

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56446; File No. SR-Amex-2007-85)

September 17, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change to Establish a New Class of Off-Floor Market Makers in ETFs and Equities Called Designated Amex Remote Traders

I. Introduction

On August 8, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposal to create a new class of off-floor market makers, called “Designated Amex Remote Traders” or “DARTs,” in all ETF and equity-traded securities that trade on the Exchange. The proposed rule change was published for comment in the Federal Register on August 16, 2007.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description

The Exchange proposes to adopt changes to its rules to create a new class of off-floor market makers in all ETF and equity-traded securities that trade on the Exchange, including the implementation of related changes to the Exchange’s AEMI trading platform. These market makers, to be called “Designated Amex Remote Traders” or “DARTs,” will be members or member organizations physically located off-floor that will electronically enter competitive quotations into AEMI on a regular basis in all

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 56236 (August 9, 2007), 72 FR 46113.

securities to which they are assigned in the DART program. DARTs will also have to meet certain business requirements, which will include minimum performance standards. The proposed DART program is similar to the Supplemental Registered Options Traders (“SROT”) program implemented by the Amex for options,⁴ with its own unique caveats. Under the DART proposal, an Amex specialist firm may also be a DART, although it may not be registered as such in securities in which it is also the specialist. In ETFs, DARTs will trade in an identical way as Registered Traders in the same securities on the Exchange when auto-ex is on, with similar obligations under Exchange rules such as those relating to a course of dealings that contributes to the maintenance of a fair and orderly market. DARTs in equity-traded securities will be subject to the same obligations as DARTs in ETFs and will not be subject to the stabilization rules that are applicable to equity specialists. A DART will not participate in any post-trade allocation in connection with an auction trade; instead, a DART’s participation in an auction pair-off on the Exchange will be limited to the size of its quotation on the AEMI Book at the time of the pair-off.

Amex will establish minimum requirements for a DART to remain in the program, which may be modified by the Exchange from time to time. Business requirements will include minimum performance standards, including that a DART’s quotations must be on one side of the NBBO for a required percentage of the time in all assigned securities. Other performance standards will include average displayed size, average quoted spread, and the ability of the DART to transact in underlying markets in the case of a derivative security. A DART that fails to comply with one or more of the performance standards, as determined by the Chief Executive Officer of the Exchange or

⁴ See Amex Rule 993-ANTE (Supplemental Registered Options Traders).

his/her designee, may be subject to loss of the benefits to which it would otherwise be entitled under Amex rules by virtue of its status as a DART (e.g., rebates for providing liquidity), including suspension or termination of DART status. A DART may be either a regular member of the Exchange or an associate member of the Exchange that meets the requirements for electronic access to the Exchange's automated systems.

DARTs will receive benefits for participating in and meeting the requirements of the DART program.

While the Exchange anticipates starting the program with a limited group of DARTs, no specific upper limit on the number of DARTs is anticipated. In addition to the requirements cited above, DARTs will be required to meet eligibility criteria similar to those specified in the SROT program, which include:

- (i) adequacy of resources including capital, technology, and personnel;
- (ii) history of stability, superior electronic capacity, and superior operational capacity;
- (iii) level of market-making and/or specialist experience in a broad array of securities;
- (iv) ability to interact with order flow in all types of markets;
- (v) existence of order flow commitments;
- (vi) willingness and ability to make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the equity and ETF securities it trades; and
- (vii) the number of member organizations requesting approval to act as a DART.

The regulatory requirements applicable to DARTs will be surveilled for by the

FINRA Market Regulation Amex Division (“FINRA”) consistent with current surveillance procedures for Registered Traders on the Exchange. FINRA staff will work with Amex technical staff on planning the necessary changes to AEMI to capture required surveillance data and in surveilling the increased number of market makers that the program is expected to attract. Adjustments to current technology and surveillance procedures will likely also be necessitated by the fact that the DARTs will not be physically located on the floor of the Exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that a national securities exchange’s rules be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under the proposal, DARTs would be permitted to quote electronically in equities and ETFs from off the Exchange’s physical trading floor. Introducing a new class of market participant able to enter quotes from off the physical trading floor should attract new market makers to the Exchange, which should increase the liquidity available in those classes to which DARTs are assigned.

⁵ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

The Commission notes that DARTs will be required to meet certain eligibility requirements. The existence of order flow commitments between a DART applicant and order flow providers is one such factor. The Exchange represents, and the Commission emphasizes, that a future change to, or termination of, any such commitments would not be used by the Exchange at any point in the future to terminate or take remedial action against a DART and that the Committee would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. Similarly, the Exchange has included the “willingness to promote the Exchange” as a factor that the Committee may consider when making its application decisions. The Exchange represents, and the Commission emphasizes, that the Committee would not apply this factor to in any way restrict, either directly or indirectly, a DART’s activities as a market maker or specialist on other exchanges, or to restrict how a DART handles orders it holds in a fiduciary capacity to which it owes a duty of best execution.

The Commission also notes that should the Committee decide not to approve a DART applicant, or should an DART’s appointment be suspended or terminated in one or more classes, a DART applicant or DART, respectively, would be entitled to a hearing under Article IV, Section 1(g) of the Amex Constitution and Amex Rule 40.

Proposed Amex Rule 110A(b) - AEMI sets forth the obligations that a DART would be required to fulfill. Specifically, a DART would be required to generate continuous, two-sided quotations in all assigned securities that are on at least one side of the NBBO for a specified percentage of the time. A DART’s affirmative obligations appear to be sufficient to justify the benefits it would receive as a market maker.

The proposal also requires information barriers to be in place to prevent the

misuse of material, non-public information with any affiliates that may conduct a brokerage business in securities assigned to a DART, or that may act as a specialist or market maker in any security underlying a derivative security assigned to a DART. DARTs would also be required to comply with Amex Rule 193 regarding the misuse of material non-public information.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Amex-2007-85) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).