

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56255; File No. SR-Amex-2007-77)

August 15, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Certain Exchange Rules Prohibiting the Entering of Limit Orders on Both Sides of the Market on a Regular and Continuous Basis

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 August 8, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. Amex has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 Exchange proposes to amend Rules 1000-AEMI, 1000A-AEMI, 1200-AEMI, 1200A-AEMI, 1200B-AEMI, 1500-AEMI, and Rule 1400 to eliminate the prohibition on the entering of certain limit orders in Exchange Traded Fund Shares and other equity derivative products into the Exchange’s trading systems.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at the Amex, the Commission's Public Reference Room, and www.amex.com.

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

In August 2001, the Exchange adopted rules restricting the entry of certain limit orders in Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts. Subsequently, the Exchange adopted the same rules for trading in Commodity-Based Trust Shares, Currency Trust Shares, Paired Trust Shares, and Partnership Units when those products began trading on the Exchange. All of these products will be collectively referred to herein as "Exchange Traded Fund Shares" or "ETFs." Specifically, the rules provide that members, acting as either principal or agent, may not permit the entry of orders into the Exchange's electronic order routing system if the orders are limit orders for the account or accounts of the same or related beneficial owners and the limit orders are entered in such a manner that the member or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis.

The Exchange adopted these rules because its business model at that time depended upon specialists and registered traders for competition and liquidity. To encourage participation by specialists and registered traders, the Exchange determined to limit the ability of non-specialists/registered traders to compete on equal terms within its automated systems. The Exchange determined that certain actions -- simultaneous entry of limit orders to buy or sell the same ETF, multiple acquisition and liquidation of positions in the same ETF, and the entry of multiple orders at different prices in the same ETF -- were tantamount to operating as a market maker and gave such members an advantage over the specialist who was required to yield priority to their orders. The adoption of these rules by the Exchange did not, however, confer market maker status on such members for any purpose under the Act or otherwise.

Since that time, trading in ETFs has changed considerably. Most recently, the implementation of the AEMI trading system and the introduction of Regulation NMS have changed the Exchange's view of these restrictions and the need to encourage order flow from all types of liquidity providers, particularly member firms trading for their own proprietary accounts. ETF specialists and registered traders now have the ability to stream quotations into the AEMI system using their own proprietary quoting systems in a manner that allows them to compete effectively with orders from members' proprietary accounts. In addition, specialists and registered traders have the ability to be on parity with these orders from members. Thus, the Exchange is proposing to amend its rules to eliminate the prohibition on limit orders from members operating as market makers. Management believes the removal of these restrictions will provide a level playing field for all market participants on parity and should enhance access to the Exchange providing additional liquidity in our ETFs.

The prohibition, however, will continue to apply to customer agency orders since those orders continue to have priority over specialists and registered traders. The rule prevents certain customers from obtaining an unfair advantage by acting as unregistered specialists and traders while having priority over the specialists and registered traders by virtue of their customer status. Permitting customers to enter multiple limit orders to such an extent that they are effectively acting as market makers in a security, while at the same time giving them priority over all other orders on the book, gives such customers an inordinate advantage over other market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,⁴ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, 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

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(6) thereunder⁶ because it does not: (i) significantly

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(6).

affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.⁷

Rule 19b-4(f)(6) provides that the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Commission hereby waives the 30 day pre-operative period.⁸ In an order approving a proposed rule change by the Chicago Board Options Exchange, the Commission recognized that an exchange may permit members to submit orders on both sides of the market on a regular or continuous basis, even if such members are not registered as market makers.⁹ Therefore, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative period so that the proposal may become operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁷ Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Amex has satisfied the five-day pre-filing notice requirement.

⁸ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ See Securities Exchange Act Release No. 38054 (December 16, 1996), 61 FR 67365, 67370 (December 20, 1996).

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 Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Amex-2007-77 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-2007-77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not

edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-77 and should be submitted on or before [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).