SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55179; File No. SR-Amex-2007-08)

January 26, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Establish a Passive Price Improvement Order for Specialists and Registered Traders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder[2] notice is hereby given that on January 19, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend its rules with respect to its new AEMI℠ trading platform and hybrid market structure for equity products and exchange-traded funds ("ETFs"), recently approved by the Commission,[3] to add a new Passive Price Improvement ("PPI") order type to encourage Specialists and Registered Traders to provide aggressing orders with increased opportunities for price improvement. PPI orders would be the only method by which Specialists and Registered Traders could offer price improvement electronically and would provide undisplayed liquidity that reacts to

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006).

aggressing orders according to criteria met at the time of order entry. PPI orders are intended to replicate in part the dynamics of floor-based trading in an electronic environment, and the Exchange believes that they would act as an incentive for the Exchange's Specialists and Registered Traders to quote more aggressively and add liquidity to the market. This should serve to assist the specialists and market makers in maintaining the continuity and depth of the marketplace, increase the quality of the market, and dampen volatility.

The text of the proposed rule change is available on Amex's Web site at http://www.amex.com, at Amex's Office of the Secretary and at the Commission's Public Reference Room.

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

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

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

(1) Purpose

To encourage Specialists and Registered Traders to provide aggressing orders with increased opportunities for price improvement, the Exchange is proposing to adopt a new Passive Price Improvement ("PPI") order type. This would be the only method by which Specialists and Registered Traders could offer price improvement electronically. This interest would be undisplayed and reside inside the APQ, and its purpose is to offer price improvement to an aggressing order. The ability to offer price improvement would be linked to the competitiveness and size of the Amex liquidity provider's own displayed quote. PPI orders are intended to replicate in part the dynamics of floor-based trading in an electronic environment and the Exchange believes that they would act as an incentive for the Exchange's Specialists and Registered Traders to quote more aggressively and add liquidity to the market. This should also serve to maintain continuity and depth in the marketplace as well as to increase the quality of the market and dampen volatility.

A Specialist or Registered Trader could have only a single, undisplayed PPI order per side in a particular security on the AEMI Book at any point in time, which must be inside the APQ and would be permitted only if the user has at least one quote for that side in the AEMI Book. A PPI order would not form part of the APQ and would be visible only to the entering Specialist or Registered Trader or his firm or group. A PPI order on the AEMI Book could be of any size, but its eligibility for execution would be assessed at the time of execution against an incoming order, and would be based on the competitiveness of the participant's quote at that time.

AEMI would make a PPI order eligible for execution if at least one of the following two conditions is met; otherwise AEMI would ignore the PPI order:

1. The Specialist's or Registered Trader's displayed quote is at the APQ on the side of the PPI order that would be executed. In this case, the PPI order would be executed up to (a) the size of the Specialist's or Registered Trader's displayed quote or (b) the size of the incoming order, whichever is smaller. Any balance of the PPI order would be considered ineligible to trade against the incoming order and will be ignored.

2. The Specialist's or Registered Trader's displayed quote is (i) one tick away from the APQ on the side of the PPI order that would be executed, and (ii) at least double the size of the APQ on the side of the PPI order that would be executed. In this case, the PPI order would be executed up to (a) half of the size of the Specialist's or Registered Trader's displayed quote or (b) the size of the incoming order, whichever is smaller. Any balance of the PPI order would be considered ineligible to trade against the incoming order and would be ignored.

In both cases, as with other aggressing orders, intermarket sweep orders would be generated to clear any better-priced protected quotations at other markets.

The two conditions above balance the need to provide meaningful price improvement opportunities in the form of undisplayed liquidity with the need to ensure the competitiveness of displayed quotations.

The AEMI platform would ignore (i.e., make ineligible for execution against an aggressing order, without canceling) a PPI order on the AEMI Book that locks or crosses the automated NBBO or APQ as a result of a change in the automated NBBO or APQ or equals the APQ on the same side of the market. If there are multiple PPI orders at the same price, the Specialist's PPI order would take priority over a Registered Trader's PPI order. This provision recognizes the fact that Specialists have higher capital requirements, more stringent quoting obligations, and more trading obligations (both negative and affirmative) and responsibilities to maintain a fair and orderly market, and seeks to reward the Specialist for his central role in providing liquidity to the marketplace. It also encourages Registered Traders to make tighter markets and enhances competition among the liquidity providers. PPI orders would not participate in negotiated trades, and they would be ignored when auto-ex is disabled.

For example, assume that the NBB is $6.90 bid for 2,500 shares, comprising NYSE and ARCA for 1,000 shares each, and INET for 500 shares. The Specialist is bidding $6.89 for 2,000 shares, and represents the Amex best bid which is published in the APQ. Registered Traders #1, #2, and #3 are each quoting $6.87 bid for 500 shares each. The Specialist has a PPI order at $6.91 bid for 3,000 shares; Registered Traders #1 and #2 each have a PPI order at $6.91 bid for 500 shares; and Registered Trader #3 has a PPI order at $6.91 bid for 300 shares. An incoming order to sell 3,000 shares at $6.90 would trade 2,000 shares against the Specialist at $6.91, since the Specialist’s quote is at the APQ and the PPI order may be executed only up to the size of the Specialist’s displayed quote. The remaining balance of 1,000 shares would be routed away at $6.90. The PPI orders of the Registered Traders were ignored in this case since none of their displayed quotes were either at the APQ or a tick away from the APQ.

As a second example, assume that the NBB is $6.89 bid for 3,000 shares, comprising the Amex best bid. The Specialist is bidding $6.89 for 2,000 shares and a Registered Trader is bidding $6.89 for 1,000 shares. The Specialist has a PPI order at $6.91 bid for 3,000 shares and the Registered Trader has a PPI order at $6.91 bid for 1,000 shares. An incoming limit order to buy 100 shares at $6.90 arrives on the AEMI Book, creating a new NBB and Amex best bid. This is followed by an incoming order to sell 2,500 shares at the market. At the time of execution of the incoming order, the Specialist and the Registered Trader are a tick away from the APQ, and their PPI orders may therefore each trade up to only half of the size of the participant’s displayed quote. Both PPI orders are eligible since both participants are quoting at least double the size of the APQ. The incoming order trades 1,000 shares at $6.91 against the Specialist's PPI order, 500 shares at $6.91 against the Registered Trader's PPI order, 100 shares at $6.90 against the order on the AEMI Book, and the balance of 900 shares at $6.89 against the displayed quotes of the Specialist and the Registered Trader. The unexecuted balances of the PPI orders remain on the AEMI Book.

The specific AEMI rules to which changes are being proposed are discussed below.

<u>Rule 123–AEMI - Manner of Bidding and Offering</u>

An additional phrase is being added to section (e) of Rule 123–AEMI to provide that AEMI would not display a PPI order.

<u>Rule 131–AEMI - Types of Orders</u>

The Exchange is proposing to add the definition of a PPI order to section (q) of Rule 131–AEMI. The proposed definition would contain the two conditions under which a PPI order would be eligible for execution by AEMI, as described above. Under the proposed definition, a PPI order would be an order submitted to AEMI by a Specialist or a Registered Trader to buy or sell a stated amount of a security at a specified, undisplayed price. A Specialist or Registered Trader could have only one PPI order to buy and/or one PPI order to sell a particular security on the AEMI Book at any point in time. A Registered Trader would have to be actively quoting a security in order to enter a PPI order in the security.

The proposed definition would provide that AEMI would reject a new PPI order (i) if it is not priced inside the APQ (above the bid and below the offer) at the time of entry into AEMI, (ii) if it is marked "sell short" (except for certain securities that have been granted no-action relief from a short sale price test, such as ETFs and Regulation

SHO Pilot securities), although not if it is marked "sell short exempt" or (iii) if the order would lock or cross the automated NBBO.

AEMI would cancel a PPI order on the AEMI Book (i) if the Specialist's or Registered Trader's best quote is withdrawn, (ii) at the end of the day, or (iii) if there is a trading halt in the security.

AEMI would ignore (i.e., make ineligible for execution against an aggressing order, without canceling) a PPI order on the AEMI Book (i) if the two conditions for execution eligibility described above are not met, (ii) if automatic execution becomes disabled, (iii) if the price of the PPI order locks or crosses the automated NBBO or APQ as a result of a change in the automated NBBO or APQ, or (iv) if the price of the PPI order equals the APQ on the same side of the market. With respect to (iii) and (iv) in the previous sentence, AEMI would continue to ignore the PPI order and prevent the person who entered it from entering a new PPI order on the same side of the market until the automated NBBO or APQ, changes so that the PPI order no longer locks or crosses the automated NBBO or APQ, or no longer is equal to the APQ on the same side of the market, or the person who entered the PPI order cancels it.

The proposed rule change also provides that, if there is more than one PPI order in the AEMI Book, AEMI would execute the orders in price/time priority, provided, however, that Specialist PPI orders would be given priority over Registered Trader PPI orders at the same price. A PPI order would not be displayed in the APQ and would be visible only to the Specialist or Registered Trader who entered it or to his or her firm. AEMI would only execute PPI orders only when automatic execution is enabled. AEMI would execute PPI orders only against aggressing orders (or elected or converted stop and percentage orders). PPI orders would not participate in the execution of cross-only or mid-point cross orders or in the execution of auction trades.

Finally, the proposed definition provides that a PPI order could be entered only during the regular trading session and will not participate in an opening, reopening, cash closing, or regular closing.

The proposed rule change also would add language to section (r) of Rule 131–AEMI relating to cross orders to clarify how PPI orders would interact with the new electronic cross order types that will be available in AEMI. While "cross-only" or "mid-point" cross orders would not execute against PPI orders, "IOC cross," "cross," and "PNP cross" orders could execute against any executable PPI orders at the price of the PPI orders. In the case of auction cross orders, the displayed order could be price-improved by PPI orders in the AEMI Book as well as by new bids, offers, or orders entering the AEMI Book during the three-second auction cross duration.

<u>Rule 157–AEMI - Orders with More than One Broker</u>

The Exchange is proposing to add a phrase to section (b) of Rule 157–AEMI to clarify that a Registered Trader may maintain a PPI order in AEMI while he is maintaining a bid or offer for the same security in AEMI.

<u>Rule 170–AEMI - Registration and Functions of Specialists</u>

The Exchange is proposing to add language to Commentaries .01 and .02 of Rule 170–AEMI to allow transactions by the Specialist in certain "tick" situations without the approval of a Floor Official if the Specialist effects the transaction by means of a PPI order.

(2) Statutory Basis

The proposed rule change is designed to be consistent with Regulation NMS, as well as consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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4 15 U.S.C. 78f(b).

5 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 1934 Act. Comments may be submitted by any of the following methods:

Electronic Comments:

Use the Commission's Internet comment form at http://www.sec.gov/rules/sro.shtml or send an e-mail to rule-comments@sec.gov. Please include File No. SR-Amex-2007-08 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-Amex-2007-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at http://www.sec.gov/rules/sro.shtml. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Amex-2007-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon
Deputy Secretary

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[6] 17 CFR 200.30-3(a)(12).