

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57645; File No. SR-Amex-2008-35)

April 10, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify that Current Limitations on the Trade Allocation Match for Registered Traders in ETFs Also Apply to DARTs

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 April 3, 2008, 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 filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with 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

Amex proposes to amend Commentary .01 to its Rule 157–AEMI to clarify that certain limitations currently applicable to its market makers, who enter quotations in exchange-traded funds (“ETFs”) into the AEMI system from the floor of the Exchange (known as “Registered Traders”), are also applicable to its market makers in ETFs who enter quotations into AEMI from an off-floor location (known as “Designated Amex Remote Traders” or “DARTs”). These limitations address whether ETF market makers that have a relationship with the same member

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

organization may trade in the same security at the same time. The proposed rule change would provide that, if such ETF market makers are allowed to trade in the same security at the same time, the current limit on the trade allocation match that the related market makers may receive would not depend on whether their respective quotes are entered from on or off the floor of the Exchange (*i.e.*, whether they are Registered Traders or DARTs). The purpose of these limitations is therefore to ensure fairness in trading crowds.

The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at the Amex's principal office, 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, Amex 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 III below. Amex 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

Commentary .01 to the Exchange's Rule 157-AEMI currently prohibits Registered Traders (*i.e.*, market makers in ETFs who enter quotations in the form of Crowd Orders into the AEMI system from the floor of the Exchange) that have a relationship with the same member organization from trading in the same security at the same time: (i) if they are "affiliated" (as defined in the Exchange's rules); or (ii) in the event they are not "affiliated," if the member

organization's combined share of their profits and/or losses exceeds 100% of these profits and/or losses. Further, even if two or more such related Registered Traders are permitted to trade in the same security at the same time based on the foregoing criteria, Commentary .01 to Rule 157–AEMI limits them to the trade allocation match they could get if there were only two of them in the trading crowd. The purpose of the foregoing restrictions is to ensure fairness in trading crowds by preventing a single firm or joint account from “packing the crowd” in order to increase that entity's match.

Amex recently adopted changes to its rules creating a new class of off-floor market makers in ETFs that trade on the Exchange.⁵ These market makers (i.e., DARTs), although located off-floor and not physically part of the trading crowd, nonetheless also enter their quotations in the form of Crowd Orders into AEMI from their off-floor locations. The Exchange desires to clarify its intent that the foregoing limitations on the Exchange's ETF market makers should not depend on whether their respective quotations are entered from on or off the floor of the Exchange (i.e., whether the market makers are Registered Traders or DARTs). In other words, a member organization, having one or more Registered Traders on the floor of the Exchange, should not be provided with an incentive to create a DART simply to increase the combined trade allocation match that could be received from the same level of market making activity. Such an outcome would not be consistent with the Exchange's policy of ensuring fairness in trading crowds.

Consequently, the Exchange proposes to add an additional paragraph to Commentary .01 of Rule 157–AEMI to clarify that a DART, having a relationship with the same member organization as a Registered Trader in the same security, shall be treated as if it were another

⁵ See Securities Exchange Act Release No. 57241 (January 31, 2008), 73 FR 7335 (February 7, 2008) (SR-Amex-2007-138).

Registered Trader under the provisions of Commentary .01 for the purposes of: (i) determining whether it and the Registered Trader may trade in that security at the same time; and (ii) applying the limitation on the trade allocation match they may receive even if they are permitted to trade in that security at the same time. The proposed rule change would also require the DART to provide certain relationship documentation that a Registered Trader in the same situation would be required to provide.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange believes that 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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

(ii) impose any significant burden on competition; and

(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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

The Exchange has asked the Commission to designate the proposal as operative as of filing. The Commission hereby grants Amex's request.¹⁰ The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest because, by clarifying that the existing rule relating to ETF market maker allocations applies to DARTs, it will eliminate immediately any incentive for an Amex registered trader to establish a DART in order to obtain an unfair trade allocation.

At any time within 60 days of the filing of the 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.

III. 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:

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange satisfied the five day pre-filing notice requirement.

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 Number SR-Amex-2008-35 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 Number SR-Amex-2008-35. 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 a.m. and 3:00 p.m. Copies of such filing will also 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 Number SR-Amex-2008-35 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).