of the cross that shall be displayed at a better price than the proposed cross price. One or both sides of an auction cross may be displayed at a price that is better than the proposed cross price.

AEMI shall display the side(s) specified for possible price improvement for the three second Auction Cross Duration. The side(s) of the cross selected for price improvement must be displayed one minimum trading increment worse than the proposed cross price (i.e., the buy side of the cross must be displayed one tick below the proposed cross price and/or the sell side of the cross must be displayed one tick above the proposed cross price). During the three second Auction Cross Duration, the displayed order may be price improved by new bids, offers or orders entering the AEMI Book. If the cross price is equal to or better than the automated NBBO and is between the APQ at the end of the Auction Cross Duration, AEMI shall execute the auction cross at the cross price, otherwise the order is cancelled to avoid trading through the automated NBBO or the APQ. If one or both sides selected for display are executed in part during the Auction Cross Duration, the unfilled balance shall continue to be displayed and shall be executed at the end of the Auction Cross Duration at the cross price, and any remainder shall be cancelled at the end of the Auction Cross Duration unless the order is designated CNP, in which case the unexecuted balance of the cross order shall be added to the AEMI Book. If a side selected for display is executed in full during the Auction Cross Duration, the other side of the auction cross order shall be cancelled unless the order is designated CNP.

AEMI shall reject auction cross orders if the cross price is equal to the APQ or outside the automated NBBO.

### **Reserve order**

(s) A reserve order is a limited price order submitted to AEMI by a Floor Broker standing in the crowd which consists of both a visible and an undisplayed (reserve) size. The reserve size is not included in the APQ. A broker may specify the visible size of a reserve order subject to a visible minimum size established by the Exchange. (The Auto-Ex Enhancements Committee shall establish the minimum visible size for reserve orders, in any case not less than one lot, from time to time.) Following a trade that executes against the visible size of a reserve order, AEMI shall replenish the displayed size from the order's reserve quantity up to the lesser of the displayed size or the remainder of the reserve size. Only the cumulative size of all reserve size at each price point shall be visible to the specialist. Specialists shall not disclose reserve size in response to a market probe by a member or member organization or in response to an inquiry from a representative of the issuer of the security.

### **Hit or take order**

(t) A hit or take order is a type of order that is available to any member to trade against the APQ. It is an order that expires if not immediately executed but that is capable of generating

away market obligations to clear better away markets. The requirements for use of this order are provided in Rule 128A–AEMI(d)(iii). A hit or take order can be specified as “sell short.”

### **“G” order**

(u) A “G” order is an order for the account of a member or member organization, the account of an associated person thereof or an account with respect to which the member or member organization or an associated person thereof exercises investment discretion entered pursuant to Section 11(a)(1)(G) of the Securities Exchange Act of 1934 or Rule 11a1-1(T) (“Transactions Yielding Priority, Parity and Precedence”) thereunder. Members and member organizations shall not enter a G order on the Exchange.

### **Company buy-back order**

(v) A company buy-back order is an order for the account of an issuer or its affiliated purchasers to buy the issuer’s securities. Members and member organizations that accept company buy-back orders with instructions to adhere to the “safe harbor” provisions of SEC Rule 10b-18 must use due diligence to execute the orders in compliance with the requirements of those provisions, since AEMI is not programmed to execute company buy-back orders in conformity with the provisions of Rule 10b-18.

### **Stabilizing order**

(w) A stabilizing order is an order to buy a security in distribution entered pursuant to Rule 104 of Regulation M. Members and member organizations that accept stabilizing orders must use due diligence to execute the orders in compliance with the requirements of Rule 104 of Regulation M, since AEMI is not programmed to execute stabilizing orders in conformity with Rule 104 of Regulation M.

### **Amendment of order terms**

(x) AEMI shall treat an amendment of any term of an order in AEMI other than (i) a reduction in the size of the order, (ii) an increase in the reserve size of a reserve order, or (iii) a reduction of the order’s time-in-force as a cancel/replace of the original order which may result in a loss of standing of the order on the AEMI Book.

### **Inconsistent order terms**

(y) AEMI shall reject orders entered into the system with inconsistent terms or qualifiers (e.g., a market order entered with a limit price).

### **•••Commentary**

.01 See Rule 154–AEMI for provisions regarding the election of stop and stop limit orders by quotation in certain securities.

.02 Paragraph (d) of this rule shall apply to the trading of Nasdaq securities to which the Exchange has extended unlisted trading privileges.

.03 (a) "Market at 4:00 p.m. cash close" orders. An order in Portfolio Depositary Receipts or Index Fund Shares that trade on the Exchange until 4:15 p.m. (including those Portfolio Depositary Receipts and Index Fund Shares trading pursuant to unlisted trading privileges) may be designated as "market at 4:00 p.m. cash close" to denote that it is a market order which is to be executed at or as close as practicable to the close of the regular equity trading session on the Exchange (normally 4:00 p.m. Eastern Time). Members and member organization must enter all market at 4:00 p.m. cash close orders into AEMI prior to 4:00 p.m. if they want the orders to be eligible to participate in the 4:00 p.m. cash close. Market at 4:00 p.m. cash close orders not entered in AEMI by 4:00 p.m. will not participate in the cash close.

(b) Where the AEMI Book holds both buy and sell "market at 4 p.m. cash close" orders, and where there is an imbalance between the buy and sell "market at 4 p.m. cash close" orders, the specialist shall, at 4:00 p.m. or as soon after 4:00 p.m. as practicable, execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The specialist shall then pair-off the remaining " market at 4 p.m. cash close" orders at the price of the immediately preceding sale described above.

(c) Where the aggregate size of buy "market at 4:00 p.m. cash close" orders equals the aggregate size of sell "market at 4:00 p.m. cash close" orders in a given security, the buy and sell orders shall be paired off at the midpoint of the then prevailing bid and offer in that security on the Exchange. In the event that that midpoint consists of a number including a fraction of a cent, [then] the price of the transaction shall be at the next higher one-cent increment above the midpoint.

(d) Market at 4:00 p.m. cash close orders shall be executed at one price at 4:00 p.m. or as soon as practicable after 4:00 p.m. AEMI shall not generate an intermarket sweep order to an away market displaying a protected quotation even if the market on cash close price would constitute a trade through, pursuant to the exemption to Rule 611 of Regulation NMS for a single-priced closing transaction by a trading center.

(e) Market at 4:00 p.m. cash close and other bids, offers and orders in AEMI shall be executed in the following order:

- (1) Market at 4:00 p.m. cash close orders and other market orders.
- (2) Buy limit orders with limit prices above the cash close price and bids above the cash close price. Sell limit orders with limits below the cash close price and offers below the cash close price.
- (3) Limit orders, bids and offers in AEMI limited to the cash close price.

The bids, offers and orders specified in item numbers (1) and (2) above must be executed by the specialist in executing market on 4:00 p.m. cash close orders. The orders, bids and offers specified in item number (3) above shall be executed by the specialist in executing market on 4:00 p.m. cash close orders in accordance with the rules of precedence (Rule 126—AEMI).

### **Market on Close Policy and Expiration Procedures**

**Rule 131A—AEMI.** The following procedures apply to stocks and closed end funds and do not apply to options or to any security the pricing of which is based on another security or an

index (e.g., Exchange Traded Funds or Trust Issued Receipts, securities listed under Section 107 of the Exchange Company Guide, warrants and convertible securities).

(a) In an attempt to minimize price volatility on the close, all market-on-close (MOC) and limit-on-close (LOC) orders should be entered as early in the day as possible to provide market participants an opportunity to better ascertain possible order imbalances that might exist at the close. Members and member organizations must enter all MOC and LOC orders into AEMI prior to the applicable deadlines in order for them to be eligible to participate in the closing. MOC and LOC orders not entered in AEMI by the applicable deadlines will not participate in the closing. Orders entered after the deadline that do not offset a published imbalance will be rejected.

Between 3:00 and 3:40 p.m. (Eastern Time), imbalances of any size may be published with Floor Official approval. These are informational only and do not limit MOC/LOC order entry before 3:40 p.m.

At or as soon after 3:40 p.m. as possible, AEMI shall publish MOC order imbalances of 25,000 shares or more on the consolidated tape. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders will result in a closing price which exceeds the price change parameters of Rule 154—AEMI(e) (the 1%, \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. A "No Imbalance" notice will only be published for any stock at 3:40 p.m. if there had been a prior informational imbalance publication.

(1) MOC Imbalance Calculation Policy (3:40 p.m. calculation): Marketable LOC orders to buy (that is, LOC buy orders with limit prices above the last sale at 3:40 p.m.) are added to MOC orders to buy. Marketable LOC orders to sell (that is, LOC orders with limit prices below the last sale at 3:40 p.m.) are added to MOC orders to sell. The buy orders are then matched against sell orders. If there is a buy imbalance, it is offset and reduced by any tick-sensitive MOC orders to sell and tick-sensitive, marketable LOC orders to sell (including orders to sell short). If there is a sell imbalance it is offset and reduced by any tick-sensitive MOC orders to buy and tick-sensitive, marketable LOC orders to buy. Tick-sensitive MOC and LOC orders whose execution would violate customer restrictions or the SEC's short sale rules at the time of publication will not be reflected in the closing imbalances.

At or as soon after 3:50 p.m. as possible, AEMI shall publish MOC order imbalances of 25,000 shares or more on the consolidated tape. In addition, an order imbalance below 25,000 shares may also be published by a specialist, with the concurrence of a Floor Official, if the specialist (i) anticipates that the execution of the MOC orders will result in a closing price which exceeds the price change parameters of Rule 154—AEMI(e) (the 1%, \$2, \$1, \$.50 Rule), or (ii) believes that an order imbalance should otherwise be published in an attempt to minimize price volatility on the close. If there had been an imbalance publication at 3:40 p.m. and the imbalance at 3:50 p.m. is less than 25,000 shares, either a "No Imbalance" notice will be published, or the size and side of the imbalance may be published with Floor Official approval.

MOC Imbalance Calculation Policy (3:50 p.m. calculation): Procedures for the 3:50 p.m. calculation are the same as the 3:40 p.m. calculation, except that the Exchange last sale at 3:50 p.m. would be used to determine whether or not a LOC order is marketable.

(2) Between 3:40 p.m. and 3:50 p.m., no MOC or LOC orders may be entered except to offset a published MOC imbalance at 3:40 p.m.

Between 3:40 p.m. and 3:50 p.m., MOC and LOC orders are irrevocable, except to correct an error (e.g., incorrect stock, side, size, or price, or a duplication of a previously entered order). Properly cancelled MOC and LOC orders may not be replaced after 3:40 p.m. unless the replacement order offsets a published MOC imbalance.

After 3:50 p.m., no MOC or LOC orders may be entered except to offset a published MOC imbalance at 3:50 p.m.

Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. will not be permitted for any reason, including in case of legitimate error.

(3) Publication of Imbalances Following Trading Halt of Any Type: AEMI shall publish MOC order imbalances of 25,000 shares or more in the event a stock reopens after 3:50 p.m. following a trading halt of any type. An imbalance of less than 25,000 shares may be published with the concurrence of a Floor Official. Trading will not resume in the event a trading halt in a stock occurs after 3:55 p.m., and MOC/LOC orders in that stock shall be cancelled by AEMI.

(4) Entry of MOC/LOC Orders During a Regulatory Halt. If a regulatory halt is in effect at 3:40 p.m. or occurs after that time, the entry of MOC/LOC orders is permitted until 3:50 p.m. or until the security reopens, whichever occurs first. If an order imbalance is published following a regulatory halt and reopening after 3:40 p.m., the entry of MOC/LOC orders is permitted only to offset the published imbalance.

(5) Cancellation of MOC/LOC Orders During a Regulatory Halt. When a regulatory halt (news pending or news dissemination) is in effect at 3:40 p.m. or occurs after that time, cancellation of MOC/LOC orders is permitted until 3:50 p.m. or the reopening of the security, whichever occurs first. This policy does not apply to non-regulatory (e.g., order imbalance or equipment changeover) halts, and cancellation of orders in such cases is prohibited after 3:40 p.m. except to correct an error. Cancellation or reduction in size of MOC and/or LOC orders after 3:50 p.m. will not be permitted for any reason, including in case of legitimate error.

(b) Printing the Close:

Where there is an imbalance between the buy and sell MOC and marketable LOC orders, the specialist shall, at the close or as soon after the close of trading in the security as practicable, execute the imbalance at an auction price under prevailing market conditions that is consistent with auction market procedures. The specialist shall conduct a post trade allocation with respect to the shares necessary to off-set the imbalance of buy/sell interest at the closing price, and AEMI will then send notification of individual trades to active crowd participants, consisting of Registered Traders in the crowd with a bid or offer on the AEMI Book on the contra side of the imbalance and Floor Brokers with a Crowd Order on the contra side of the imbalance, in each case at the time of the trade (e.g., brokers with offers in AEMI when there is an imbalance of buy orders).

Following the printing of the imbalance, AEMI shall pair-off and execute the remaining executable buy and sell orders against each other at the price of the imbalance trade described above. The "pair-off" transaction shall be reported to the tape with the same indicator used for printing the paired-off transactions discussed in Rule 118—AEMI(j)(iii). Subsequently, AEMI shall execute at that same price stop orders and percentage orders on the AEMI Book elected by the execution of the MOC and marketable LOC imbalance at the price of the imbalance trade as provided below if they are executable. Where the aggregate size of the MOC (and marketable

LOC, i.e., orders with limits above the closing price) orders to buy equals the aggregate size of the MOC (and marketable LOC, i.e., orders with limits below the closing price) orders to sell, the specialist shall pair-off the buy orders and sell orders and execute them at the price of the last sale regular way on the Exchange prior to the close of trading in that stock on that day. The transaction shall be reported to the consolidated last sale reporting system with the same indicator used for printing the paired-off transactions discussed in Rule 118—AEMI(j)(iii). Stop orders and percentage orders will not be elected by this closing transaction.

(c) Order of Execution of Orders, Bids and Offers at the Close

AEMI shall execute orders, bids and offers in the AEMI Book in the following order:

1. Market orders, including market on-close orders,
2. Buy limit orders (including LOC orders) and bids with limit prices greater than the closing price, and sell limit orders (including LOC orders) and offers with limit prices below the closing price,
3. Regular and on-close buy minus orders and bids executable higher than the closing price, and regular and on-close sell plus and sell short orders executable below the closing price
4. Limit orders (including LOC orders), bids and offers with limit prices equal to the closing price,
5. Regular and on-close buy minus orders limited to the closing price,
6. For securities that are subject to the “tick” test of Amex Rule 7, an order to sell short limited to the closing price, which closing price is a plus or zero-plus tick,
7. On-close sell long plus orders limited to the closing price,

Orders, bids and offers listed in items 1 through 3 above, including any reserve size of such orders, are Must Trade Orders and shall be executed by AEMI at the closing price. Orders, bids and offers listed in items 4 through 7 are May Trade Orders and shall be executed by AEMI only if there is sufficient contra interest in AEMI to execute them. AEMI shall execute all customer orders in ETFs in items 4 through 7 above collectively before it executes any broker/dealer orders in any of these four categories.

Stop and percentage orders in the AEMI Book elected by the execution of the imbalance trade shall be executed in the following sequence:

8. Buy stops with stop prices equal to or less than the closing price, and sell stops with stop prices equal to or greater than the closing price,
9. Buy stop limits with stop prices equal to or less than the closing price and with limit prices greater than the closing price; and sell stop limits with stop prices equal to or greater than the closing price and with limit prices less than the closing price,

10. Buy stop limit orders with stop prices equal to or greater than the closing price and with limit prices equal to the closing price, and sell stop limit orders with stop prices equal to or less than the closing price and with limit prices equal to the closing price.
11. Buy percentage orders with a limit price equal to the closing price and sell percentage orders with a limit price equal to the closing price.

Stop orders listed in items 8 through 9 above are Must Trade Orders and shall be executed by AEMI at the closing price. Stop and percentage orders listed in items 10 and 11 are May Trade Orders and shall be executed by AEMI only if there is sufficient interest in AEMI to execute them. AEMI, moreover, shall execute all customer orders in ETFs in items 10 and 11 above collectively before it executes any broker/dealer orders in either of these two categories.

#### (d) Auxiliary Opening Procedures

For each expiration settlement value day on which derivative, index-related products (e.g., options, futures, options on futures) settle against opening prices, several auxiliary procedures are necessary to integrate stock orders relating to expiring contracts into Amex's opening procedures in a manner that assures an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration settlement value day is a trading day prior to the expiration of index-related derivative products whose settlement value is based upon opening prices on the Exchange, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation). The twelve expiration days are "Expiration Fridays" which generally fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month.

#### **Order Entry**

Stock orders relating to index-related derivative contracts whose settlement pricing is based upon opening prices must be received by AEMI by 9:00 a.m. These orders may be cancelled or reduced in size. (Firms canceling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Amex Rule 153–AEMI provides.) All other orders may be entered before or after 9:00 a.m.

To facilitate early order entry, AEMI will begin accepting orders at 7:30 a.m.

#### **Order Identification**

Stock orders relating to expiring derivatives whose settlement pricing is based on opening prices must be identified "OPG" with an appropriate audit trail code identifying them as related to an index related derivative. (See the Commentary to Rule 719.)

#### **Dissemination of Order Imbalances**

As soon as practicable after 9:00 a.m. on expiration days, the Exchange will publish market order imbalances of 25,000 shares or more in all stocks. In addition, imbalances of less than 25,000 shares may be published at that time with Floor Official approval. A "no imbalance" status will not be published for any stock.

(e) Order imbalances for stocks admitted to unlisted trading privileges may be published in the same manner as order imbalances for NASDAQ securities admitted to unlisted trading privileges. (See Rule 118.) This paragraph (e) shall not apply to options, securities admitted to unlisted trading privileges on or before February 28, 1950, or to any security the pricing of which is based on another security or an index (e.g., Exchange Traded Funds or Trust Issued Receipts, securities listed under Section 107 of the Exchange Company Guide, warrants and convertible securities).

### **Price Adjustment of Open Orders on "Ex-Date"**

**Rule 132—AEMI.** (a) When a security is quoted ex-dividend, ex-distribution, ex-rights or ex-interest, the following kinds of orders shall be reduced by the cash value of the payment or rights, except where the security is quoted "ex" a stock dividend or stock distribution in which case the provisions of paragraph (b) below shall apply, on the day the security sells ex:

- (1) open buying orders;
- (2) open stop orders to sell. (With open stop limit orders to sell, the limit, as well as the stop price, shall be reduced.)

The following shall not be reduced:

- (1) open stop orders to buy;
- (2) open selling orders.

(b) When a security is quoted "ex" a stock dividend or stock distribution, all open orders, including open orders to sell and open stop orders to buy, shall be reduced by the proportional value of the dividend.

#### **••• Commentary**

.01 Reduction of Orders—Odd Amounts.—When the amount of a cash dividend is not equivalent to or is not a multiple of the fraction of a dollar in which bids and offers are made in the particular stock, orders shall be reduced by the next higher one cent increment.

.02 Reduction of Orders—Optional Amounts.—When a dividend is payable at the option of the stockholder either in cash or securities, the stock will be quoted ex-dividend the value of the cash or securities, whichever is greater.

.03 Reduction of Orders—Proportional Procedure.—All open orders shall be reduced by the proportional value of a stock dividend or stock distribution on the day a security sells ex-dividend or ex-distribution. The new price of the order is determined by dividing the price of the original order by 100% plus the percentage value of the stock dividend or stock distribution. For example, in a stock dividend of 3%, the price of an order would be divided by 103%.

The chart below lists, for the more frequent stock distributions, the percentages by which the prices of all open orders shall be divided to determine the new order prices.

<u>Distribution</u>	<u>Price of Order Divided by</u>	<u>Distribution</u>	<u>Price of Order Divided by</u>
<u>5-for-4</u>	<u>125%</u>	<u>2-for-1</u>	<u>200%</u>
<u>4-for-3</u>	<u>133⅓%</u>	<u>5-for-2</u>	<u>250%</u>
<u>3-for-2</u>	<u>150%</u>	<u>3-for-1</u>	<u>300%</u>
<u>5-for-3</u>	<u>166⅔%</u>	<u>4-for-1</u>	<u>400%</u>

If as a result of this calculation, the price is not equivalent to or is not a multiple of the fraction of a dollar in which bids and offers are made in the particular security, the price should be rounded to the next lower one cent increment.

In reverse splits, all open orders (including open sell orders and open stop orders to buy) should be cancelled.

**Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Agree to the Cancellation or Revision**

**Rule 135—AEMI.** (a) A member or member organization effecting a transaction on the Exchange shall not cancel or revise such transaction unless it was made in error or the cancellation or revision is for other proper reason, and unless in each case both buying and selling members agree to the cancellation or revision and prior approval of the cancellation or revision is obtained from a Floor Official.

(b) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to securities admitted to dealings on the Exchange after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his or her account.

**••• Commentary**

.01 A change or correction in a transaction which previously appeared on the tape, or the cancellation of a transaction which previously appeared on the tape and was properly rescinded, or the occurrence of a transaction which had been omitted from the tape, is to be published on the tape on the day of the transaction after approval of such publication is obtained from a Floor Official. If not published on such day, the same is to be published at a later date in the Exchange's Sales and Quotes Report with the approval of a Floor Official. A correction to the tape will only change the calculation of the "tick" of the next trade if the last published trade is the subject of the correction.

**Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Do Not Agree to the Cancellation or Revision**

**Rule 135A—AEMI.** (a) A Floor Official shall, pursuant to the procedures set forth below, have the authority to review any transaction in a security admitted to dealings on the Exchange that is claimed to be clearly erroneous arising out of the use or operation of any facility of the Exchange, provided, however, that the procedures for reviewing transactions in Nasdaq securities admitted to dealings on the Exchange are separately set forth in Rule 118–AEMI and provided further that these procedures do not apply to listed options. A member of the regulatory staff shall advise and participate in all steps of the Floor Official’s review of the transaction.

In reviewing a trade that is claimed to be clearly erroneous, a Floor Official shall review the transaction with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. A member of the regulatory staff shall advise and participate in all steps of the Floor Official’s review of the transaction. Based upon this review, the Floor Official shall decline to "break" a disputed transaction if the Floor Official believes that the transaction under dispute is not clearly erroneous. If the Floor Official determines the transaction in dispute is clearly erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Floor Official shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(b) Any member who seeks to have one or more transactions reviewed pursuant to paragraph (a) above shall submit the matter to a Floor Official and deliver a written complaint to the Service Desk and the other member(s) who were part of the trade within 30 minutes of the transaction. Once a complaint has been received, the complainant shall have up to 30 minutes, or such longer period as the Floor Official may specify, to submit any supporting written information concerning the complaint necessary for a review of the transaction. The other member(s) that were part of the trade shall have up to thirty minutes after being notified of the complaint, or such longer period as specified by the Floor Official, to submit any supporting written information concerning the complaint necessary for a review of the transaction. Any member on a disputed trade may request the written information provided by the other members pursuant to this subparagraph. Once a member communicates that he or she does not intend to submit any further information concerning a complaint, the member may not thereafter provide additional information unless requested to do so by the Floor Official. If the members involved in a disputed trade indicate that they have no further information to provide concerning the complaint before their thirty-minute information submission periods have elapsed, then the matter may be immediately considered by a Floor Official. Members or persons associated with members and member organizations involved in the transaction shall provide the Floor Official with any information that he or she requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth above. Once a member has applied to a Floor Official for a ruling, the Floor Official shall review the transaction, with the advice and participation of a member of the regulatory staff, and make a ruling unless all members on the transaction agree to withdraw the application for review prior to the time that the Floor Official makes the ruling. A member may seek review of a Floor Official's ruling pursuant to the procedures described in Rule 22(d) and Commentary .02 to Rule 22.

(c) In the event of (1) a disruption or malfunction in the use or operation of any facility of the Exchange or (2) extraordinary market conditions or other circumstances in which the nullification or modification of transactions executed on the Exchange may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, a Senior Floor Official may review any transactions arising out of or reported through any facility of the Exchange (other than transactions in Nasdaq securities which are covered by Rule 118—AEMI). A member of the regulatory staff shall advise and participate in all steps of the Floor Official's review of the transaction. A Senior Floor Official acting pursuant to this paragraph may declare any Amex transaction null and void or modify the terms of any such transactions if the Senior Floor Official determines that (1) the transaction is clearly erroneous, or (2) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the Senior Floor Official shall take action pursuant to this subsection within 30 minutes of detection of the transaction, but in no event later than 3:00 p.m., Eastern Time, on the next trading day following the date of the trades at issue. A member may seek review of a Senior Floor Official's ruling from a three Senior Floor Official Panel as described in Rule 22(d) and Commentary .02 to Rule 22 without first seeking review of the ruling from a Floor Official or Exchange Official.

(d) A Floor Official shall have the authority to review any transaction that is claimed to be erroneous as a result of the automatic execution of an order, bid or offer by AEMI against an Amex quote that was not firm as a result of any condition set forth in paragraph (h)(i), (h)(ii) or (h)(iii) to Rule 123—AEMI. In reviewing a trade that is claimed to be erroneous, a Floor Official shall review the transaction with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the Floor Official shall decline to “break” a disputed transaction if the Floor Official believes that the transaction under dispute is not erroneous as a result of the presence of one or more of the conditions stated in Rule 123—AEMI(h). If the Floor Official determines the transaction in dispute is erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Floor Official shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For the purposes of this Rule, the terms of a transaction are erroneous if AEMI automatically executed an order, bid or offer against a quote that is not firm as provided in Rule 123—AEMI(h).

Any member who seeks to have one or more transactions reviewed shall submit the matter to a Floor Official and deliver a written complaint to the Service Desk and the other member(s) who were part of the trade within 30 minutes of the transaction. Once a complaint has been received, the complainant shall have up to 30 minutes, or such longer period as the Floor Official may specify, to submit any supporting written information concerning the complaint necessary for a review of the transaction. The other member(s) that were part of the trade shall have up to thirty minutes after being notified of the complaint, or such longer period as specified by the Floor Official, to submit any supporting written information concerning the complaint necessary for a review of the transaction. Any member on a disputed trade may request the written information provided by the other members pursuant to this subparagraph. Once a member communicates that he or she does not intend to submit any further information concerning a complaint, the member may not thereafter provide additional information unless requested to do so by the Floor Official. If the members involved in a disputed trade indicate that they have no further information to provide concerning the complaint before their thirty-minute information submission periods have elapsed, then the matter may be immediately considered by

a Floor Official. Members or persons associated with members and member organizations involved in the transaction shall provide the Floor Official with any information that he or she requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth above. Once a member has applied to a Floor Official for a ruling, the Floor Official shall review the transaction and make a ruling unless all members on the transaction agree to withdraw the application for review prior to the time that the Floor Official makes the ruling. A member may seek review of a Floor Official's ruling pursuant to the procedures described in Rule 22(d) and Commentary .02 to Rule 22.

(e) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to securities admitted to dealings on the Exchange after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his or her account.

**••• Commentary**

.01 A change or correction in a transaction which previously appeared on the tape, or the cancellation of a transaction which previously appeared on the tape and was properly rescinded, or the occurrence of a transaction which had been omitted from the tape, is to be published on the tape on the day of the transaction after approval of such publication is obtained from a Floor Official. If not published on such day, the same is to be published at a later date in the Exchange's Sales and Quotes Report with the approval of a Floor Official. A correction to the tape will only change the calculation of the "tick" of the next trade if the last published trade is the subject of the correction.

**Purchases and Sales While Holding Unexecuted Market Order**

**Rule 150—AEMI.** (a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he or his member organization or any member, officer, employee or approved person therein is directly or indirectly interested, while such member personally holds or has knowledge that his member organization or any member, officer, employee or approved person therein holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization or any member, officer, employee or approved person therein holds an unexecuted market order to sell such security in the unit of trading for a customer.

**Purchases and sales while holding unexecuted limit order**

(b) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization or any member, officer, employee or approved person therein holds an unexecuted limited price order to buy such security in the unit of trading for a

customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization or any member, officer, employee or approved person therein holds an unexecuted limited price order to sell such security in the unit of trading for a customer.

### **Odd-lot and other exemptions**

(c) The provisions of this rule shall not apply to (1) any purchase or sale of any security in an amount of less than the unit of trading made by a specialist as the odd-lot dealer to offset odd-lot orders of customers, (2) a purchase or sale made by a specialist as the odd-lot dealer to offset a position previously acquired through the purchase or sale of odd lots or to offset odd-lot orders that will be executed on a purchase or sale, provided such specialist has entered an order in the Specialist Order Book and that his order is "up" in the Specialist Order Book based upon the time stamp on the order, and he is bidding or offering at the limit indicated on the order, (3) to any purchase or sale of any security, delivery of which is to be upon a day other than the day of delivery provided in such unexecuted market or limited price order, (4) a purchase or sale of any security by a specialist where the member or member organization entering a percentage order has permitted the specialist to be on parity with the order, (5) a purchase or sale of an ETF by a specialist where the specialist is on parity with another broker/dealer order pursuant to the Exchange's rules (e.g., Rule 126–AEMI), or (6) a purchase or sale of any security by a specialist where the order is suspended in whole or part in AEMI because it has been sent to another market.

### **Intermarket Trading**

(d) The provisions of this rule shall apply to the issuance of a commitment or obligation to trade from the Exchange, and the acceptance on the Exchange of a commitment or obligation to trade issued from another market center.

### **“Open Outcry” Cross Transactions**

**Rule 151—AEMI.** When a member has a customer's order to buy and a customer's order to sell the same security, he must offer such security at the minimum price variation of trading above a bid price which he has established or bid the minimum price variation of trading below an offered price which he has established before making a transaction between the customers whose orders he holds. This Rule does not apply to cross orders entered into AEMI pursuant to Rule 131–AEMI.

### **Taking or Supplying Stock to Fill Customer's Order**

**Rule 152—AEMI.** (a) No member or member organization shall take or supply for any account in which the member, member organization or any other member, officer or approved person therein has any direct or indirect interest, of which the member knows or should have known, the securities named in a sell or buy order accepted for execution by the member or member organization except as follows:

**Error**

(1) A member who neglects to execute an order may be compelled to take or supply for his own account or that of his member organization the securities named in the order.

**Filling Customer's Order**

(2) A member or member organization may take or supply the securities for the purpose of filling a customer's order only if:

(i) In connection with taking the securities named in a sell order, the member or member organization shall have offered the securities in the open market at a price which is higher than the bid of such member or member organization by the minimum price variation of trading permitted in such securities. This requirement does not apply to cross orders entered into AEMI pursuant to Rule 131-AEMI;

(ii) In connection with supplying the securities named in a buy order, the member or member organization shall have bid for the securities in the open market at a price which is lower than the offer of such member or member organization by the minimum price variation of trading permitted in such securities. This requirement does not apply to cross orders entered into AEMI pursuant to Rule 131-AEMI;

(iii) The price in each case is justified by the condition of the market;

(iv) In the case of an order received from a non-member customer of the member or member organization, the member or member organization either (A) prior to effecting the transaction shall have obtained from the customer the customer's consent or, except as otherwise provided by law, (B) as promptly as possible following execution of the order shall have disclosed to the customer that the securities have been taken or supplied for an account in which the member, member organization, or any member, officer or approved person therein has an interest, and the customer accepts the trade;

(v) In the case of an order received from another member or member organization, the member or member organization receiving the order, promptly after effecting the transaction notifies such other member or member organization that the member or member organization receiving the order took or supplied the securities named in the order for the account of the member, member organization or a member, officer or approved person therein and such other member or member organization accepts the trade; and

(vi) Such transaction is made in accordance with any other applicable rules of the Exchange.

(b) In the event that a member or member organization having executed a sell or buy order accepted for execution as a broker finds that inadvertently the securities sold or purchased in such execution were taken or supplied for an account in which the member, member organization or any member, officer or approved person therein has a direct or indirect interest, such member or member organization shall report that fact to his or its principal who may accept or reject the trade.

(c) A specialist acting as principal in the course of his specializing function is prohibited from charging a commission for the execution against his account of an order entrusted to him, as agent, by a member.

••• Commentary

.01 The provisions of clauses (i) and (ii) of Rule 152–AEMI(a)(2) do not apply to a specialist’s transactions as principal in the proper performance of his function to assist in the maintenance of a fair and orderly market, and he may as principal take or supply the securities named in an order on the Specialist Order Book provided he complies with the other requirements of Rule 152–AEMI.

**Record of Orders**

**Rule 153—AEMI.** (a) Every member or member organization shall maintain a record of every order transmitted to the Floor of the Exchange, which record shall include the name, amount and price of the security and the time when such order was so transmitted.

(b) Every member or member organization shall maintain a record of every order received by such member or member organization on the Floor of the Exchange. Such record shall include the name, amount and price of the security and the time when such order was received. With respect to orders that are eligible for input into the Exchange's electronic order processing facilities, members and member organizations shall comply with their record keeping obligations under this Rule by inputting immediately upon receipt eligible orders that are not already systematized into the Exchange's electronic order processing facilities and retaining the record of such orders provided to them by the Exchange for this purpose. Any member or member firm proprietary system approved by the Exchange which receives orders on the Exchange's trading floor will be considered an Exchange electronic order processing facility for the purpose of complying with record keeping obligations under this Rule. Any proprietary system approved by the Exchange shall have the functionality to comply with the Exchange’s record keeping requirements, and the member or member organization that utilizes such a propriety system shall report these required records to the Exchange in electronic form on a daily basis.

(c) Every member or member organization shall maintain a record of every commitment or obligation to trade issued from the Floor and cancellation thereof, which record shall include the name, amount, and price of the security, the destination market center, and the time when such commitment was issued or cancelled.

(d) Every member or member organization shall maintain a record of every report of the execution of an order, commitment or obligation covered by paragraph (a), (b), or (c) of this rule in addition to the record required by such paragraphs, which shall include the time of the receipt of such report.

(e) Before any order, commitment or obligation covered by paragraph (a), (b), or (c) of this rule is executed, there shall be placed upon the order slip or other record the name or designation of the account for which such order, commitment or obligation is to be executed; no change in such account name or designation shall be made unless the change has been authorized by any member or officer in the member organization or authorized representative thereof who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

(f) All records required to be maintained under this rule shall include such information and shall be preserved for such period as required by the Securities Exchange Act of 1934 (the “Exchange Act”) and the rules thereunder relating to the requirements for the retention of records regarding orders (including, but not limited to, Rule 17a-3(a)(6) and Rule 17a-4(b)(1) (17 CFR

240.17a-3(a)(6) and 17 CFR 240.17a-4(b)(1))). Any record required to be maintained under this rule that is not required to be created or maintained pursuant to the Exchange Act or the rules thereunder must be maintained for at least three years.

(g) The term "order" as used in this Rule 153–AEMI includes any modification to or cancellation of such order.

### **Orders in AEMI**

**Rule 154—AEMI.** (a) A specialist shall only accept orders, cancellations or amendments to orders that are received by him/her through AEMI. The specialist shall not accept orders, cancellations or amendments to orders that are handed to him in writing or communicated to him verbally.

(b) Rule 131–AEMI defines types of orders accepted on the Exchange. The following order types, although acceptable on the Exchange, shall not be accepted by AEMI: not held orders, company buy back orders with instructions to adhere to safe harbor conditions of SEC Rule 10b-18, stabilizing orders, sell orders to be executed under SEC Rules 144 and 145, and sell orders requiring delivery “with prospectus.” (See Rule 153—AEMI relating to records of orders and cancellations.)

(c)(i) When a specialist elects a stop order by selling stock to the existing bid or buying stock at the existing offer for his own account, he must first obtain a Floor Official's approval. Such approval shall not be required for ETFs or for Nasdaq securities to which the Exchange has extended unlisted trading privileges.

(ii) Stop and stop limit orders to buy or sell a security, the price of which is derivatively based upon another security or index of securities (e.g., an ETF), shall be elected by a quotation as set forth below:

- (1) a stop order to buy becomes a market order when the bid price in the security is at or above the stop price after the order is received in the AEMI Book;
- (2) a stop order to sell becomes a market order when the offer price in the security is at or below the stop price after the order is received in the AEMI Book;
- (3) a stop limit order to buy becomes a limit order executable at the limit price or at a better price, if obtainable, when the bid price in the security is at or above the stop price after the order is received in the AEMI Book; and
- (4) a stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when the offer price in the security is at or below the stop price after the order is received in the AEMI Book.

(d) At the opening a specialist shall execute all round lot market orders on the AEMI Book at one price.

(e) No transaction in a stock at a price of \$20 or more a share may be made at the greater of 1% or two dollars away from the last previous sale, no transaction in a stock at a price of \$10 or

more (but less than \$20) a share may be made at one dollar or more away from the last previous sale, and no transaction in a stock at a price of less than \$10 a share may be made at 50 cents or more away from the last previous sale, without the prior approval of a Floor Official, except for a transaction that occurs electronically by means of Auto-Ex (which transaction will disable Auto-Ex as provided in Rule 128A—AEMI(f)(iv)).

The terms "1%," "two dollars," "one dollar or more" and "50 cents or more" refer in each case to the net difference between the proposed price and the price of the last previous "regular way" sale after taking into consideration a dividend or other distribution when the stock sells "ex-dividend" or "ex-distribution."

The provisions of this paragraph do not apply to the trading of ETFs.

(f) See Rule 177, paragraphs (a) and (d) with respect to the duty of a specialist to report to a Floor Official any unusual activity or price change in a security in which he is registered or any unusual transaction or transactions in which he participates as a broker or dealer in such security.

(g) All open orders to buy or sell round lots held in the AEMI Book and all open orders to buy or sell odd-lots held by the specialist prior to the day a stock sells ex-dividend, ex-distribution, or ex-rights, shall be reduced by the Exchange in accordance with the provisions of Rule 132—AEMI, unless in the case of an ordinary cash dividend, the order is marked "do not reduce". All such reductions shall be made without any adjustment in the number of shares covered by the order.

(h) Unexecuted round lot and odd-lot orders in a "when issued" stock held in the AEMI Book expire at the close on the last day for trading in the "when issued" stock.

(i) A stop limit order to sell a round lot or odd lot, which has been elected but not executed before the ex-dividend date, is to be treated as an open limited price order to sell and is not to be reduced by the Exchange on the ex-date for a cash dividend but will be adjusted for stock dividends and stock distributions on ex-date in accordance with Rule 132.

(j) (1) When more than one percentage order has been entered in a given security, each such order will be on parity with the other. However, when an odd number of round lots are involved relative to the number of in-parity orders, for example, 300 shares to be executed against two percentage orders, the extra round lot(s) will be allocated by AEMI among the orders on the basis of time priority. Thereafter any additional shares executed against the percentage orders will be allocated among the in-parity orders using an "allocation wheel" (e.g., see Commentary .04 to Rule 126—AEMI).

(2) A specialist who believes that percentage orders will interfere with the maintenance of a fair and orderly market in a particular security should discuss the situation with a Floor Official. With Floor Official approval, entry of percentage orders may be banned for a given security, provided this is done before the start of the trading session. In such case, an administrative message will be disseminated to the tape.

(3) A percentage order to buy may be manually converted by the specialist into a regular limit order for transactions effected on "minus" or "zero minus" ticks (buy stabilizing ticks) and a percentage order to sell may be manually converted by the specialist into a regular limit order for transactions effected on "plus" or "zero plus" ticks (sell stabilizing ticks). AEMI will automatically convert a percentage order into a regular limit order to effect a transaction on a

stabilizing tick when an incoming order creates a market that meets the values specified by the entering broker for: (i) maximum spread between bid and ask; (ii) ratio between the Amex published bid size and the Amex published offer size; and (iii) size parameters listed in Rule 131-AEMI(m) (i.e., maximum conversion size per trade and aggregate maximum conversion amount for the order).

(4) Destabilizing Conversion Instructions. The entering Floor Broker may further specify that the specialist may, but shall not be required to, manually convert a percentage order to buy into a regular limit order for transactions effected on "zero plus" and "plus" ticks. Conversely, the entering Floor Broker may further specify that the specialist may, but shall not be required to, manually convert a percentage order to sell into a regular limit order for transactions effected on "zero minus" or "minus" ticks. (These ticks are hereinafter collectively referred to as "destabilizing ticks".) The Floor Broker's destabilizing conversion instructions on the percentage order will also cause AEMI to automatically convert the percentage order to effect a transaction on a destabilizing tick when an incoming order creates a market that meets the values specified on the order. Pursuant to these destabilizing conversion instructions, automatic conversion will take place and manual conversion by the specialist may take place only where the price at which the converted percentage order is to be executed is no more than 25 cents away from the last sale price; provided, however, that this price parameter may be modified for all percentage orders in a given security with the prior approval of a Senior Floor Official, provided any changes are made before the start of the trading session.

The specialist shall not execute a percentage order manually converted pursuant to the preceding paragraph at consecutively higher or lower prices so that consecutive up or down ticks (as the case may be), follow one another in rapid succession, unless he obtains the prior approval of a Floor Official. In determining whether to grant such prior approval, the Floor Official shall consider any changes in overall market conditions, and any changes in buying or selling interest in the stock in question. Where a specialist reasonably believes, based on prevailing market conditions (for example, a brief period of time where there is an influx of buying/selling interest) that it may be appropriate and necessary for him to manually convert percentage orders, on destabilizing ticks, in a series of trades which, while not consecutive, may be effected within a short period of time, the specialist shall first seek the approval of a Floor Official. In granting such approval, the Floor official should, based on his evaluation of the buying/selling and contra-side interest in the market, determine a price a reasonable amount away from the market, to which price the specialist may manually convert percentage orders in a series of non-consecutive trades. As this price is approached, the specialist shall again consult with a Floor Official, who will re-evaluate the situation at that time. Any subsequent approvals by the Floor Official shall follow the principles discussed immediately above. In addition, consecutive automatic conversions will not occur until the passage of a specified period of time. This time period is set for a given security, and may only be changed before the start of the trading session.

(5) The specialist may manually convert a percentage order on a stabilizing tick to make a bid or offer in such size as he deems appropriate. The specialist may manually convert a percentage order on a destabilizing tick in such size as he deems appropriate to add size to the prevailing bid or offer.

In addition, the specialist may, except as provided below, manually convert a percentage order on a destabilizing tick to establish a new bid in such size as he deems appropriate, (i) immediately following a transaction, or (ii) to narrow the quotation spread; provided that no such bid may be more than ten cents higher than the last sale. The specialist's conversion of a percentage order to

establish a new bid pursuant to (i) and (ii) above shall be further subject to the following conditions:

1) Where the specialist has manually converted a percentage order to buy on a "plus" tick to participate in a transaction as otherwise permitted by this rule, he may not manually convert a percentage order to buy to establish a new bid at a price which is higher than the price of the transaction, unless there is an intervening transaction at a price that is independent of the price established by the specialist through the conversion of a percentage order.

2) Where the specialist has manually converted a percentage order to buy to establish a new bid that is higher than the last sale price, with the result that a transaction is effected at the bid price, he may not manually convert a percentage order to buy to participate in a trade as otherwise permitted by this rule, unless there is an intervening transaction at a price that is independent of the price established by the specialist through the conversion of a percentage order.

3) Where the specialist has manually converted a percentage order to buy to establish a new bid that is higher than the last sale, he may not manually convert a percentage order to subsequently establish a higher bid, unless there is an intervening transaction at a price independent of the price established by the specialist through the conversion of a percentage order.

The same principles shall apply in the case of a specialist's manual conversion of percentage orders to sell. With the prior approval of a Floor Official, the specialist may manually convert a percentage order to make a destabilizing bid or offer at a price which would otherwise be prohibited under the limitations and conditions stated above.

(6) Any percentage order or portion thereof converted to make a bid or offer shall be considered as a limit order on the AEMI Book and will have the same priority and parity status as a regular limit order entered at that time, and any such bid or offer made pursuant to such percentage order shall have the same standing in the market as would be provided any other bid or offer under the Exchange's auction market rules and procedures dealing with priority, parity, and precedence. Where the specialist has manually converted a percentage order to make or add to a bid (offer) as permitted by this rule, and subsequently additional buying or selling interest enters the market and establishes a different higher bid (lower offer), the original converted order or portion thereof shall be treated as a cancelled order on the AEMI Book and revert to its original status as a percentage order subject to subsequent election or further conversion as permitted by this Rule. Where the specialist has manually converted a percentage order to make or add to a bid or offer as permitted by this Rule, and subsequently additional size is added to a prevailing bid or offer on the opposite side of the market from the converted percentage order, or a different bid or offer is established on the opposite side of the market from the converted percentage order, the specialist may cancel the converted order or portion thereof if he intends to reconvert the order to trade with the interest on the opposite side of the market, and such trade is otherwise permitted by this Rule.

(7) Notwithstanding the provisions of this Rule permitting percentage orders to be converted on destabilizing ticks, where a member holds orders to buy or sell a particular stock which he proposes to cross at or within the prevailing market, the specialist may not, unless asked to do so by the member with the cross (assuming the cross is at or within the 25 cents price parameter of this Rule), manually convert any percentage order on a destabilizing tick for execution in such proposed cross transaction unless the specialist can (at or within the 25 cents or other Senior-

Floor-Official-approved price parameter specified in this Rule, and within the limit price of the order) provide a better price to one side or the other of the proposed cross.

When the specialist is holding one or more percentage orders with special instructions permitting conversions on destabilizing ticks as provided in this Rule, and a member who holds orders to buy and sell proposes to cross such orders at or within the prevailing market, the specialist shall not, unless asked to do so by the member with the cross, trade for his own account with either the bid or the offer side of such cross (as the case may be), where the effect of such proprietary trade would be to establish a new last sale price, and thereby extend the 25 cents or other Senior-Floor-Official-approved price parameter specified in this Rule.

(8) In any situation where the specialist is taking or supplying for his own account the security named in a percentage order manually converted by him, the specialist and the entering Floor Broker shall comply with the procedures for confirmation of transactions specified in Exchange Rule 155–AEMI, Commentary .03.

(9) When manually converting a percentage order into a limit order, the specialist shall give priority to conventional limit orders on the Specialist Order Book at that price on the same side of the market, which orders were entered before the conversion. This means that the manually converted percentage order may receive an execution at any particular price only after all such conventional limit orders on the Specialist Order Book at that price are satisfied.

(10) A Floor Broker entering a percentage order shall permit the specialist to be on parity with his manually converted order. However, when the specialist is handling more than one percentage order, he may not be on parity with any such manually converted order if there is a conventional limit order on the Specialist Order Book on the same side of the market and at the price at which he manually converted the percentage order(s). A specialist on parity with one or more manually converted percentage orders may not participate for his own account in an amount in excess of what each percentage order would receive, except that the specialist may participate for his own account to an extent greater than any particular percentage order where the size specified on such order has been satisfied. A specialist on parity with a manually converted percentage order remains subject to the limitations in Exchange Rule 170–AEMI as to transactions for his own account effected on destabilizing ticks.

When a specialist holds more than one percentage order, each individual order shall be elected to the extent of the full amount of the electing transaction, except that percentage orders on the Specialist Order Book shall not be elected by any portion of volume which results from the execution of a converted or previously elected portion of a percentage order on the same side of the market.

### **Precedence Accorded to Orders Entrusted to Specialists**

**Rule 155—AEMI.** A specialist shall give precedence to orders in the Specialist Order Book in any security in which he is registered before executing at the same price any purchase or sale in the same security for an account in which he has an interest. However, the requirements of this Rule shall not apply to (1) a purchase or sale of any security by a specialist where the member or member organization entering a percentage order has permitted the specialist to be on parity with the order, (2) a purchase or sale of an ETF by a specialist where the specialist is on parity with another broker/dealer order pursuant to Rule 126–AEMI, or (3) a purchase or sale of any security by a specialist where the order has been suspended in AEMI because it has been sent to another market pursuant to the rules of the Exchange.

**••• Commentary**

.01 If a block is to be sold at a "clean-up" price the specialist should execute at the "clean-up" price all of the executable buy orders on the AEMI Book.

The same principles apply in the case of a purchase of a block of stock.

.02 If there are limit sell orders on the Specialist Order Book at two or more different prices, the specialist should not, as a dealer, purchase all of the stock from the Specialist Order Book at the lowest limit price and then immediately purchase stock on the Specialist Order Book at a higher limit price. In such a situation the specialist should purchase at one price the entire amount of stock he is taking as a dealer. The same principle applies in the event the specialist has limit buy orders on the Specialist Order Book at two or more different prices.

.03 (i) If a specialist elects to take or supply for his own account the securities named in an order entrusted to him by another member or member organization, such member or organization shall be notified by AEMI in the report of the transaction.

A member or member organization that seeks to reject such a transaction shall request Floor Official review of the transaction in writing promptly after receiving such notice and shall advise the relevant specialist in writing contemporaneously with the request for review. Any such written request for review shall be given to the Floor Official and specialist by a member, not by a clerk. The transaction may only be rejected upon written Floor Official approval, with the advice and participation of a member of the regulatory staff, for good cause shown in relation to the specialist's responsibility to maintain a fair and orderly market. Any transaction not rejected in this manner shall be deemed accepted.

**Representation of Orders**

**Rule 156—AEMI. Market order**

(a) A broker or specialist entrusted with a market order is to use due diligence to execute the order at the best price or prices available to him under the published market procedures of the Exchange.

**Limited price order**

(b) A broker or specialist entrusted with a limited price order is to use due diligence to execute the order at the limit price, or at a better price, if available to him under the published market procedures of the Exchange.

**Not held order**

(c) A broker who has been given a not held order is to use brokerage judgment in the execution of the order, and if he exercises such judgment, is relieved of all responsibility with respect to the time of execution and the price or prices of execution of such an order.

### Orders with More than One Broker

**Rule 157—AEMI.** (a) No member, member organization or any member therein, or corporate subsidiary of such organization within the meaning of Rule 318, shall maintain with more than one broker, for execution on the Exchange, market orders or orders at the same price for the purchase or sale of the same security with knowledge that such orders are for the account of the same principal.

(b) A Registered Trader shall neither maintain a Crowd Order with a broker nor maintain an order on the Specialist Order Book while the Registered Trader is either bidding or offering for the security in the open outcry market, or is maintaining a bid or offer for the security in AEMI.

#### ...Commentary

.01 To ensure fairness in trading crowds, Registered Traders in a joint account may never trade in the same crowd at the same time. Registered Traders that have a relationship with the same member organization can, however, trade in the same crowd at the same time, but only if they first demonstrate to the Exchange's satisfaction that they are not "affiliated" with one another; provided, however, that, if two or more such related Registered Traders trade in the same crowd at the same time, they will be limited to the match they could get if there were only two of them in the crowd. Such related Registered Traders who wish to use this exception must submit to the Amex Membership Department complete documentation of their relationship to their member organization as well as their relationship to each other and explain why they believe they are not "affiliated". The Exchange will determine whether or not such related Registered Traders are also "affiliated" using the control test in Exchange Rule 904, Comm. .08. Such related Registered Traders will be considered "affiliated" if one "controls" or is controlled by the other Registered Trader. Under Rule 904, Comm. .08, the term "control" includes the power or ability to (i) make trading decisions for an account (in this case, the account of another Registered Trader); or (ii) influence directly or indirectly the trading decisions of another Registered Trader. Control will be presumed when a Registered Trader shares in 10 percent or more of profits and/or losses of another Registered Trader's account. For example, if two Registered Traders have a relationship with the same member organization and one has a 10% interest in the profit and/or losses of the other's account, the Registered Traders are "affiliated" and may not be on parity.

In addition, if two Registered Traders have a relationship with the same member organization, but are not affiliated with each other, those Registered Traders will not be permitted to trade in the same crowd at the same time if the member organization's combined share of their profits and/or losses exceeds "100%" of their profits and/or losses. For example, Registered Trader John Doe has a relationship with XYZ Brokerage, and its share of profits and losses in his account is 60%. Registered Trader Jane Smith also has a relationship with XYZ Brokerage, and its share of profits and losses in her account is 50%. Those Registered Traders will not be permitted to be on parity because XYZ's combined share of their profits and losses is "110%". If, in the example, XYZ's share of Doe's profit and losses was 50% or less and XYZ's share of Smith's profit and losses was 50% or less, then Doe and Smith would be permitted to trade in the same crowd at the same time as long as they were not "affiliated" with each other in addition to having a relationship with XYZ.

### **Registration and Functions of Specialists**

**Rule 170—AEMI.** (a) No member shall act as a specialist in any security unless such member is registered as a specialist in such security by the Exchange and such registration may be revoked or suspended at any time by the Exchange.

(b) As a condition of a member's being registered as a specialist in one or more securities, it is to be understood that, in addition to the execution of orders on the Specialist Order Book and the performance of his obligations as the odd-lot dealer in such securities, a specialist is to engage in a course of dealings for his own account to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange in such securities in accordance with and when viewed in relation to the criteria set forth in paragraphs (c) and (d) of this rule and the commentary thereto. If the Exchange shall have found any substantial or continued failure by a specialist to engage in such a course of dealings, the registration of such specialist shall be subject to suspension or cancellation by the Exchange in one or more of the securities in which he is registered. Nothing herein shall limit any other power of the Board of Governors under the Constitution or any rule of the Exchange with respect to the registration of a specialist or in respect of any violation by a specialist of the provisions of this rule.

(c) A specialist or his member organization shall not effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he or his member organization is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as the odd-lot dealer in such security.

(d) In connection with the function of a specialist in relation to assisting in the maintenance, insofar as reasonably practicable, of a fair and orderly market in the securities in which he is registered, it is ordinarily expected that a specialist will engage, to a reasonable degree under the existing circumstances, in dealings for his own account in full lots when lack of price continuity or lack of depth in the full lot market or temporary disparity between supply and demand in either the full lot or the odd-lot market exists or is reasonably to be anticipated. Transactions on the Exchange for his own account effected by a specialist in the securities in which he is registered are to constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated, in either the full lot or the odd-lot market. Transactions in such securities not part of such a course of dealings are not to be effected by a specialist for his own account.

In order to facilitate the specialist's continuity responsibility, AEMI will automatically update the specialist's quote with a specialist emergency quote based on parameters set by the specialist. If a Specialist is displaying an automated quote and his mandatory quote is reduced to or below a configured size, a new quote is automatically generated. This feature is disabled if quotes are streamed in. Emergency quotes that are generated as a result of incoming order flow sweeping the AEMI Book are injected into the sweep (if appropriately priced) so that the incoming order may receive price improvement.

(e) No member (other than a specialist acting pursuant to paragraphs (c) or (d) above), officer, employee or approved person who is affiliated with a specialist or specialist member organization, shall, during the period of such affiliation, purchase or sell any security in which such specialist is registered for any account in which such person or party has a direct or indirect

interest. Any such person or party may, however, reduce or liquidate an existing position in a security in which such specialist is registered provided that such orders are (1) not identified to the specialist as being for an account in which such persons or party has a direct or indirect interest, and (2) represented by an independent broker.

(f) A specialist may gap the quote when an order imbalance exists. This provides for public dissemination of an order imbalance and may minimize short term price dislocation associated with an order imbalance. When a gap quote situation arises, the specialist must gap the quotation and display on the side of the imbalance, a bid or offer equal to the price of the automated NBBO on the same side corresponding to the order causing the imbalance (e.g., automated national best bid for an aggressing buy order) and show the full size of the electronic imbalance or the order represented in the crowd, as the case may be. The specialist shall display one round lot for the contra side size. The price of the contra side quote shall represent the specialist's determination of the price at which the stock would trade if no contra interest develops or no cancellations occur as a result of the gapped quotation. The gapped quote will be non-firm. After publishing the gapped quote, the specialist shall ask a Senior Floor Official or an Exchange Official to supervise the process. If the gapped quote is the result of an order represented in the crowd, the Floor Broker whose order imbalance has caused the quote to be gapped is required to enter his order (i.e., the side and size and the contra side quote price) into AEMI immediately. A gapped quote shall be displayed until offsetting interest is received but shall not exceed two minutes. While the quotation is gapped, orders, cancellations and other messages will continue to enter AEMI, but will not update the APQ and no trades shall occur. In addition, ITS commitments received from other markets during a gapped quote shall be cancelled. The Senior Floor Official or Exchange Official supervising the gap quote process shall determine whether to (i) execute the orders immediately and terminate the gapped quote, (ii) direct the specialist to maintain the gapped quotation for no more than two minutes in order to allow time for contra side interest to develop or cancellations to occur, or (iii) halt trading in the stock. At the end of the two minutes from the initiation of the gapped quote, the specialist, in consultation with the supervising Senior Floor Official or Exchange Official, either must conduct an auction trade and disseminate an automated quotation or trading should be halted in the stock.

Gap quote situations involve clearly large imbalances compared with the typical trading volume in a security. The size of an imbalance suitable for gapped quoting is at least 10,000 shares or a quantity of stock having a value of \$200,000 or more, although depending on the trading characteristics of the security, the appropriate conditions for gapped quoting may be higher.

### ••• Commentary

.01 In effecting transactions for his own account for the purpose of establishing or increasing a position, a specialist is to effect such transactions in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of his position to the immediate and reasonably anticipated needs of the full lot and the odd-lot market. The following types of transactions to establish or increase a position are not to be effected except when they are reasonably necessary to render the specialist's position adequate to such needs:

- (a) a purchase on the offer at a price above the last regular way trade in the same trading session, or a sale short to the bid at a price below the last regular way trade in the same trading session where permitted by SEC short sale regulations;

- (b) the purchase of all or substantially all the stock offered on the AEMI Book on a zero plus tick, when the stock so offered represents all or substantially all the stock offered in the market;
- (c) the supplying short of all or substantially all the stock bid for on the AEMI Book on a zero minus tick where permitted by SEC short sale regulations, when the stock so bid for represents all or substantially all the stock bid for in the market;
- (d) failing to re-offer or re-bid where necessary after effecting transactions described in (a), (b) or (c) above.

Transactions of these types may, nevertheless, be effected with the approval of a Floor Official or in relatively inactive markets where they are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market. In addition, transactions by the specialist in the tick situations described above may be effected without the approval of a Floor Official if the stock is subject to auto-ex in AEMI and the specialist (i) purchases on the Amex Published Bid (which must be equal to his bid) when his bid is accessed by an aggressing sell order, or (ii) sells on the Amex Published Offer (which must be equal to his offer) when his offer is accessed by an aggressing buy order.

.02 Transactions by a specialist for his own account in liquidating or decreasing his position in a stock in which he is registered are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the specialist's positions to the immediate and reasonably anticipated needs of the full lot and the odd-lot market, and, in this connection:

- (a) the specialist may liquidate a position by selling stock to the bid on a direct minus tick or by purchasing stock on the offer on a direct plus tick only if such transactions are reasonably necessary in relation to the specialist's overall position in the stocks in which he is registered, and the specialist has obtained the prior approval of a Floor Official; provided, however, that transactions by the specialist in these tick situations may be effected without the approval of a Floor Official if the stock is subject to auto-ex in AEMI and the specialist (i) purchases on the Amex Published Bid (which must be equal to his bid) when his bid is accessed by an aggressing sell order, or (ii) sells on the Amex Published Offer (which must be equal to his offer) when his offer is accessed by an aggressing buy order;
- (b) the specialist should maintain a fair and orderly market during liquidation and, after reliquifying, should re-enter the market to offset imbalances between supply and demand. The selling of stock to the bid on a direct minus tick or a zero minus tick, or the purchasing of stock on the offer on a direct plus tick or a zero plus tick should be effected in conjunction with the specialist's re-entry in the market on the opposite side of the market from the liquidating transaction where the imbalance of supply and demand indicates that immediately succeeding transactions may result in a lower price (following the specialist's sale of stock to the bid on a direct minus tick or a zero minus tick) or a higher price (following the specialist's purchase of stock on the offer on a direct plus tick or a zero plus tick). During any period of volatile or unusual market conditions resulting in a significant price movement in the subject security, the specialist's transactions re-entering the market following a liquidating transaction effected by selling stock to the bid on a direct minus tick or zero minus tick, or purchasing stock on the offer on a direct plus tick or zero plus tick, should, at a minimum, reflect the specialist's usual level of dealer participation in the

subject security. During such periods of unusual price movement in a security, any series of such transactions which may be affected in a brief period of time should be accompanied by the specialist's re-entry in the market and effecting transactions which reflect a significant degree of dealer participation.

.03 A specialist's quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether having the effect of reducing or increasing the specialist's position, would bear a proper relation to preceding transactions and anticipated succeeding transactions or, in the case of ETFs or other derivatively priced securities, to the value of underlying or related securities.

.04 A specialist should avoid participating as a dealer in opening or reopening a stock in such a manner as to reverse the balance of public supply and demand as reflected by market and limited price orders at or near the price of the previous close or halt, unless the condition of the general market or the specialist's position in light of the reasonably anticipated needs of the market makes it advisable to do so, or unless the specialist has obtained the prior approval of a Floor Official to do so. He may, however, buy or sell stock as a dealer to minimize the disparity between supply and demand at an opening or reopening.

.05 A member acting as a specialist may not effect transactions for the purpose of adjusting a LIFO inventory in a stock in which he is so acting except as a part of a course of dealings reasonably necessary to assist in the maintenance of a fair and orderly market.

.06 Members dealing for their own account are subject to the short selling rules of the Securities and Exchange Commission, and the above criteria with respect to the function of a specialist in relation to assisting in the maintenance, insofar as reasonably practicable, of a fair and orderly market in the securities in which he is registered do not require or permit any transactions in contravention of the short selling rules of the Commission.

.07 Under certain circumstances a specialist may assign securities in which he is registered to an investment account. Purchases creating or adding to a position in an investment account may not be made unless reasonably necessary to permit the specialist to assist in the maintenance of a fair and orderly market or to act as the odd-lot dealer.

In the maintenance of price continuity with reasonable depth, it is commonly desirable for a specialist to supply securities to the market, even though he may have to sell short to do so, to the extent reasonably necessary to meet the needs of the market.

A specialist may not effect a transfer of securities in which he is registered from his dealer account to an investment account if the transfer would result in creating a short position in the dealer account.

If a "net long" position is created as a result of a specialist's maintenance of an investment position in a security in which he is registered while a short position in such security exists in his dealer account, the specialist may not cover such a short position by purchasing on the offer in the full-lot market on a "plus" tick. In addition, he must also limit his purchase on the offer to no more than 50% of the security offered on a "zero plus" tick, and in no event may he purchase the final full-lot offered.

Each specialist who establishes or maintains an investment account in any security in which he is registered as a specialist shall file with the Exchange in a form prescribed by the

Exchange a monthly report showing his position in such account and his short position, if any, in his dealer account for each such security.

.08 (a) Notwithstanding the provisions of Commentary .01(a) and (b) above, whenever a specialist effects a principal purchase of a specialty stock in another market center, at or above the price at which there are orders to sell that stock on the AEMI Book, such orders which remain unexecuted on the AEMI Book must be filled by the specialist by purchasing the stock for his own account at the same price at which he effected his principal transaction in another market center, unless effecting such a principal transaction on the AEMI Book, at that price, would (i) be inconsistent with the maintenance of fair and orderly markets; or (ii) result in the election of stop orders.

(b) Notwithstanding the provisions of Commentary .01(c) above, whenever a specialist effects a principal sale of a specialty stock in another market center, at or below the price at which there are orders to buy that stock on the AEMI Book, such orders which remain unexecuted on the AEMI Book must be filled by the specialist by selling stock for his own account at the same price at which he effected his principal transaction in another market center, subject to the same conditions as set forth in (a)(i) and (ii) above and provided further that effecting such a principal transaction on the AEMI Book, at that price, would not be precluded by the short selling rules, or would not result in a sale to a stabilizing bid.

.09 Notwithstanding the provisions of Commentary .02(a) above, whenever a specialist effects a principal purchase (sale) of a specialty stock in another market center, at or above (at or below) the price at which there are orders to sell (buy) that stock on the AEMI Book, such orders which remain unexecuted on the AEMI Book must be filled by the specialist by purchasing (selling) the stock for his own account, at the same price at which he effected his principal transaction in another market center, subject to the same conditions as set forth in Commentary .08 above.

.10 The following provisions of this Rule shall not apply to the trading of Nasdaq securities to which the Exchange has extended unlisted trading privileges: paragraph (e), Commentary .01, .02, .05, .07, .08 and .09.

.11 The following provisions of this Rule shall not apply to the trading of ETFs: Commentary .01, .02, .06 (to the extent that the SEC has granted "no action" relief or otherwise exempted the security from the "Short Sale Rule"), and .07.

### **Disclosures by Specialists Prohibited**

**Rule 174—AEMI.** (a) A member acting as a specialist may disclose information in regard to orders on the AEMI Book as provided in this rule.

(b) When requested by a member, member organization, or a representative of the issuer of the security involved, the specialist shall disclose to such parties on a post-trade basis the names of buying and selling member organizations in either completed or partially executed Exchange transactions to which the specialist is a counterparty unless specifically directed to the contrary by the parties involved.

(c) The specialist may in response to an inquiry from a member or member organization conducting a market probe in the normal course of business provide any information about the

quantity of buying or selling interest in the market or on the AEMI Book and may also include information regarding stop orders if the specialist has a reasonable basis to believe that the member or member organization intends to trade the security at a price which stop orders would be relevant, provided that the specialist shall, while on the Floor, make the same information available in a fair and impartial manner to any member or member organization, and provided further that the specialist, when requested, shall disclose whether a bid or offer is in whole or in part for an account in which he has a direct or indirect interest. The specialist shall not disclose any information about the reserve (undisplayed) size of reserve orders on the AEMI Book.

(d) The specialist shall disclose information in regard to limited price orders entrusted to him as a specialist to the extent required by the Plan provided for in Rule 230. The provisions of the Plan shall not be construed to require a specialist to disclose the name of a bidder or offeror whose order is contained in the Specialist Order Book.

(e) A stock specialist or specialist member organization that is also registered as the option specialist in the overlying option in a side-by-side trading environment is required to disclose on request to all participants in the option or stock trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the option or stock books.

### ••• Commentary

.01 The Plan, as currently in effect, provides as follows: "With respect to limit orders held by any specialist or any Participant in any stock traded through ITS, the rules of each Participant shall provide that, so long as the off-board trading rules of such Participant as in effect on the date the Plan is filed with the SEC remain in effect, such specialist will on request and to the extent practicable supply the specialists registered in such stock or any other Participant with information relating to such limit orders. The sharing of such information following any removal of the current off-board trading rules will be dependent upon implementation of necessary equal regulation of all market makers in all markets coupled with adequate surveillance procedures."

.02 (a) On a best efforts basis, the specialist may disseminate a depth indication in any security. Such depth indication may be disseminated for the purpose of indicating that there is additional market interest to buy below the current published bid, or additional market interest to sell above the current published offer, as described in paragraph (b) below. The depth indication shall be disseminated by means of an appropriate symbolic designation, appended to the current published bid and/or offer, as appropriate, but the depth indication shall not itself be deemed to constitute a "firm quotation" for purposes of this Rule or Rule 602 under Regulation NMS under the Securities Exchange Act of 1934.

(b) The depth indication may be disseminated only when there is market interest, consisting of the specialist's proprietary interest as well as interest reflected by orders on the AEMI Book (including percentage orders, but excluding the reserve size of reserve orders), aggregating such minimum number of shares and range of prices below the published bid or above the published offer as the Exchange deems appropriate and communicates to its membership.

### **Responsibility of Specialist**

**Rule 178—AEMI.** (a) If a member or member organization makes a request of the specialist for a report with respect to an odd-lot or full lot order which was executed or should have been executed prior to and including one half-hour before the opening of trading on the following business day, the specialist shall be responsible for any loss which may be sustained until such time as he answers the request.

A request for a report which is delivered to a specialist within one hour after the close regarding the execution of an order on that day shall be answered prior to one half-hour before the opening of trading on the following business day.

(b) If a member or member organization makes a request of the specialist for a report with respect to an odd-lot or full lot order which was executed or should have been executed after one half-hour before the opening of trading on the following business day but before the close on the business day following the day on which the order was executed or should have been executed, the specialist shall be responsible for one-half of any loss which may be sustained provided the loss is established before the closing on the business day following the day on which the order was executed or should have been executed; in the event the loss is established after the closing on the business day following the day on which the order was executed or should have been executed, the specialist shall not, without his consent, be responsible for any loss sustained. The member or member organization entering such order into AEMI shall be responsible for the remainder of such loss and for any further loss unless such member or member organization received the order from another member or member organization, in which case the remainder of such loss and any further loss shall be equally divided among such members or member organizations.

(c) A request for a report and any response thereto must be transmitted through AEMI. If a request for a report is not transmitted to the specialist through AEMI, it shall not be deemed to have been given to the specialist and shall be of no force or effect.

### **Expiring Equity Securities**

**Rule 179—AEMI.** (a) During the three business days preceding the final day for trading in an issue of rights, every order therein entered into the AEMI Book shall be for "next day" or "cash" delivery.

On the final day for trading in an issue of rights, every order therein entered into AEMI shall be for "cash".

(b) During the three final business days for trading in an issue of warrants, every order therein entered on a AEMI Book shall be for "cash", and during the three preceding business days every such order entered shall be for "next day" delivery.

(c) Unless the Exchange otherwise determines, during the three business days preceding the final day for trading in an expiring equity security (other than an issue of rights or warrants described in paragraph (a) of this Rule), every order entered into the AEMI Book shall be for "next day" or "cash" delivery. On the final day for trading in such equity security, every order therein entered into the AEMI Book shall be for "cash".

(d) On a business day when trading of an expiring equity security for "next day" delivery or for "cash" is deemed "regular way," all orders and quotes in such expiring equity security in the AEMI Book shall be considered "next day" or "cash," as the case may be.

(e) In each of the foregoing instances, "next day" or "cash," as the case may be, shall be deemed to be regular way delivery during the specified time period.

**••• Commentary**

.01 For purposes of this Rule, an "expiring equity security" includes any security that is traded on the Exchange as an equity security, and that has a specific maturity, expiration or termination date.

**Odd-Lot Dealer Registration**

**Rule 200—AEMI.** The specialist in an equity-traded security shall be the odd-lot dealer in the security.

**Manner of Executing Odd-Lot Orders**

**Rule 205—AEMI.** (a) Except as provided below, all orders for less than the unit of trading ("odd-lot orders") shall be received, processed, and executed by means of AEMI. The specialist for the subject security shall be the contra party to all such executions. No differential or commission may be charged with respect to any odd-lot order received by AEMI. All odd-lot orders entered for execution in AEMI shall contain the appropriate account type identification code according to specified account type categories in accordance with the reporting requirements of Rule 719.

(b) Market Orders. Odd-lot market orders received by AEMI shall be executed in time priority of receipt by AEMI at the price of the next round-lot transaction on the Exchange in the subject security following receipt of the orders by AEMI, subject to the following:

(i) Odd-lot buy orders and odd-lot sell orders will be executed at the price of such round-lot transaction with the specialist as the contra side to the extent that such odd-lot orders total an equal number of shares bought and sold.

(ii) The total number of additional shares of odd-lot orders executed at the price of such round lot transaction shall not exceed the number of shares of such round-lot transaction, except that an odd-lot order which would otherwise receive a partial execution shall be executed in full.

(iii) Odd-lot market orders not executed pursuant to paragraph (i) or (ii) above shall be executed, in time priority order, at the price of the subsequent round-lot transactions, subject to the same procedures stated in paragraph (i) and (ii) as to volume of round-lot transactions.

(iv) Any odd-lot market order not executed within 30 seconds of receipt by AEMI pursuant to paragraphs (i), (ii) or (iii) above shall be executed, in the case of an order to buy, at the price of the qualified national best offer after 30 seconds, and in the case of an order to sell, at the price of the qualified national best bid after 30 seconds.

- (v) Odd-lot market orders entered before the opening of the subject security shall be executed at the price of the opening transaction. If there is no opening transaction (i.e., the symbol opens on a quote) in the subject security, odd-lot market orders will trade according to Rule 205(b)(i-iv).
- (vi) Any odd-lot market order entered within 30 seconds of the close of trading and not executed prior to the closing transaction shall be executed, in the case of an order to buy, at the price of the qualified national best offer at 4:00 p.m. (or such other closing time), and in the case of an order to sell, at the price of the qualified national best bid at 4:00 p.m. (or such other closing time).
- (vii) An odd-lot market order to sell short a security subject to price restrictions under Exchange Rule 7 shall be executed at the price of the next sale in the round-lot market on the Exchange following entry of the order which is higher than the last different round-lot price.
- (c) Limit Orders. Odd-lot limit orders received by AEMI shall be executed in time priority of receipt by AEMI at prices of round-lot transactions effected subsequent to receipt of the orders by AEMI, that are at or better than the limit prices on the odd-lot orders, subject to the principles of paragraphs (b) (i), (ii) and (iii) above.
- (d) Limit Orders to Sell Short. An odd-lot limit order to sell short a security subject to price restrictions under Exchange Rule 7 shall be executed at the price of the first round-lot transaction on the Exchange which is at or above the specified limit of the order, and which is also higher than the last different round-lot transaction (a "plus" or "zero plus" tick).
- (e) Market Stop Orders. Odd-lot market stop orders shall be executed as follows:
- (i) Buy Stop Orders. A buy stop order shall become a market order when a round-lot transaction takes place at or above the stop price. The order shall then be filled at the price of the next round-lot transaction, as provided in (b) above.
- (ii) Sell Stop Orders, Marked "Long". A sell stop order marked "long" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next round-lot transaction, as provided in (b) above.
- (iii) Sell Stop Orders, Marked "Short". A sell stop order marked "short" shall become a market order when a round-lot transaction takes place at or below the stop price. If the order is in a security subject to price restrictions under Exchange Rule 7, it shall then be filled at the price of the next round-lot transaction, which is higher than the last different round-lot transaction (a "plus" or "zero plus" tick) as provided in (b) above; otherwise, it shall be filled as in (e)(ii) above.
- (f) Limit Stop Orders. Odd-lot stop limit orders shall be executed as follows:
- (i) Buy Stop Limited Orders. A buy stop limited order shall become a limited order when a round-lot transaction takes place at or above the stop price. The order shall then be filled in the manner prescribed in (c) above for handling a limited order to buy.
- (ii) Sell Stop Limited Orders, Marked "Long". A sell stop limited order marked "long" shall become a limited order when a round-lot transaction takes place at or below the stop

price. The order shall then be filled in the manner prescribed in (c) above for handling a limited order to sell.

(iii) Sell Stop Limited Orders, Marked "Short". A sell stop limited order marked "short" shall become a limited order when a round-lot transaction takes place at or below the stop price. If the order is in a security subject to price restrictions under Exchange Rule 7, it shall then be filled in the manner prescribed in (d) above for handling a limited order to sell; otherwise, it shall be filled as in (c) above.

(g) Other Types Of Orders

**Buying on Closing Offer-Selling on Closing Bids**

(1) Buy "On Close." An order to buy "On Close" shall be filled at the price of the closing round-lot sale.

(2) Sell "On Close." An order to sell "On Close" marked "long" shall be filled at the price of the closing round-lot sell. An order to sell "On Close" marked "short" shall not be accepted.

**Discretionary Orders**

A discretionary order must not be accepted by a specialist acting as the odd-lot dealer.

**••• Commentary -----**

.01 "Delayed Sale," "Sold Sale."—When a "delayed sale" or "sold sale" occurs (printed on the ticker tape followed by the symbol "SLD"), the specialist shall make every effort to ascertain the approximate time the transaction took place. If there is some doubt as to whether or not this transaction in any way affects the execution of an odd-lot order, the firm that entered the order should be notified, informed of the circumstances, and given the opportunity to accept or reject a report based on the transaction.

.02 Orders to Be Reduced on Ex-Date.—Open odd-lot buy limited orders and open odd-lot stop orders to sell held by a specialist prior to the day a stock sells ex-dividend, ex-distribution or ex-rights shall be handled in accordance with the procedures set forth in Rule 132–AEMI and Rule 154–AEMI(g).

.03 The odd-lot portion of PRL (part of round lot) orders will be executed at the same price as the round lot portion.

.04 For purposes of this Rule, the qualified national best bid or offer for a security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center; provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127–AEMI ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under

paragraph (b)(2) of Rule 602 under Regulation NMS pursuant to the "unusual market" exception of paragraph (a)(3) of Rule 602 under Regulation NMS, and (v) the quotation disseminated by the other market center is automated.

.05 In instances in which quotation information is not available, e.g., the quotation collection or dissemination facilities are inoperable, or the market in a security has been determined to be affected by an unusual market condition (as described in Rule 115–AEMI), standard, regular way odd-lot market orders will be executed by means of AEMI at the price of the next Exchange round lot sale.

### **Prohibition of Round-Lot Transactions Merely for Purpose of Establishing Odd-Lot Prices**

**Rule 206—AEMI** . A specialist's purchase or sale of a round lot as principal when made merely for the purpose of establishing the execution price for odd-lot orders he holds is not a transaction reasonably necessary to permit such specialist to assist in the maintenance of a fair and orderly market or to act as the odd-lot dealer, within the meaning of Rule 170–AEMI.

#### **••• Commentary**

.01 If a specialist sells a round lot as principal to the bid at a price below the last different round lot price (a minus or zero-minus tick), and, because of the amount of odd-lot sell orders he holds at that price, becomes a buyer of an amount greater than one round lot on balance, the Exchange will ordinarily consider that the round lot sale as principal was made merely for the purpose of establishing the execution price for such odd-lot sell orders and is not reasonably necessary unless prior approval to make such round lot sale is obtained from a Floor Official.

Similarly, if a specialist purchases a round lot as principal on the offer at a price above the last different round lot price (a plus or zero-plus tick), and, because of the amount of odd-lot buy orders he holds at that price, becomes a seller of an amount greater than one round lot on balance, the Exchange will ordinarily consider that the purchase of the round lot was made merely for the purpose of establishing the execution price for such odd-lot buy orders, unless prior approval to make such round lot purchase is obtained from a Floor Official.

This Commentary does not apply to specialist transactions in ETFs.

### **Limitation on Electing Odd-Lot Stop Orders**

**Rule 207—AEMI**. In the absence of prior approval of a Floor Official, a specialist shall not, as principal, purchase on the offer any round lot at a price above the last different price or sell to the bid any round lot at a price below the last different price if such purchase or sale would elect any odd-lot stop or stop limit order he holds; provided, however, that where there are unusual circumstances in the market for the particular stock or in the general market, a specialist may obtain—in advance—from a Floor Official an exemption from the provisions of this rule for all or part of any trading session.

### Communications to and on the Floor

**Rule 220—AEMI.** No member shall establish or maintain any telephonic or electronic communication between the Floor and any other location, or between locations on the Floor, without the prior written approval of the Exchange.

**••• Commentary**

.01 With the approval of the Exchange, a member or member organization may establish and maintain a telephone line which permits a non-member located off the Floor to communicate with such member or member organization on the Floor. Except as provided in Commentary .03 below, the Exchange will not approve the use of a portable telephone or other portable communication device on the Floor which would permit direct voice communication between members and non-members.

.02 With the approval of the Exchange, a specialist unit may maintain a telephone line at its trading post location to the off-floor offices of the specialist unit; the unit's clearing firm; the floor of another securities, commodities or option exchange; or the upstairs offices of a member organization. Such a telephone connection shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities, but may be used by the specialist to enter orders in options, futures, or underlying securities for execution in such other markets, or with a member firm's off-floor offices, or to obtain market information.

.03 With the approval of the Exchange, a Floor Broker may use wireless telephone device to receive off-floor orders from any source (i.e., members, broker/dealers, non-broker/dealers, or public customers) at the specialist's post where the security is traded. The following requirements and conditions shall apply to the Floor Broker's use of telephone services at the specialist's post:

- (1) Only those quotations that have been publicly disseminated pursuant to Rule 602 under Regulation NMS may be provided over telephones at or near the specialist's post.
- (2) Floor Brokers may only receive orders over the telephone lines at the specialist post or the wireless telephone device during outgoing telephone calls initiated by the Floor Brokers.
- (3) Only those Floor Brokers properly qualified in accordance with applicable rules and regulations may accept orders from public customers pursuant to this Commentary.

.04 *Hand Held Terminal ("HHT") and Data Communication Policy.*

The Exchange for many years has had rules and policies governing communications to and between locations on the Trading Floor. These policies give the Exchange broad authority to review telephonic and other electronic communications both between the Floor and other locations and between points on the Floor.

There have been significant developments in data transmission technology since the Exchange formalized its communications policies. In light of these changes, the Exchange promulgated its Hand Held Terminal and Data Communication Policy and built a data communications infrastructure (the "Infrastructure"). The Exchange undertook these regulatory and systems initiatives in order to: (i) facilitate quoting, order processing and trading on the Exchange, (ii) facilitate the execution by Amex members of hedging and other permitted transactions in other markets, (iii) facilitate risk management, trade comparison and transaction reporting, (iv) facilitate the transmission of pricing analytics to Amex members, (v) provide appropriate oversight of data communications, (vi) ensure the safety and efficient operation of the

Exchange's trading systems, (vii) provide fair access for all members and the Exchange to the finite supply of available radio frequencies and system capacity, and (viii) promote a fair, orderly and efficient market for securities on the Exchange.

All members using proprietary HHT and other data communications technology on the Floor must conform their proprietary technologies at their cost to the requirements of the Infrastructure and the Exchange's other systems. For example, members are required to use the Exchange's antennas, base stations and Exchange specified radio cards for their wireless HHTs. Members also are required to conform to physical interface standards specified by the Exchange.

The Exchange will require members to conform their proprietary technologies at their cost to the requirements of any enhancements to, or replacements of, the Infrastructure or any other Exchange system should this be deemed necessary by the Exchange. The Exchange may also require members to link their HHT and other data communications system hosts to the Exchange's quoting, order management, trading, trade comparison, reporting or other systems, or implement entirely new technologies should this be more efficient or cost effective for the operations of the Exchange. The members will be responsible for bearing all costs associated with any such changes.

To further advance the policy objectives underlying the Hand Held Terminal and Data Communication Policy and the Infrastructure, the Exchange will require all members acting as brokers and all Registered Traders to use HHTs in conducting business on the Exchange Floor. (Specialists acting as broker in their specialty securities will not be required to use HHTs.) The Exchange currently is developing a standard application that will reside on an HHT that it will issue to brokers for their use. Once this Exchange provided HHT system is operational, all brokers will be required to use it at all times. The Exchange, moreover, will require all Registered Traders to use HHTs to conduct their business. Since the Exchange does not currently plan to develop an HHT application for Registered Traders, Registered Traders must either develop or secure HHTs for their own use at such time as may be specified by the Exchange with the following minimum capabilities:

- Registered Traders must be able to communicate their bids and offers to AEMI.
- Registered Traders must be able to execute trades against orders, bids and offers in AEMI.
- Registered Traders must be able to receive through their HHTs any AEMI notifications of individual trades as a crowd participant, following a post trade allocation by the specialist (e.g., following an auction trade).
- Registered Traders must be able to receive execution reports on their HHTs during a trading session with respect to trades executed against their accounts by AEMI.
- Registered Traders must be able to report their trades within time limits prescribed by the Exchange to their clearing agents during a trading session by means of their HHTs.
- HHTs used by Registered Traders must be able to make a record of text transmissions to or from other persons. This record must include the date and time of the transmission, the person initiating the transmission, all persons receiving the transmission, and the text of the message.

- Registered Traders must be able to capture the following audit trail data on their HHTs with respect to all trades they execute on the Amex: (1) time of trade (the clocking mechanism must be milliseconds), (2) executing broker badge number, (3) contra broker badge number, (4) open or closing transaction, (5) clearing member, (6) contra clearing member. Registered Traders must be able to report this audit trail information to their clearing agents during a trading session within time limits prescribed by the Exchange.
- HHTs used by Registered Traders must be able to make a record of the following information with respect to orders or quotes initiated by Registered Traders for securities or futures traded in other markets: (1) date, (2) the time the order or quote is sent to the other market (the clocking mechanism must be in milliseconds), (3) the identity of the person initiating the order or quote, (4) security symbol, (5) buy, sell, sell short, short exempt, (6) order type (e.g., market, limit), (7) order or quote size, (8) order or quote price, (9) execution quantity, (10) execution price, (11) market where the order or quote is routed (e.g., NYSE, Nasdaq, and CBOE).
- All clocking must be done electronically. All clock sources will be synchronized to a Stratum-1 time source.
- All records required to be made must be maintained for at least three years and available to the staff of the Exchange upon request in no more than three business days.

The Exchange will not require any member that develops a proprietary data communications system to make its technology available to other members. The Exchange believes that the enforced sharing of proprietary technology among competitors would be a disincentive to innovation.

### **Capacity and Radio Frequency**

The Exchange will use industry standard radio frequencies[y] for the wireless portion of the Infrastructure. Persons approved to use wireless technology do not acquire any property rights with respect to their use of any frequencies that the Exchange may approve for wireless communications on the Floor.

The Exchange's staff may monitor the level of message traffic by persons using HHTs and other data communications devices. If the Exchange determines that a firm is using an excessive amount of the Infrastructure's capacity, it will require that firm to reduce its message traffic immediately. In addition, if the Exchange determines that HHT or other message traffic throughout the Exchange is threatening the integrity of the Infrastructure or any of its other systems, the Exchange may require certain or all users to reduce their message traffic immediately. Persons that do not comply with a request to reduce their message traffic are subject to disciplinary action and may have their ability to communicate with their HHTs or other data communications devices immediately terminated by the Exchange.

### **Exchange Review and Approval of Member Communications Devices Applications**

As noted above, the Exchange will permit proprietary HHTs and other data communications devices in order to foster innovation and efficiency. However, since the use of non-standardized, proprietary equipment and applications conceivably could threaten the Exchange's Infrastructure and/or other trading systems, the Exchange will review all proposals for new HHT technology or other data communications devices prior to introduction to the Floor to

ensure that the proposed technology is compatible with the Infrastructure, poses no threat to the Exchange's other systems, and satisfies applicable regulatory and other requirements. In this regard, members and member organizations must ensure that there are sufficient firewalls in their systems to ensure that inappropriate communications are not sent to the Floor.

Potential users of a proprietary HHT or other data communications technology will have to complete a detailed questionnaire and provide the Exchange with the specifications for their system. The Exchange's staff may approve a proposal in whole or in part, conditionally approve it, or deny an application. Since members are permitted to employ proprietary technology with different applications, the conditions on an approval may vary from user to user. In addition, the Exchange may have to modify the conditions on an approval after it has been granted in view of the Exchange's experience with the technology generally or experience with a particular member's system. Members will be required to adhere to all conditions of approval, and violations of the terms of approval will be treated as violation of the Hand Held Terminal and Data Communications Policy. Following approval of a member's application to use HHT or other data communication technology, the Exchange may inspect the system after installation and subsequently to ensure compliance with the application, approval terms, and other requirements.

Without limiting the scope of the Exchange's review or the factors it may consider in determining whether to approve a proposed HHT or data communication application, the Exchange will not approve any proposed application if it poses any danger to the efficient operation of the Exchange's existing trading systems or the Infrastructure or if it would interfere with the frequency or capacities assigned to other members or to the Exchange. For example, the Exchange generally will not permit internet access from a wireless HHT as this may consume excessive message capacity. Similarly, the Exchange will not approve any HHT application unless it will comply with the Exchange's rules, federal securities laws, government regulations pertaining to wireless communications, and other applicable requirements. Any HHT system must be able to produce and maintain records required by the Exchange's rules and policies, federal securities laws and SEC regulations. (See, for example, Exchange Rules 110—AEMI(m), 153—AEMI, and the Exchange's audit trail policies). The rules of the SEC also impose similar record keeping requirements on registered brokers and dealers. See Securities Exchange Act ("SEA") rules 17a-3(a)(6) and (7), and 17a-4(b)(1).)

The Exchange will require members and member organizations (and their employees or approved persons) that have developed HHTs or other data communications devices that may be used to initiate orders or enter quotes for financial instruments traded in other markets (e.g., the NYSE, Nasdaq or CBOE) to maintain a log of such orders or quotes. This record would, at the minimum, include the following information: (1) date, (2) the time the order or quote is sent to the other market (the clocking mechanism must be in millisecond increments and all clock sources must be synchronized with a Stratum-1 time source), (3) the identity of the person initiating the order or quote, (4) security symbol, (5) buy, sell, sell short, short exempt, (6) order type (e.g., market, limit), (7) order or quote size, (8) order or quote price, (9) execution quantity, (10) execution price, (11) market where the order or quote is routed (e.g., NYSE, Nasdaq, or CBOE). The record would be maintained for three years in a readily accessible place. This record of orders and quotes would have to be maintained for both executed and unexecuted orders and quotes. The Exchange also shall require persons that have developed HHTs to maintain a record of any transmissions to or from their HHTs.

The Exchange will permit members to encrypt options analytics and position information only. No other messages may be encrypted without the permission of the Exchange. In addition,

members that choose to encrypt options analytics and/or position information must maintain the key to the code for a three-year period and provide the key to the Exchange on request.

### **Sanctions for Violations of the Hand Held Terminal and Data Communication Policy**

Violations of any aspect of the foregoing Hand Held Terminal and Data Communication Policy may result in disciplinary action pursuant to Article V of the Exchange Constitution or Exchange Rules 345 or 590 as appropriate.

### **Comparison of Exchange Transactions**

**Rule 719–AEMI.** (a) Notwithstanding any other rule to the contrary, each transaction effected on the Exchange shall be compared or otherwise closed out by the close of business on the Exchange on the business day following the day of the contract.

(b) The provisions of paragraph (a) above shall apply regardless of whether the transaction has been submitted to a registered clearing agency for comparison or settlement, but such provisions shall apply only to contracts for "regular way", "next day" and "seller's option", settlement on alternative delivery periods, and settlement in Options Clearing Corporation issued securities, stocks, rights, warrants, "when issued" and "when distributed" securities, bonds, and other securities admitted to dealings.

(c) To facilitate comparison of transactions effected on the Exchange as provided for in paragraph (a) above, by such time following any such transaction as the Exchange may prescribe (but in no event more than two hours after execution), each member or member organization which is a party to the contract shall submit, or cause to be submitted, such trade data as may be required by the Exchange or the registered clearing agency it selects in such form as the Exchange or the registered clearing agency shall prescribe, to:

- (i) the registered clearing agency it selects; or
- (ii) such facility as the Exchange may develop and implement to facilitate comparison of transactions effected on the Exchange; and,
- (iii) in the case where the registered clearing agency will not be used to compare or settle the transactions, to the party or parties on the other side of the trade.

(d) Members and member organizations shall comply with such other rules and procedures as may be adopted by the Exchange or the registered clearing agency they select for the comparison or settlement of transactions, for the resolution of uncompleted or questioned trades, and for the collection and submission of audit trail data.

### **••• Commentary**

.01 For purposes of paragraph (b) of this Rule 719–AEMI, the term "registered clearing agency" shall have the same meaning as set forth in Rule 700, provided further that a clearing agency shall be deemed a "registered clearing agency" only if it has established rules and procedures to facilitate comparison of transactions as provided for in paragraph (a) of this Rule 719–AEMI.

.02 Regardless of whether or not a registered clearing agency is being used for comparison and/or settlement, each clearing member organization shall submit the following trade data and audit trail information with respect to contracts for securities entered into on the Exchange to a

registered clearing agency in such form and within such time periods as may be described by the registered clearing agency or the Exchange;

- (1) Name or identifying symbol of the security,
- (2) The clearing firm's number or alpha symbol as may be used from time to time, in regard to its side of the contracts,
- (3) The executing broker's badge number or alpha symbol as may be used from time to time, in regard to its side of the contract,
- (4) Trade date,
- (5) The time the trade was executed,
- (6) Number of shares or quantity of security,
- (7) Transaction price,
- (8) The clearing firm's number or alpha symbol as may be used from time to time, in regard to the contra side of the contract,
- (9) The executing broker badge number or alpha symbol as may be used from time to time, in regard to the contra side of the contract,
- (10) The terms of settlement,
- (11) Specialist, registered trader, and market maker acronyms in regards to options transaction,
- (12) Account type code-equities only. The current account type codes for equity transactions are as follows. Members should use the most restrictive account type code available. Thus, for example, members only should use the " A" account type code for an agency transaction when no other account type code accurately describes the trade. These codes may be changed from time to time as the Exchange may determine;

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member)

G—Registered Trader and Registered Equity Market Maker market maker transactions in the equities and ETFs in which they are registered as a market maker regardless of the clearing member, and Registered Option Trader and option specialist transactions in an underlying Paired Security if the underlying Paired Security is an equity other than an ETF (e.g., SPY, DIA, QQQQ, HOLDRS, Sector SPDRs)

P—Amex Option Specialist or Market Maker transaction in the underlying of an Amex "paired security" if the underlying of the Paired Security is an ETF (e.g., SPY, DIA, QQQQ, HOLDRS, Sector SPDRs) (regardless of the clearing member)

O—Proprietary transactions cleared for a competing market maker that is affiliated with the clearing member

T—Transactions cleared for the account of an unaffiliated member's competing market maker

R—Transactions cleared for the account of a non-member competing market maker

I—Transactions cleared for the account of an individual investor

E—Short exempt transactions cleared for the proprietary account of a clearing member organization or affiliated member/member organization

F—Short exempt transactions cleared for the proprietary account of an unaffiliated member/member organization

H—Short exempt transactions cleared for an individual customer account

B—Short exempt transactions cleared for all agency customer accounts

L—Short exempt transaction cleared for a competing market maker that is affiliated with the clearing member

X—Short exempt transaction cleared for the account of an unaffiliated member competing market maker

Z—Short exempt transaction cleared for the account of a non-member competing market maker

W—Proprietary transactions not specified above and cleared for the account of an unaffiliated member/member organization

A—Transactions cleared for all agency non-broker/dealer customer accounts

P—Transactions not specified above and cleared for the proprietary account of a clearing member organization of affiliated member/member organization

V—Proprietary transactions cleared for the account of a non-member broker dealer that is not a competing market maker

5—Stock transactions for the proprietary account of a clearing member organization or affiliated member/member organization related to index-related derivative contracts whose settlement pricing is based on that same day's opening price

6—Stock transactions cleared for the proprietary account of an unaffiliated member/member organization related to index-related derivative contracts whose settlement pricing is based on that same day's opening price

7—Stock transactions cleared for the proprietary account of a non-member broker-dealer related to index-related derivative contracts whose settlement pricing is based on that same day's opening price

8—Stock transactions cleared for the account of an individual investor related to index-related derivative contracts whose settlement pricing is based on that same day's opening price

9—Stock transactions cleared for all other non-broker-dealer accounts related to index-related derivative contracts whose settlement pricing is based on that same day's opening price

New York Stock Exchange program trade audit trail account type codes as used from time to time also are acceptable.

(13) Account type code-options only. The current account type codes for option transactions are as follows. Members should use the most restrictive account type code available. These codes may be changed from time to time as the Exchange may determine:

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member)

C—Transactions cleared for the account of an individual investor

F—Transactions cleared for the account of a broker-dealer that is not a registered market maker in the security

P—Registered trader market maker transaction regardless of the clearing member

N—Transaction cleared for the account of a non-member market maker

(14) Such other information as the Exchange may from time to time require.

Clearing members may not "summarize" multiple trades in the same security, executed at the same price with the same contra clearing firm as this results in degradation of the audit trail.

### **Portfolio Depositary Receipts**

**Rule 1000–AEMI. (a) Applicability.** The Rules in this Chapter (Trading of Certain Equity Derivatives) are applicable only to Portfolio Depositary Receipts. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article 1, Section 3(j) of the Constitution, Portfolio Depositary Receipts are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange. In addition, pursuant to the provisions of Article I, Section 3(d) of the Constitution, Portfolio Depositary Receipts are included within the definition of "derivative products" as that term is used in the Constitution and Rules of the Exchange.

**(b) Definitions.** The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

**(1) Portfolio Depositary Receipt.** The term "Portfolio Depositary Receipt" means a security (a) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (b) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount; (c) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the "Portfolio Deposit"; and (d) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Portfolio Depositary Receipts, or that provides for the reinvestment by holders of such periodic cash payment, less certain expenses and other charges as set forth in the Trust prospectus.

**(2) Reporting Authority.** The term "Reporting Authority" in respect of a particular series of Portfolio Depositary Receipts means the Exchange, a wholly-owned subsidiary of the Exchange, an institution (including the Trustee for a series of Portfolio Depositary Receipts), or a reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be

deposited to the Trust in connection with issuance of Portfolio Depositary Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts, net asset value, or other information relating to the creation, redemption or trading of Portfolio Depositary Receipts.

**••• Commentary**

.01 The Exchange requires that members and member organizations provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] has been prepared by the American Stock Exchange and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts]."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

.02 Transactions in Portfolio Depositary Receipts may be effected until 4:15 each business day.

.03 The Exchange may approve a series of Portfolio Depositary Receipts for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) *Eligibility Criteria for Index Components.* Upon the initial listing of a series of Portfolio Depositary Receipts on the Exchange, the component stocks of an index or portfolio underlying such series of Portfolio Depositary Receipts shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks.

(5) All securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Portfolio Depositary Receipts will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer, and (iii) The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Portfolio Depositary Receipts trade on the Exchange.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depositary Receipts an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depositary Receipts is required to be outstanding at start-up of trading.

(e) The minimum price variation for a series of Portfolio Depositary Receipts shall be one cent (\$.01) except for quotations or orders priced less than \$1.00, where the minimum price variation shall be one one-hundredth of a cent (\$.0001). The minimum price variation for quotations and orders in a security that has been exempted by the SEC from Rule 612 of Regulation NMS shall be the minimum price variation set forth in the SEC's exemption order for that security.

(f) Listing fees. The original listing fee is \$5,000 for each series of Portfolio Depositary Receipts. The annual listing fee under Section 141 of the Amex Company Guide will be based upon the number of shares of a series of Portfolio Depositary Receipts outstanding at the end of each calendar year.

(g) Surveillance Procedures. The Exchange will implement written surveillance procedures for Portfolio Depositary Receipts.

(h) Applicability of Other Rules. The provisions of Rules 1000 et seq will apply to all series of Portfolio Depositary Receipts.

.04 Limit Orders—Member and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same Portfolio Depositary Receipts, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Portfolio Depositary Receipts on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same Portfolio Depositary Receipts; the multiple acquisition and liquidation of positions in the same Portfolio Depositary Receipts during

the same day; and the entry of multiple limit orders at different prices in the same Portfolio Depository Receipts.

.05 It may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (i) an order being facilitated, or (ii) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell a Portfolio Depository Receipt that is the subject of the order, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument until either (i) all the terms of the order and any changes in the terms and conditions of the order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Commentary .06, an order to buy or sell a "related instrument," means an order to buy or sell securities comprising ten percent or more of the component securities in the Portfolio Depository Receipt or an order to buy or sell a futures contract on any economically equivalent index.

### **Index Fund Shares**

**Rule 1000A–AEMI.** (a) **Applicability**–The Rules in this Section are applicable only to Index Fund Shares. Except to the extent specific Rules in this Section govern or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(j) of the Constitution, Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange. In addition, pursuant to the provisions of Article I, Section 3(d) of the Constitution, Index Fund Shares are included within the definition of "derivative products" as that term is used in the Constitution and Rules of the Exchange.

(b) **Definitions.** The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) **Index Fund Share.** The term "Index Fund Share" means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, or a specified portfolio of fixed income securities and/or a cash amount, with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash or fixed income securities and/or cash, with a value equal to the next determined net asset value.

(2) (i) The term "Index Fund Share" includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified foreign or domestic stock index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified foreign or domestic index by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stocks and/or cash as defined in

subparagraph (b)(2)(ii) of this rule with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; and repurchase agreements (the "Financial Instruments"), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (b)(2) shall not be approved by the Exchange for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. (See Commentary .02)

(3) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares.

### ••• Commentary

.01 Nothing in paragraph (b)(3) of this Rule shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange. The term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

.02 The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied, and provided further, that the Exchange may not so approve a series of Index Fund Shares that has the characteristics described in Rule 1000A-AEMI(b)(2):

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks.

(5) All securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) *Index Methodology and Calculation.* (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer, and (iii) The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Index Fund Shares trade on the Exchange.

(c) *Disseminated Information.* The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) *Initial Shares Outstanding.* A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(e) The minimum price variation for Index Fund Shares shall be one cent (\$.01) except for quotations or orders priced less than \$1.00, where the minimum price variation shall be one one-hundredth of a cent (\$.0001). The minimum price variation for quotations and orders in a security that has been exempted by the SEC from Rule 612 of Regulation NMS shall be the minimum price variation set forth in the SEC's exemption order for that security.

(f) *Hours of Trading.* Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) *Listing fees.* The original listing fee is \$5,000 for each series of Index Fund Shares. The annual listing fee under Section 144 of the Amex *Company Guide* will be based upon the number of shares of a series of Index Fund Shares outstanding at the end of each calendar year. For multiple series of Index Fund Shares issued by an open-end management investment company, the annual listing fee will be based on the aggregate number of shares in all series outstanding at the end of each calendar year.

(h) *Surveillance Procedures.* The Exchange will implement written surveillance procedures for Index Fund Shares.

(i) *Applicability of Other Rules.* The provisions of Rules 1000A–AEMI *et seq* will apply to all series of Index Fund Shares.

.03 The provisions of this Commentary .03 apply only to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus deliver requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform members and member organizations regarding application of this Commentary .03 to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

.04 Transactions in iShares<sup>SM</sup> Index Funds of the iShares<sup>SM</sup> Trust may be effected until 4:00 p.m. or 4:15 p.m. (New York time) each business day, as specified by the Exchange. Transactions in iShares MSCI Index Funds (formerly "WEBS Index Series") of iShares, Inc. may be effected until 4:00 p.m. (New York time).

.05 Limit Orders—Member and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same Index Fund Shares, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Index Fund Shares on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same Index Fund Shares; the multiple acquisition and liquidation of positions in the same Index Fund Shares during the same day; and the entry of multiple limit orders at different prices in the same Index Fund Shares.

.06 It may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (i) an order being facilitated, or (ii) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell a Index Fund Share that is the subject of the order, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument until either (i) all the terms of the order and any changes in the terms and conditions of the order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Commentary .07, an order to buy or sell a "related instrument," means an order to buy or sell securities comprising ten percent or more of the component securities in the Index Fund Share or an order to buy or sell a futures contract on any economically equivalent index.

### **Rules of General Applicability**

**Rule 1200–AEMI.** (a) Applicability. The Rules in this Chapter (Trading of Trust Issued Receipts) are applicable only to Trust Issued Receipts. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, Trust Issued Receipts are included within the definitions of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

(b) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

Trust Issued Receipts. The term "Trust Issued Receipt" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

#### **••• Commentary**

.01 The Exchange requires that members and member organizations provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

.02 Transactions in Trust Issued Receipts may be effected until 4:00 p.m. each business day.

.03 Limit Orders—Member and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same Trust Issued Receipts, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Trust Issued Receipts on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same Trust Issued Receipts; the multiple acquisition and liquidation of positions in the same Trust Issued Receipts during the same day; and the entry of multiple limit orders at different prices in the same Trust Issued Receipts.

### **Commodity-Based Trust Shares**

**Rule 1200A–AEMI.** (a) Applicability. The Rules in this Section are applicable only to Commodity-Based Trust Shares. In addition, except to the extent specific Rules in this Section govern or unless the context otherwise requires, the provisions of the Trust Issued Receipt rules and the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

(b) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) *Commodity-Based Trust Shares.* The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust (the "Trust") that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.

(2) *Commodity.* The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

**Commentary -----**

.01 A Commodity-Based Trust Share is a Trust Issued Receipt that holds a specified commodity deposited with the Trust.

.02 The Exchange requires that members and member organizations provide to all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-based Trust Shares.

.03 Transactions in Commodity-Based Trust Shares will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series, as specified by the Exchange.

.04 *Limit Orders*—Members and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same Commodity-Based Trust, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Commodity-Based Trust Shares on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same Commodity-Based Trust Shares; the multiple acquisition and liquidation of positions in the same Commodity-Based Trust Shares during the same day; and the entry of multiple limit orders at different prices in the same Commodity-Based Trust Shares.

### **Currency Trust Shares**

**Rule 1200B–AEMI.** (a) Applicability. The Rules in this Section (Trading of Currency Trust Shares) are applicable only to Currency Trust Shares. Except to the extent that specific Rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, Currency Trust Shares are included within the definitions of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

(b) The term "Currency Trust Shares" for purposes of this Rule means a security that (i) is issued by a trust that holds a specified non-U.S. currency deposited with the trust; (ii) when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency; and (iii) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust.

**Commentary -----**

.01 A Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency or currencies deposited with the trust.

.02 The Exchange requires that members and member organizations provide to all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

.03 Transactions in Currency Trust Shares will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series, as specified by the Exchange.

.04 *Limit Orders*—Members and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same trust, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Currency Trust Shares on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same Currency Trust Shares; the multiple acquisition and liquidation of positions in the same Currency Trust Shares during the same day; and the entry of multiple limit orders at different prices in the same Currency Trust Shares.

**Trading of Partnership Units**

**Rule 1500—AEMI.** (a) Applicability. The Rules in this Chapter (Trading of Partnership Units) are applicable only to Partnership Units. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, Partnership Units are included within the definitions of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

(b) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(i) *Commodity.* The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(ii) *Partnership Units.* The term "Partnership Units" for purposes of this Rule means a security (a) that is issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities and/or securities; and (b) that is issued and redeemed daily in specified aggregate amounts at net asset value.

**Commentary -----**

.01 The Exchange requires that members and member organizations provide to all purchasers of newly issued Partnership Units a prospectus for the series of Partnership Units.

.02 Transactions in Partnership Units will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series, as specified by the Exchange.

.03 *Limit Orders*—Members and member organizations shall not enter orders into the Exchange's order routing system, as principal or agent, limit orders in the same partnership, for the account or accounts of the same or related beneficial owner, in such a manner that the member or beneficial

owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such Partnership Units on a regular or continuous basis. In determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same Partnership Units; the multiple acquisition and liquidation of positions in the same Partnership Units during the same day; and the entry of multiple limit orders at different prices in the same Partnership Units.

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## Amex Company Guide

### RELATIONSHIP WITH SPECIALIST (§910–AEMI)

#### PROCEDURES, RULES AND REGULATIONS

**Sec. 910–AEMI.** From time to time, company officials inquire about Exchange rules or regulations affecting their relationship to the registered specialist in their securities.

(a) *Specialist's Function*—Specialists are members of the Exchange who perform two basic functions regarding the issues in which they specialize. As brokers, they hold and execute orders transmitted to them by the Exchange's systems. As dealers, they are obliged, insofar as reasonably practicable, to purchase and sell securities for their own account in order to help maintain a fair and orderly market. Their aim is to provide a continuous auction market throughout the trading day, with minimum price changes between transactions. Specialists do not by their own activities determine the trend of stock prices. Rather, the price at any given moment is determined fundamentally by the balance of public buy and sell orders.

(b) *Liaison*—The Exchange recognizes that periodic communication between company officials and their specialists, if appropriately conducted, can be beneficial to both parties. Such communication may provide company officials with a better understanding of the auction market, the specialist system and their own specialist's role in relation to the company's securities. From the specialist's viewpoint, an awareness and understanding of the company and its affairs may aid specialists in discharging their responsibility for maintaining a fair and orderly market in the company's securities.

(c) *Scope of Permissible Disclosure*—In view of the specialist's central and sensitive role in the auction market, it is essential that Federal securities laws, Exchange rules and a responsible code of conduct be observed in all communications between specialists and company officials. The following summary may serve as a guide as to the scope of permissible disclosure in such communications.

A company may make available to the specialist whatever information it has provided to its stockholders, security analysts or the general public, such as specific data and information concerning general trends relating to the company's business, as well as industry and general economic developments that may influence the company's welfare. It is improper, however, to furnish to the specialist any material information not previously released to the public regarding such matters as earnings, forecasts, anticipated dividend action, a proposed stock split, merger negotiations or any other undisclosed matter which is likely to have an effect on the price of the company's securities or influence investment decisions.

While it is not contemplated that a company will be in continuous contact with its specialist, the specialist may from time to time inform company officials of unusual market problems and

respond to broad questions about the market in the company's stock. The restrictions imposed on specialists concerning the information they may disclose are set forth in paragraph (d)(i) below.

Within this framework, company officials and specialists should feel free to call upon each other so that a mutually beneficial understanding of the problems encountered by each is fostered.

(d) Exchange Rules Governing Specialist's Activities—In addition to certain provisions of the Securities Exchange Act of 1934, a number of Exchange regulations place clearly defined limits on a specialist's activities. An awareness of both the intent and spirit of Exchange rules, and the responsibilities the Exchange places on the specialist, will help ensure that contacts between company officials and the specialist are conducted within the framework provided for above.

With respect to any security in which a specialist is registered, the Exchange and/or Exchange rules prohibit specialists (and, with respect to paragraphs iii through ix, the member firm or member corporation of which the specialist is a member) from:

(i) disclosing information in regard to orders on the AEMI Book or buying and selling interest in the market or the name of a buyer or seller except as follows:

when requested by a member, member organization, or a representative of the issuer of the security involved, the specialist shall disclose to such parties on a post-trade basis the names of buying and selling member organizations in either completed or partially executed Exchange transactions to which the specialist is a counterparty unless specifically directed to the contrary by the parties involved; the specialist may in response to an inquiry from a member or member organization conducting a market probe in the normal course of business provide any information about the quantity of buying or selling interest in the market or on the AEMI Book and may also include information regarding stop orders if the specialist has a reasonable basis to believe that the member or member organization intends to trade the security at a price at which stop orders would be relevant, provided that the specialist shall, while on the Floor, make the same information available in a fair and impartial manner to any member or member organization, and provided further that the specialist, when requested, shall disclose whether a bid or offer is in whole or in part for an account in which he has a direct or indirect interest; the specialist shall not disclose any information about the reserve (undisplayed) size of reserve orders on the AEMI Book; and the specialist shall disclose information in regard to limited price orders entrusted to him as a specialist to the extent required by the Intermarket Trading System Plan (the " Plan") provided for in Rule 230, but the provision of the Plan shall not be construed to require a specialist to disclose the name of a bidder or offeror whose order is contained in the AEMI Book;

(ii) effecting transactions for their own account, unless such dealings are reasonably necessary to permit them to maintain a fair and orderly market;

(iii) acquiring, holding or granting an option in any such security except where appropriate to permit such specialist to offset the risk of making a market in the underlying specialty stock; however, no specialist or his member organization or any member, limited partner, officer, or approved person thereof shall act as an options specialist or function in any capacity involving marketmaking responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such;

(iv) being an officer or director of the issuer of any such security;

(v) nominating, directly or indirectly any person to be on the board of directors of the issuer of any such security;

(vi) effecting, directly or indirectly, any business transaction with the issuer of any such security or any officer, director or 10% stockholder of any such issuer, except as provided in

Commentary .07 to Rule 190 with respect to business transactions, under certain conditions, between a specialist or his member organization or any member, officer, employee or approved person therein and the sponsor of an ETF (as defined therein) that he or it is registered as a specialist in:

(vii) accepting an order for the purchase or sale of any stock directly from the company issuing such stock; from any officer, director or 10% stockholder of that company; from any pension or profit-sharing fund; or from any bank, trust company, insurance company, investment company, or similar institution;

(viii) soliciting any proxy, directly or indirectly, on behalf of the specialist or any other persons in respect of any such security; and

(ix) voting, directly or indirectly, in any proxy contest involving any such security in which the specialist has a beneficial interest.

With respect to any security in which a specialist is registered, Exchange rules require the specialist to report to the Exchange:

(i) unusual activity or price change;

(ii) information which may materially affect the business or financial structure of the issuer of, or the market for, such security;

(iii) the existence of unlisted options or selling agreements;

(iv) any unusual transaction in which the specialist participates as a broker or dealer;

(v) each purchase and sale for the specialists' own account; and

(vi) a full description of any business transaction or relationship that a specialist or his member organization or any member, officer, employee or approved person therein may have, under certain conditions as provided in Commentary .07 to Rule 190, with any sponsor of an ETF (as defined therein) that he or it is registered as specialist in.

(e) Director—The company will be assigned a day-to-day contact (Director) who will:

(i) respond to questions concerning performance of the company stock;

(ii) assist the company in developing customized investor relations programs;

(iii) keep company officials abreast of industry—related issues and rule changes; and

(iv) serve as liaison between company officials and specialist and generally provide guidance to the company concerning its Exchange listing.