SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54145; File No. SR–Amex–2005–104]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, 4, and 5 Thereto Relating to the New Amex Hybrid Market Structure

July 14, 2006.

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 October 17, 2005, 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, II, and III below, which Items have been prepared by the Exchange. On January 19, 2006, the Amex submitted Amendment No. 1 to the proposed rule change.[3] On March, 10, 2006, the Amex submitted Amendment No. 2 to the proposed rule change.[4] On March 14, 2006, the Amex submitted Amendment No. 3 to the proposed rule change.[5] On July 3, 2006, the Amex submitted Amendment No. 4 to the proposed rule change.[6] On July 13, 2006, the Amex submitted Amendment No. 5 to the proposed rule change.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to implement a new hybrid market structure for equity products and Exchange Traded Funds (''ETFs'') that will provide for a single marketplace that integrates automated execution and floor-based auction trading. To facilitate the hybrid market, the Exchange is undertaking a major technology upgrade and will implement a new trading platform for equity products and ETFs. This platform, designated as AEMI℠, is aimed at providing easy and fast access to automated order execution, as well as encompassing auction market capabilities for those situations in which there are order imbalances that require additional liquidity, or if price improvement from the auction process is desired.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the Exchange's principal office, on the Commission's Web site (*http://www.sec.gov*), 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Exchange's proposal is to implement a new hybrid market structure for equity products and ETFs [8] that would provide for a single marketplace that integrates automated execution (''auto-ex'') and floor-based auction trading. In this hybrid market, direct market participants would consist of off-floor members, Specialists, Registered Traders, and Floor Brokers. Investors and off-floor members would be able to choose from a variety of execution methods the one that best suits their purpose at any point in time. They can access the electronic environment directly, or take advantage of point-of-sale representation provided by Floor Brokers in the crowd. To facilitate the hybrid market, the Exchange is undertaking a major technology upgrade and would implement a new trading platform for equity products and ETFs. According to the Exchange, this platform, designated as AEMI℠—the ''Auction & Electronic Market Integration'' platform (referred to hereinafter as the ''AEMI platform'' or ''AEMI'')—is expected to provide easy and fast access to automated order execution, as well as encompassing auction market capabilities for those situations in which there are order imbalances that require additional liquidity, or if price improvement from the auction process is desired. The Exchange anticipates that auto-ex would be available throughout the trading session. However, for those instances when excessive volatility occurs, auto-ex would be unavailable for a limited period of time during which the auction market would be used to dampen volatility and gyrations in the market. This fusion of auto-ex, that is based on both limit and market orders, with the auction process that creates price discovery is designed to balance the premium on speed demanded by market participants with the need to protect investors from undue and costly volatility. The Exchange also believes that this proposed hybrid market would promote fairness, stability, and competitiveness in the marketplace under Regulation NMS.[9]

Categories of Floor Participants in AEMI. In all securities traded on AEMI, Specialists would continue to provide liquidity and stabilization as they currently do.[10] They would maintain their affirmative and negative

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

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated January 19, 2006, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] *See* Form 19b–4 dated March 10, 2006, which replaced Amendment No. 1 in its entirety (''Amendment No. 2'').

[5] *See* Form 19b–4 dated March 14, 2006, which replaced Amendment No. 2 in its entirety (''Amendment No. 3'').

[6] *See* Form 19b–4 dated July 3, 2006, which replaced Amendment No. 3 in its entirety (''Amendment No. 4''). Among other things, the amendment (1) removed the proposed Passive Price Improvement (''PPI'') order type from AEMI until its parameters can be revised; (2) stated the Exchange's commitment to make AEMI's depth-of-book information broadly available; (3) added additional size and value requirements for certain cross orders; (4) distinguished two different quote indicators that may be disseminated in connection with the Exchange's publishing of non-firm quotes, (5) revised its proposed procedures with respect to an intermarket sweep order to which no response, or only a partial fill, is received; (6) changed the manner in which unexecuted or partially executed intermarket sweep orders generated during an auction are handled; and (7) made a number of other corrections and clarifications to the proposed rule changes.

[7] *See* Partial Amendment to Form 19b–4 dated July 13, 2006 (''Amendment No. 5''). In Amendment No. 5, the Exchange made a number of technical changes, including (1) stating the timeframe for the availability of depth-of-book data; (2) clarifying when Exchange Specialists may charge commissions; (3) clarifying when the Exchange will send intermarket sweep orders to other markets; and (4) acknowledging that its proposed trade-through treatment for late trade reports will not obviate or invalidate an away market's rules regarding such late trades.

[8] As used herein, the term ''equity products'' includes equities and securities that trade like equities on the Exchange, such as listed and UTP stocks, closed-end funds, and certain structured products. The term ''ETFs'' includes Portfolio Depositary Receipts, Index Fund Shares, Trust Issued Receipts, and Partnership Units.

[9] 17 CFR 242.600 *et seq.*

[10] *See infra*, the discussion under ''Rule 170–AEMI''relating to proposed changes to existing requirements for Floor Official approval in connection with certain transactions for the Specialist's own account that involve destabilizing ticks.

obligations,[11] manage auctions, and may add resident liquidity to the AEMI Book (as described herein) at up to five price levels, including the quote that each Specialist must provide to meet his obligation to assist in the maintenance of a fair and orderly market and of price continuity with reasonable depth.[12] They would have a choice of quoting methods, and could stream quotes into AEMI from proprietary systems, generate quotes automatically based on parameters set by the Specialist within AEMI, or enter quotes physically. In instances where the Specialist's quote is depleted, AEMI would generate emergency quotes based on parameters set by the Specialist so that the affirmative quote obligations of the Specialist are met.

Market makers designated as Registered Traders would add liquidity to the ETF marketplace through the continuous provision of competitive quotes and must be in the crowd[13] in order to do so. The Exchange intends to foster quote competition between the Specialists and Registered Traders. Unlike the existing Amex system where Registered Traders' quotes are imbedded in the Specialist's quote, Registered Traders would be required by Amex rules to make competitive quotes separately from the Specialist. They would be able to stream quotes into AEMI from proprietary systems, generate quotes automatically based on parameters within AEMI, or enter quotes into AEMI physically from a ''front-end'' device supplied by the Exchange. They would also be permitted to add liquidity at up to five price levels on both sides of the market and could participate in auctions, provided that they are actively quoting, thereby serving to provide added depth and competition to the marketplace. Registered Traders would function under essentially the same restrictions that are applicable to them in the Amex's current rules.

Floor Brokers would maintain their value-added services through their point-of-sale proximity, participation in auctions, trading on parity, and provision of liquidity to the electronic environment in the form of crowd orders. They would receive orders from customers electronically via the floor booth automated routing systems and would manage their order flow using hand-held terminals. This should result in faster responses to customers. Floor Brokers could represent customer orders as crowd members electronically, trade on parity in the electronic environment, and initiate and participate in auctions, using their judgment to obtain best execution for their customers.

Off-floor members could access the electronic environment in two main ways. First, they could send orders directly to the AEMI Book. Alternatively, they could direct orders to booths on the floor, which would allow Floor Brokers to represent their orders on the floor and use their point-of-sale privileges as members of the crowd to obtain best execution for their customers. Orders sent to the Exchange that *must* be handled manually would be directed to the order-entry firm's broker booth to be managed by booth personnel or redirected to Floor Brokers. For example, ''not held'' and SEC Rule 144 orders would be handled outside the AEMI Book and would be sent to a booth. By contrast, orders that may *not* be handled manually (such as odd-lot orders) would be sent automatically to the AEMI Book.

The Exchange is committing to making depth-of-book information broadly available with respect to its securities that are traded in AEMI, and the Exchange intends to implement this program with the rollout of AEMI prior to the Trading Phase Date (as defined below under ''Implementation of the AEMI Platform'').[14] This represents a significant change from the Exchange's initial proposal, under which only the Specialist would have been able to see this information. The Exchange will make a separate rule filing with the Commission in connection with any related fees that are proposed to be charged for the depth of book information.

This proposal seeks the approval of new rules to implement AEMI for equity products and ETFs. Key features of the proposed new hybrid market are summarized under the headings below.

Automated Trading Center. By implementing AEMI, the Exchange intends to qualify as an ''automated trading center'' under Regulation NMS.[15] The Exchange would publish automated quotes for all securities on the AEMI platform. The publication of automated quotes means that all incoming executable orders would be processed immediately and automatically without human intervention. If Amex were not the national best bid or best offer (''NBBO''), the incoming executable order would be routed out immediately and automatically, in whole or in part, to the trading center(s) with the best-priced automated quotation that is immediately accessible (as required by Rule 611 of Regulation NMS).[16] AEMI would contain predetermined parameters that would automatically disable auto-ex when triggered, and Amex would publish non-firm manual quotes until auto-ex is re-enabled.[17]

The AEMI Platform. The AEMI platform is a single electronic system that would process quotes and orders in all equity and ETF securities on the Exchange. The ''AEMI Book'' is the physical part of the AEMI platform that comprises all quotes and orders that could be eligible for auto-ex during the Exchange's regular session. These orders could logically be represented in the automated environment by members in the crowd interacting directly with AEMI (''crowd orders''), or represented directly in the automated environment (''public orders''). Quotes and orders submitted to the AEMI Book by Registered Traders and Floor Brokers standing in the crowd would be considered crowd interest. All other orders and quotes would constitute the Specialist Order Book (*i.e.*, all other off-floor orders submitted directly to AEMI; other percentage, limit, and market orders left with the Specialist by Floor Brokers; and the Specialist's own quotes). The Specialist Order Book would therefore be a subset of the AEMI Book. Further, except in certain defined circumstances, the AEMI rules would provide that the Specialist's own proprietary interest would yield to orders on the Specialist Order Book, thereby ensuring that customer interest is afforded a higher priority in the electronic environment.

AEMI would generally execute orders according to price/time priority. However, AEMI would execute orders at a single price point according to Amex parity, priority, and precedence rules. The instructions and characteristics of the orders at the price point are considered first, and then, depending on

[11] *See* Amex Rule 170 and related Commentary.

[12] Amendment No. 5 eliminated references in this sentence and in a related footnote to PPI orders that were included in Amendment No. 4.

[13] In ETFs, a crowd is defined as three contiguous panels.

[14] The Exchange intends to provide depth-of-book information to vendors and direct subscribers simultaneously with the first day of AEMI operation. Moreover, the Exchange commits to providing vendors and limited direct subscribers sufficient information including technical specifications to permit them to obtain the depth-of-book data feed as of the first day of AEMI operation. *See* Amendment No. 5.

[15] *See* 17 CFR 242.600(b)(4).

[16] However, an incoming intermarket sweep order (as defined herein) or immediate-or-cancel order would not be routed out to another trading center.

[17] AEMI could also disseminate a non-firm quote, using a different indicator, when 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.

product type, the capacity designation and allocation indicator for the orders would be considered. Orders with an allocation designation of ''crowd'' would trade on parity with public orders in the AEMI Book, and crowd orders would be restricted to crowd members. Orders with an allocation designation of ''public'' would trade on parity with the crowd orders and could be submitted by any on-floor or off-floor market participant, as well as by Floor Brokers in the form of percentage, limit, or market orders left with the Specialist. Generally, the Specialist interest would yield to those public orders that are being represented in the marketplace as part of the Specialist Order Book, which is part of the AEMI Book.[18] Every order would have a capacity designation of ''agency'' or ''principal'' which is derived from the account type code for the order designated by the member who enters the order. This denotes whether the order is a customer (non-broker-dealer) order or a broker-dealer order, which affects its priority standing during execution.[19] A broker-dealer order could be a principal order entered by a member that is a broker-dealer or it could be an order entered by a member acting as an agent for a broker-dealer. The rules regarding priority and precedence for ETFs would differ from the corresponding rules for equity-traded securities because ETFs are traded more like derivative products with market makers in the crowd. In summary, the principal/agency capacity designation serves to ensure that investors' orders are afforded precedence in the execution process, and the public/crowd indicator serves to distinguish off-floor orders (which are all public) from activity that is afforded the privileges of presence in the crowd. All off-floor orders are therefore public, all quotes from Registered Traders are crowd, and Floor Brokers choose between submitting public and crowd orders depending on their physical location on the trading floor.

The AEMI platform would also process orders that are not intended to receive auto-ex. Examples of such orders include on-close orders and opening orders, all of which would have a time dependency. Similarly, orders that require election or conversion before they could be automatically executed (*i.e.*, stop orders, stop limit orders, and percentage orders) and orders that require filing and re-filing before their terms meet conditions for automated execution (*i.e.*, tick sensitive orders) would be processed within the AEMI environment. These orders would be held separate until the conditions for automatic election, conversion, or execution are met and the orders are added to the AEMI Book, where they then would become eligible for auto-ex.

The Exchange is proposing to adopt a completely new rule for handling odd-lots in AEMI that is based on the current New York Stock Exchange (''NYSE'') rule. During the regular trading session, an odd-lot trade would be limited to the size of the nearest round-lot trade that elected it. For example, assume there are two odd-lot orders of 60 shares and 50 shares, respectively, and a round-lot trade of 100 shares takes place. Odd-lots could trade up to 100 shares. However the second odd-lot order of 50 shares would trade in its entirety to avoid splitting an odd lot (*i.e.*, 110 shares executes in total). If a market odd-lot order were not filled on the basis of round-lot trades within 30 seconds of its arrival, then the odd-lot order would trade at the price of the qualified national best bid or offer, as defined in the rule.[20] If the odd lot is part of a mixed lot, then the odd lot would trade automatically against the Specialist at the same time and same price as the first round-lot of the order.

Automated Execution. Amex would by default publish an automated quotation for all securities in AEMI, and auto-ex in the AEMI platform would operate according to two basic principles. First, interest that is eligible to trade must be resident in the AEMI Book prior to an incoming order arriving, with the exception of percentage orders and emergency quotes, which are both triggered automatically. Second, Amex would immediately and automatically ship an intermarket sweep order to any away market which displays a better-priced quotation, provided Amex is publishing an automated quotation.[21] Otherwise, auto-ex of an incoming order would occur according to whether the incoming order would do one of the following:

(a) *Lock the APQ:* If an incoming order would lock the Amex Published Quote (''APQ''), it would automatically execute against any contra-side interest resident on the AEMI Book. Any unexecuted balance would be posted simultaneously on the AEMI Book and reflected immediately in the new APQ.

(b) *Cross the APQ:* If an incoming order would cross the APQ, it would automatically execute against orders at each price point up to its limit price, or until it were filled or breached a tolerance. All liquidity at each price point would be cleared before the next price point could trade. This is known as sweeping the book, and during the sweep the incoming order could access other points of liquidity prior to reaching its limit price, such as a percentage order or a Specialist's emergency quote, both of which are described later in this document. If the range of the sweep includes better-priced protected quotations at other markets, AEMI would send intermarket sweep orders to clear those better prices simultaneously with performing the sweep. Assuming no breach of a tolerance has caused auto-ex to be disabled, any unexecuted balance would be posted simultaneously on the AEMI Book and reflected immediately in the new APQ.

(c) *Lock the NBBO:* If an incoming order would lock the NBBO, AEMI would immediately issue an intermarket sweep order for the displayed quantity. If the displayed quantity were less than the size of the order, AEMI would simultaneously post any balance on the AEMI Book and reflect this immediately in the new APQ.

(d) *Cross the NBBO:* If an incoming order would cross the NBBO, AEMI would immediately issue intermarket sweep orders for the displayed quantities of those protected quotations. Therefore, AEMI would sweep the protected quotations of away markets at the same time as it sweeps in full size the same price points on the AEMI Book. As above, during the sweep the incoming order could access other points of liquidity prior to reaching its limit price, such as a percentage order or a Specialist's emergency quote.

[18] The Exchange anticipates allowing a Specialist to charge commissions under AEMI for orders that require special handling or for which the Specialist otherwise provides a service as agent for the order (*e.g.*, percentage orders). However, the Specialist would be prohibited by Amex Rule 152(c) from charging a commission if the Specialist were a contra-party to the trade. Amendment No. 5 further stated that a Specialist would not be allowed to charge a commission on any transaction in AEMI to which the Specialist's own proprietary interests were *not* required to yield by AEMI rules or the Specialist's agency responsibility. For instance, an ETF Specialist would be allowed to trade on parity with, but not charge a commission for, a broker-dealer order in AEMI. *See* Amendment No. 5.

[19] Proposed Rule 719–AEMI provides detailed descriptions of available account type codes.

[20] Under the current NYSE odd-lot rule, a market order not filled on the basis of a round-lot trade within 30 seconds of arrival would trade at the price of an adjusted ITS bid or offer. Amex's proposed AEMI odd-lot rule would instead use the qualified national best bid or offer, as defined in the rule, due to the Exchange's expected use of private linkages instead of ITS at the time that Regulation NMS takes full effect.

[21] In Amendment No. 5, the Exchange clarified that Amex would only ship an intermarket sweep order to an away market with a better price if the Amex were publishing an automated quotation.

Assuming no breach of a tolerance has caused auto-ex to be disabled, any unexecuted balance would be posted simultaneously on the AEMI Book and reflected immediately in the new APQ.

Auto-ex in the AEMI platform would be disabled (and re-enabled) only in specific, published circumstances that Amex believes are consistent with investor protection and with the maintenance of fair and orderly markets. Such instances could occur due to the presence of a large imbalance, during periods of high volatility, or as a result of system malfunction.

The conditions outlined below under which auto-ex could be disabled during the regular trading session are designed to work together to balance the demand for speed and immediate access to execution with the need to provide a stable and fair marketplace. Amex recognizes that periods of high volatility and low liquidity could cause auto-ex to be disabled in a single security by one or more tolerances within a short time. In compliance with Regulation NMS, Amex would continuously monitor the frequency of disablement of auto-ex and the cause in each instance in order to ensure that one or more tolerances is not being breached continuously or consistently, either in individual securities or market-wide. Should this be the case, Amex would review and, with the appropriate regulatory approvals, make adjustments to the conditions under which auto-ex is disabled so as to maintain both consistency of market quality for investors and compliance as an automated trading center under Regulation NMS.

There are six situations under which auto-ex in AEMI would be disabled. Four of these situations involve trading circumstances that could otherwise result in price volatility in an individual security and are described here. The fifth situation is the ''cash close'' for certain ETFs and is referred to under ''Openings and Closings'' below, and the sixth situation is when unusual market conditions (as defined in Rule 602 of Regulation NMS) occur. Of the four trading situations, AEMI would automatically disable auto-ex in three circumstances related to breaching predefined tolerance levels held within the system, namely ''spread tolerance,'' ''momentum tolerance,'' and a ''gap trade tolerance'' (*i.e.*, exceeding a specified maximum range from the last sale). In the fourth possible trading circumstance in which auto-ex would be disabled (''gapping the quote''), the Specialist would manually gap the quote to address a large order imbalance.

With spread tolerance, auto-ex would be disabled when an inbound order has walked the book beyond a predefined price level relative to the price of the security at the time of the initial execution against the order. The spread tolerance is designed to mitigate volatility caused by the entry of a large sized order where there is no natural contra-interest on the book (commonly known as ''pounding''). The spread tolerance is an Exchange-set parameter per security and is applied dynamically according to the first execution price of the security against the incoming order, based on the table below:

Stock price	Tolerance (cents)
Less than $5	5
$5–$15	15
More than $15	25

For example, suppose the Exchange's quote is 100 shares offered at $3.10 and the best automated away market bid is $3.09 for 200 shares. Assume there are additional offers at the Amex of 500 shares each at price levels of $3.11, $3.13, $3.15, $3.16, and $3.18 and there are no protected offers between $3.11 and $3.15. An inbound order to buy 4,000 shares at the market would therefore aggress the book five cents from the first execution at Amex. This results in trades of 100 shares at $3.10, 500 shares at $3.11, 500 shares at $3.13, and 500 shares at $3.15. Auto-ex is disabled after the size offered at $3.15 is exhausted. The APQ is consequently $3.09 [22] bid for 2,400 shares, 500 shares offered at $3.16 and both sides are non-firm quotations.

With momentum tolerance, auto-ex would be disabled when multiple orders have moved the price of a security in one direction beyond a predefined trading boundary in a 30-second time period. The momentum tolerance is designed to mitigate volatility caused by a rapid succession of small orders in very short time frames (commonly known as ''spraying'').

Spread and momentum tolerances would work simultaneously to prevent excessive volatility, so while each of a series of small orders might not individually trigger the spread tolerance, their combined effect could trigger the momentum tolerance.

With a gap trade, the gap between the current quotation and the last sale has breached the parameters of the Exchange's ''1%, 2, 1, ½ point'' rule.[23] The incoming order would execute against the quote and auto-ex would automatically be disabled. This rule would serve to maintain continuity and reduce volatility in the market.

In the case of a tolerance breach or a gap trade that violates the Exchange's ''1%, 2, 1, ½ point'' rule, auto-ex would be disabled and the APQ would be designated as non-firm, being comprised of the unexecuted balance 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. If there is no imbalance (*e.g.*, the breaching order was an immediate-or-cancel order), then the natural current Amex market is reflected in the manual APQ. If there were no orders left on the contra-side of the AEMI Book (*e.g.* the stock is illiquid), and auto-ex has been disabled, AEMI would generate a stabilizing quote automatically so that a two-sided non-firm quotation would be published. The stabilizing quote would be for one round lot at one tick away from the price of the automated NBBO on the contra-side.[24]

Once auto-ex is disabled, incoming immediate-or-cancel orders would expire on receipt. Incoming market and limit orders would be added to the AEMI Book (but would not update the APQ) and any order could be amended or canceled. If auto-ex were disabled due to a tolerance breach or gap trade, the Specialist would have ten seconds to take action to re-enable auto-ex and disseminate a new automated APQ, after which time auto-ex would automatically attempt to resume and disseminate a new automated APQ. If the remainder of the aggressing order that caused the imbalance expired or were canceled or the AEMI Book were not locked or crossed, the Specialist could re-enable auto-ex prior to the expiration of the 10-second period through a ''front-end'' device. Otherwise, if the order imbalance remained and the AEMI Book were locked or crossed, the Specialist would be required to conduct an auction for the imbalance, and the action of printing the auction trade or performing a pair-off would automatically re-enable auto-ex and publish an automated quote. If the Specialist had not so acted or gapped the quote by the end of the ten-second period, then auto-ex would resume automatically, provided the AEMI Book were not locked or crossed. If the AEMI

[22] The bid is set at the prevailing best automated away market bid to insure that the Amex quote, although manual and non-firm, does not lock or cross any away market's automated offer. *See* Amendment No. 5.

[23] Proposed Rule 154–AEMI.

[24] *See* proposed Rule 128A–AEMI(g).

Book were still locked or crossed after the initial ten-second period and the Specialist had still taken no action, AEMI would attempt to re-enable auto-ex every subsequent ten seconds. The APQ would not be updated until auto-ex were re-enabled and an automated quotation were disseminated. Amex's Regulatory Division could bring enforcement action against Specialists that have a pattern of failing to take action within the initial ten seconds under the circumstances described above.

The Exchange is proposing to adopt rules for gapping the quote similar to those of the NYSE in order to maintain uniformity in the marketplace. A Specialist would gap the quote when either: (i) A large order has been represented in the crowd; or (ii) an incoming order has swept the book, disabled auto-ex, and left a large order imbalance in the security. If the Specialist gaps the quote, auto-ex would be disabled and a gapped quote would be disseminated, reflecting the order imbalance. If auto-ex had already been disabled due to the tolerance breach, then it would remain disabled and the existing non-firm quote would be updated with a non-firm gapped quote. This quote would be published in order to attract electronic contra-side interest and would be displayed until incoming order flow offsets the imbalance to such an extent that the Specialist could pair off the imbalance, which would automatically re-enable auto-ex. The quote could be gapped for a maximum of two minutes, by which time the Specialist would be required to perform an auction, or he would have to request a trading halt with Senior Floor Official or Exchange Official approval. The gapped quote disseminated by the Specialist would be comprised of the order imbalance at a bid or offer equal to the price of the automated NBBO on the side of the imbalance,[25] and a round-lot on the contra-side at the price at which the Specialist judges the stock would next print if there were no additional interest or cancellations. If the gapped quote were the result of an order represented in the crowd, the Floor Broker whose order imbalance has caused the quote to be gapped would be required to enter his order into AEMI immediately so that it participates in the pair-off. When the quote is gapped, incoming orders would be added to the AEMI Book and any order not participating in the pair-off could be amended or canceled, including the imbalance, but no auto-ex would occur until the Specialist performed a pair-off, and the APQ is updated. Note that orders that are participating in the pair-off could not be canceled or amended during the pair-off duration itself, which would last no more than three seconds.

Gap quote situations involve clearly large imbalances compared with the typical trading volume in a security. For example, assume the Exchange quote is $5.09 bid for 100 shares, 300 shares offered at $5.11, and the automated national best bid is $5.10. Further assume that a Floor Broker walks into the Crowd looking to purchase 50,000 shares. The Specialist determines that gapping the quote is in the interest of the marketplace, and enters the side and size of the imbalance and the price at which the contra-side would print. Auto-ex would be disabled and the gapped quote would be published as a non-firm quotation at $5.10 bid for 50,000 shares and a contra-side of 100 shares (a round lot) offered at $5.20. The Floor Broker would submit his imbalance from his hand-held terminal so that it is electronically captured in AEMI and could participate in the pair-off performed by the Specialist. If incoming contra-side order flow of 45,000 shares entered the book electronically, the Specialist would auction the outstanding 5,000 shares in the crowd and perform the pair-off, which would cause the trade to be printed and auto-ex to be re-enabled. The pair-off itself is described later in this document under ''Performing a Pair Off.''

The Auction Process. Vital to the AEMI platform is the preservation of the auction market, represented by members in the crowd trading on parity. Specialists, Floor Brokers, and Registered Traders would continue to add depth to the price discovery process by their interaction and presence in the crowd at the point of sale. The AEMI platform would support auctions and negotiated trades[26] taking place in the trading crowd and interacting with orders in the AEMI Book. If the Specialist were to conduct an auction in the new hybrid market, he would print the auction trades to the tape via AEMI. Both electronic imbalances that disable auto-ex due to a tolerance breach and oversized orders arriving via a Floor Broker in the crowd would be able to take advantage of the auction market and liquidity offered in the crowd. When the Specialist conducts an auction and prints the resulting trade, relevant orders in the electronic environment would be included and the AEMI platform would automatically satisfy better displayed automated quotations (protected quotations)[27] at away markets as part of the auction print. Since verbal bids and offers would not have standing in the AEMI Book, it would be the electronic print that finalized the trade and recorded the aggressing and contra-participants. To ensure the price discovery process is fairly leveraged, negotiated trades and auction trades could not take place outside the APQ when auto-ex is enabled.

The Specialist would conduct an auction based on information from both the crowd and AEMI relating to the imbalance, minimum Specialist and crowd exposure, and away market obligations. The Specialist and crowd exposure would represent the minimum commitment of the crowd, once the imbalance had been offset by away market obligations and the contra-side interest already on AEMI that would participate in the trade. Should the market change between the time of the verbal auction and the auction trade being printed, then the exposure of the crowd could change, up to the maximum exposure of the imbalance itself. After conducting the auction, the Specialist would print the trade and subsequently manage the post-trade allocation to the crowd, after which AEMI would send notification of individual trades to active crowd participants. To be considered an active crowd participant, at the time of the auction trade, a Registered Trader in the crowd would have to have a bid or offer on the AEMI Book, and a Floor Broker would have to be represented by a crowd order on the opposite side of the imbalance.

If a Floor Broker were to walk into a crowd with an order, he could participate in a verbally transacted trade with one or more individual crowd participants, including the Specialist. If the Specialist printed a trade inside the automated NBBO, there would be no electronic orders (including orders at the Amex) and no away exposure to be satisfied. However, if he printed a trade outside the automated NBBO, orders on the AEMI Book could participate and intermarket sweep orders would be

[25] The NYSE rule provides that the side of the gapped quote reflecting the order imbalance be at the price of the last sale.

[26] Negotiated trades are one-to-one trades between two crowd members (possibly including the Specialist) and would be allowed only while auto-ex is enabled. An auction trade is between a single crowd participant and multiple counterparties in the crowd. They are differentiated by the need to allocate on a post-trade basis to crowd participants. However, this difference does not affect priority and parity rules, the standing of orders on the AEMI Book, or the issuance of intermarket sweep orders. An auction trade could take place either while auto-ex is enabled or in order to re-enable auto-ex.

[27] *See* 17 CFR 242.600(b)(57) and (58).

automatically generated to satisfy better-priced automated quotations at away markets. If one or more intermarket sweep orders [28] had been generated by an auction trade and were unexecuted in whole or in part by away markets, the remaining portion of the aggressing order that was suspended in AEMI at the time intermarket sweep orders were generated would be reincorporated into AEMI without losing order time priority and would re-aggress the AEMI Book (including the generation of intermarket sweep orders to away markets, if necessary), except for negotiated trades where any unexecuted intermarket sweep orders expire.

The following are examples of the different types of trades discussed above:

(i) *Negotiated Trade.* Assume that two Floor Brokers negotiate a trade while standing in the crowd. They request that the Specialist print the trade, which he could do at or inside the APQ. The Specialist enters both Floor Broker badge identifiers into AEMI and the trade is printed. If the price is outside the APQ, it is rejected. If the price is outside the automated NBBO, then an intermarket sweep order is generated for the aggressing Floor Broker. Suppose that the APQ is 1,000 shares offered at $5.80 and Floor Broker A negotiates to buy 5,000 shares from Floor Broker B at $5.80. As the Specialist enters the trade, the automated national best offer changes from 1,500 shares offered at $5.80 to 500 shares offered at $5.79. AEMI would generate an intermarket sweep order for 500 shares for Floor Broker A and print 4,500 shares at $5.80. Floor Broker A has purchased the 1,000 shares offered on the AEMI Book and 3,500 shares from Floor Broker B. Should the intermarket sweep order be rejected or only partly executed by the away market, the unexecuted portion would expire and the two Floor Brokers would have no further obligations with respect to such order. In this trade, the Specialist played no part other than to print the trade.

(ii) *Auction Trade with auto-ex enabled.* Suppose the APQ for an ETF is 1,000 shares offered at $5.80 and the automated national best offer is 1,000 shares offered at $5.79. A Floor Broker walks into the crowd with an order to buy 5,000 shares. The Floor Broker announces a bid of $5.80 and the crowd, made up of four Registered Traders and two Floor Brokers, verbally confirms its offsetting interest. All of the crowd participants are represented electronically on the contra-side of the AEMI Book at the time of the trade with the exception of one Floor Broker, who is therefore not eligible to participate in the trade. Since AEMI does not permit a print outside the APQ while auto-ex is enabled, the Specialist could print the trade only at $5.80 or better. The Specialist enters into AEMI a trade of 5,000 shares at $5.80 with the Floor Broker's badge identifier as the aggressor. AEMI automatically generates an intermarket sweep order of 1,000 shares at $5.79 and prints 4,000 shares at $5.80 at the Amex. The print includes the 1,000 shares offered at $5.80 on the AEMI Book with 3,000 shares trading against the Specialist/crowd. If the away market rejects or only partly executes the intermarket sweep order for 1,000 shares, the balance of the suspended order would be released on the AEMI Book without losing order time priority.

(iii) *Auction Trade with auto-ex disabled.* If auto-ex has been disabled due to a spread or momentum tolerance breach or a gap trade has occurred, the Specialist could print the auction at a price outside of the automated NBBO and outside the APQ. For example, assume that a large order has walked the book and breached the spread tolerance, causing auto-ex to be disabled and a non-firm quote to be published. Also assume that a buy imbalance of 8,000 shares is on the AEMI Book and the manual APQ is $5.78 bid for 8,000 shares, 1,000 shares offered at $5.79. The automated national best offer is 500 shares offered at $5.80. The crowd, all of whom are represented electronically on the contra-side of the AEMI Book, verbally confirm their interest at a price of $5.83. There are no other orders on the AEMI Book and no other protected quotes at away markets between $5.80 and $5.83. The Specialist prints the auction trade at $5.83, and AEMI automatically generates an intermarket sweep order of 500 shares at $5.80 and prints 7,500 shares at $5.83 at the Amex. The offer for 1,000 shares on the AEMI book is included in the trade and receives price improvement of $0.04. The balance of the printed trade of 6,500 shares is the Specialist/crowd exposure. If the away market rejects the intermarket sweep order for 500 shares, the balance of the suspended order would be released on the AEMI Book without losing order time priority.

In both of the above auction trade examples, the Specialist would oversee the electronic capture of the crowd allocation, based on the AEMI priority and parity rules and involving an allocation table for the security as determined by the ETF Trading Committee (if the security is an ETF). For a listed stock, UTP stock, or closed-end fund, the allocation of crowd exposure is among eligible crowd participants and the Specialist Order Book and is based on equal splits among all crowd participants, with the whole of the Specialist Order Book deemed as one crowd participant for these purposes.[29] This allocation pertains to each member of the crowd participating on the contra-side at the time of the trade (*e.g.*, four Registered Traders and one Floor Broker in the first auction trade example). Each Floor Broker participating in an auction trade, whether as an aggressor or as a crowd participant on the trade, would conduct additional allocations to existing orders on their hand held terminals. These allocations, once completed, would be electronically communicated to AEMI, and Floor Brokers would have 20 seconds to complete their respective trade allocations. If an allocation were reported to AEMI more than 20 seconds later, the trade allocation would be deemed late but would still be permitted. Post-trade allocation would not occur for negotiated trades, since the Specialist would capture the two counterparties at the time of the trade.

Trading in the Crowd. A Floor Broker could trade in any crowd on the floor under the hybrid market rules, but would have to be physically present in the crowd to represent a crowd order in the AEMI Book. On leaving a crowd or logging out of his system, a Floor Broker would be required: (i) To cancel all crowd orders in the AEMI Book for securities in the crowd he is leaving; (ii) to electronically submit the orders in the form of percentage or limit orders to the Specialist for handling; or (iii) to electronically route the crowd orders to another Floor Broker in the crowd, via

[28] Amex proposes to define an intermarket sweep order as a limit order for an NMS stock (as defined in Regulation NMS): (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 canceled; 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 would trade only 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. An intermarket sweep order would have to be marked as such to inform the receiving market center that it could be immediately executed without regard to protected quotations in other markets. Amex believes that this definition is consistent with the Regulation NMS definition of the same term.

[29] The Exchange revised the language in this sentence in Amendment No. 5 to make clear that the Specialist Order Book would be deemed as one crowd participant for purposes of the trade allocation.

his hand-held terminal. If the Floor Broker did not take one of the actions above, he would be responsible for any executions against his crowd orders on the AEMI Book, and Amex could bring regulatory action against the Floor Broker.

Floor Brokers would have a new electronic order type—a ''reserve order''—which would consist of both a visible size and an undisplayed (reserve) size that would not be included in the APQ. Reserve orders would enable Floor Brokers to represent their customer interest at multiple price points at or outside the APQ and to participate in the electronic environment on parity, while shielding their orders from market impact. The aggregate amount of all undisplayed reserve orders (but not the individual orders) at each price point would be visible only to the Specialist, who would include any reserve orders in an auction. As a reserve order receives executions, the displayed size would be replenished up to the maximum of the defined display size or the remainder of the order. The price point could not be traded through until all the reserve size has been exhausted.

For example, assume the APQ is $5.10 bid for 500 shares. Further assume that a Floor Broker in the crowd enters a reserve order to buy 5,000 shares for $5.09, display 1,000, and a second Floor Broker enters a reserve order to buy 4,000 shares for $5.09, display 500. The Specialist would see the aggregated reserve size of 7,500 shares for $5.09 in addition to the individual displayed interests. If an incoming sell order subsequently exhausts the 500 shares bid at $5.10, the new APQ is $5.09 bid for 1,500 shares, reflecting the displayed portions of the Floor Brokers' orders.

If a Floor Broker were trading multiple orders for different clients simultaneously during the day, he could enter a single crowd order into the AEMI Book that represented all or a piece of each order. Prior to submission of such an order to AEMI, the Floor Broker would designate the allocation method of the trade (*i.e.*, whether the returning trade against the order is allocated to the oldest customer order represented, evenly across all the orders, or pro-rata based on size).

Floor Brokers could also leave percentage orders with the Specialist as public orders, permitting their customers' orders to participate throughout the day in the electronic environment through manual conversion, automatic conversion, and/or election. A Floor Broker could route a percentage order to the Specialist Order Book and then monitor the execution of this order from his hand-held terminal while away from the crowd. The AEMI platform could convert a percentage order automatically, based on instructions the Floor Broker submitted with the percentage order. Alternatively, the Specialist could also convert a percentage order manually, depending on market conditions and Floor Broker instructions with respect to the percentage order. Because the proposed processing of percentage orders is expected to primarily be automated, the Exchange is seeking to remove some size restrictions associated with the Specialist's conversion on destabilizing ticks.

In ETF securities, Registered Traders would also participate in crowd activity, individually adding liquidity to the AEMI Book and to the auction process. Although Registered Traders would not have the same quote obligations as Specialists, they would be required to maintain competitive two-sided quotes when physically in the crowd. This active quote would designate them as crowd members for that individual security and thus make them eligible to participate in crowd activity.

A ''parity joining time'' is applied in AEMI to public and crowd orders and Registered Traders' quotes that are entered within a prescribed time following certain events. A new order entered would be considered on parity if it were the only order at a price or it were entered within a two-second ''parity joining time,'' which would permit parity to be established when a new highest bid (lowest offer) is established in AEMI, following a trade, or when all bids (offers) at the APQ are canceled. If such an order or quote established the new price, then only subsequent orders entered within the parity joining time would trade on parity. If an order or quote were submitted outside the parity joining time at a price point at which there were already an order or quote present, it would be on parity at the price after a trade at any price has occurred. This principle would be applied to public and crowd orders and to quotes entered by Registered Traders when a new APQ is established.

For example, assume that three Registered Traders are using a variety of Exchange-supplied and proprietary technology to submit quotes in a crowd, and each is bidding $6.00 for 2,000 shares. Further assume that an incoming sell order for 6,000 shares exhausts the bid, and the three Registered Traders submit fresh bids immediately. If a fourth Registered Trader joins the bid eight seconds later, the first three Registered Traders' bids would be on parity, and the fourth would not be on parity. Once a trade occurs not involving any of these bids, such as a midpoint cross or a negotiated trade at or inside the APQ, all four bids would be on parity. The establishment of parity at the price would have no effect on the execution speed or behavior of incoming order flow, but would ensure that a Registered Trader's ability to compete electronically is comparable to his ability to compete in the current crowds, irrespective of the technology used to provide liquidity to the electronic environment. Since the purpose of this principle is to mitigate the minute differences in processing time or latency between competing technologies, the concept is also applied to public orders when there is a mix of public and crowd orders at a single price point. If there are multiple public orders at a price point, they would trade in price/time priority relative to each other but on parity with crowd orders at the same price.

New Electronic Order Types. To provide more trading opportunities to off-floor participants in particular, the Exchange is proposing to introduce new electronic cross order types. In addition to current crosses negotiated in the crowd by Floor Brokers, which would continue to be available under AEMI and applicable to all equity-traded securities on the Amex unless stated otherwise in the Exchange's rules, five electronic order types are being introduced as well as one electronic ''auction cross'' order type.[30] All six of these electronic order types are limited to ETFs and Nasdaq UTP securities. The

[30] Following discussion with the staff of the Commission, the Exchange is adding to the proposed AEMI rules additional minimum size (greater than the largest customer order on the Specialist Order Book at the cross price) and value ($100,000 or more) requirements for certain cross orders that are priced at the APQ and allowed to trade ahead of a previously displayed public customer order. While Amex believes that these requirements would not be triggered by the operation of its proposed new electronic cross orders, they may be applicable to crosses negotiated in the crowd by Floor Brokers. *See* proposed Rule 126–AEMI, Commentaries .01 and .02. Because the initial version of AEMI has not been programmed to automatically check for these additional parameters, the Exchange will need to develop and implement a surveillance and enforcement program with respect to member compliance with these additional rule requirements that would be in effect during the short period that it will take to develop these new parameters into a future version of AEMI. Amex regulatory officials will communicate the details of the interim surveillance and enforcement program to the staff of the Commission by letter. The Exchange expects that this proposed interim program will, due to limitations on its ability to manually surveil compliance with the additional requirements on a real-time basis, be more punitive and after-the-fact in nature, as opposed to an immediate rehabilitative approach.

electronic cross order type selected at order entry by the market participant would dictate whether the cross order could be broken up by interacting with orders on the AEMI Book, whether price improvement is being sought for the cross order, and how the residual of the cross order would be handled after it had been broken up. Two examples of electronic cross order types are ''cross'' and ''cross only'', which are differentiated by their interaction with the book—a ''cross'' order would interact with orders in the AEMI Book at the cross price whereas a ''cross only'' order would not. For example, if the APQ were $5.10 bid for 100 shares, 200 shares offered at $5.11, the sell side of a ''cross'' order for 500 shares at $5.10 would trade 100 shares against the $5.10 bid, since the existing electronic bid would take priority, and the remaining 400 shares would be crossed against the contra-side of the cross order. After both transactions, the 100 shares to buy from the ''cross'' order would expire. Under the same scenario, a ''cross only'' order at $5.10 would be rejected, since its instructions would prevent interaction with the AEMI Book when there is an existing bid on the AEMI Book for $5.10 (*i.e.*, equal to the cross price).

Another cross order type, designated as an electronic ''auction cross,'' would actively seek price improvement, and the sender of the order would designate which side or sides of the cross are eligible for price improvement. For example, assume that the APQ is $5.10 bid for 100 shares, 200 shares offered at $5.14, and an ''auction cross'' is submitted for 500 shares at $5.12, with the buy side designated for price improvement. The buy side of the cross would be put on the AEMI Book and reflected in the APQ at one tick worse than the designated cross price. The APQ would therefore become $5.11 bid for 500 shares, 200 shares offered at $5.14. If the bid for $5.11 did not receive price improvement within three seconds, it would be canceled and the cross would take places at $5.12, provided this is still feasible given market conditions and there is no trade-through. If, however, the auction price were outside the automated NBBO at the time of the trade, the auction cross would expire. To ensure consistency with rules relating to short sales, the sell side of an auction cross that is exposed for price improvement could be re-priced by AEMI. For example, assume that the APQ is $5.10 bid for 100 shares, 200 shares offered at $5.15, and the last trade on Amex is $5.13, which is a minus tick. An ''auction cross'' is submitted for 500 shares at $5.12, with the sell side marked as a short sale and designated for price improvement. Since this is a tick sensitive order, AEMI would take into account the tick of the last trade when generating the filing price. Since the last trade was $5.13, a minus tick, AEMI would re-price the order by one tick to $5.14 so that a plus tick would result if this order traded during the auction cross duration. In this example, the auction cross would expire at the end of the price improvement duration, since the cross could not occur at $5.12 under the short sale rule. By contrast, if two trades had occurred during the price improvement duration (at $5.10 and $5.11) to create a plus tick, the auction cross would take place at the designated cross price of $5.12.

Quoting. Specialists would be expected to maintain a two-sided quote during the regular trading session to comply with their obligations under the Exchange's rules to assist in the maintenance of a fair and orderly market and of price continuity with reasonable depth. A Registered Trader in ETF securities would be required to maintain a two-sided quote to be eligible to participate electronically and in crowd trades. Specialists and Registered Traders could submit quotes in the following three ways:

(1) Specialists and Registered Traders could optionally stream in multiple two-sided quotes (one quote per price point) to add liquidity to up to a total of five price points on each side of the AEMI Book. The Exchange is introducing a new interface to facilitate streaming in quotes from a proprietary application.

(2) Quotes could be generated automatically (''auto-quotes'') within AEMI. Auto-quotes are defined as quotes automatically generated within AEMI on behalf of a Specialist or Registered Trader, based on user-specified parameters relating to size, ticks, and underlying market data. A Specialist could peg either his best bid or his best offer to the automated NBBO. Registered Traders could peg their best bid or offer to one side of the APQ (excluding their own quote if that quote represented the only interest on that side of the APQ) or the automated NBBO. Both Specialists and Registered Traders could also peg their best bid or offer in ETFs to the Intra-day Optimized Portfolio Value. The contra-side (unpegged) of the quote would be automatically generated based on a quote spread designated by the user for that security. If the price to which the quote is pegged changed, a fresh auto-quote would be generated based on the pegged price and the Specialist's or Registered Trader's size.

(3) Single, two-way quotes could also be entered physically into the AEMI platform (''solo quotes''). A Specialist or Registered Trader could enter solo quotes at any time. If the user were auto-quoting or streaming in quotes, a solo quote would override the best existing quote, auto-quote, or streamed quote. The next auto-quote or streamed quote would override the previous solo quote. These solo quotes would be represented to the market place as automated quotations while auto-ex is enabled.

At the Amex, as discussed above, Specialists are expected to maintain continuous two-sided quotes in support of their affirmative market making obligations to ensure price continuity and stability in the market. The AEMI platform would ensure that a Specialist is able to meet these obligations by generating a single two-sided, firm, automated emergency quote when the Specialist's quote is decremented below a configured size that is based on parameters set by the Specialist. This feature is available only when the Specialist is not streaming in his quotations. If the Specialist's quote in a given stock were decremented to below a specified size or were exhausted, and no price change in the marketplace had automatically generated a new quote, then an emergency quote would be generated by AEMI, based on the programmed parameters. For example, assume that a Specialist has set parameters that would generate a fresh quote of 500 shares if his quote size is decremented to below 200 shares, and this quote would be generated at two ticks away from his previous quote. Further assume that (1) the Specialist's quote is pegged to the automated national best bid, (2) his current quote is 1,000 bid at $5.08 and represents the automated national best bid, and (3) the next best bid in the marketplace is at $5.07. An incoming sell order for 900 shares depletes his quote to below the size specified and therefore an emergency quote is generated for 500 shares at $5.06 (assuming that a tick is $0.01 for this security), which is now the Specialist's best bid.

Intermarket Sweep Orders. Amex believes that the AEMI platform has been designed to be fully compliant with the newly adopted Order Protection Rule of Regulation NMS, which requires that the visible size of all best automated quotes of all away markets be cleared in order to execute or print a trade at a worse price. To this end, incoming orders at the Exchange would be routed out automatically if an away market with an automated quotation were displaying a better price, provided Amex is publishing an automated quotation.[31] Intermarket sweep orders could be sent and received through either ITS or private linkages with those other markets or market participants. Away markets could also would need to be cleared by a Specialist's or Registered Trader's quote moving through an automated away market (where regulations so permit).

If one or more away market best prices are required to be cleared in order to conform to the Order Protection Rule, an outbound intermarket sweep order would be generated to each away market displaying a better price, in the displayed amount. The ''sweep'' qualifier on the order indicates to the receiving trading center that the order could be executed even though it is at an inferior price to the automated NBBO.

Only protected quotes of away markets from 9:30 a.m. to 4 p.m. Eastern Time would be considered by AEMI in the calculation of how many orders to send and where to send them. Where an outbound obligation represents an order received by the Exchange, that order would be suspended on the AEMI Book and unavailable for execution on the Amex unless it were released. If a rejection (*i.e.*, a no-fill or partial fill cancellation) were received in response to the obligation sent to away markets and no better automated quotations existed, the balance of the suspended order would be released on the AEMI Book without losing order time priority. If a rejection were received and there were better automated quotations at other markets, the released order would be resent to those markets.[32] If, following a rejection, another away market published a better quote before the balance could be released (*i.e.*, the automated NBBO has changed), the order would also be resent. Incoming intermarket sweep orders to satisfy the Order Protection Rule could also be received by the Exchange from members and away markets. Such incoming orders could trade at multiple prices up to their limit at Amex, irrespective of the prevailing automated NBBO, with the exception of intermarket sweep orders received through ITS, which would receive only the best price available at Amex. Any unexecuted balance would expire.

Amex would monitor connections at all times to ensure that systems were functioning properly. All intermarket sweep orders sent by AEMI to away markets would be immediate-or-cancel orders, and Amex therefore expects an immediate response from the away market when accessing a protected quote. To manage the issuance of immediate-or-cancel intermarket sweep orders to access manual quotes at the NBBO, each intermarket sweep order would have an expiration delay timer. This timer would control how long AEMI would wait before cancelling the intermarket sweep order and trading through the quotation. If an intermarket sweep order were sent to an away market and no response were received by the time the delay timer had expired, and assuming that no system errors had been detected, AEMI would issue a further request to cancel the order and would immediately trade through the quotation. This would occur through the release of the order that had been suspended on the AEMI Book pending the response to the intermarket sweep order, and the released order would re-aggress the AEMI Book (including the generation of intermarket sweep orders to other away markets, if necessary). Such trade-throughs by Amex would occur on a per-order basis.[33]

If an away market sends a rejection in response to an outbound intermarket sweep order and the quotation at the away market were not updated, Amex would trade through the quote, but would still continue to route other intermarket sweep orders to that market's protected quotation in the same security.

Performing a Pair-Off. At openings and closings and at the conclusion of auctions, the Specialist would be required to perform a pair-off of orders in the AEMI Book in an orderly manner. With the exception of closings, auto-ex would be automatically enabled (or re-enabled) after the pair-off. The pair-off would have to be completed within three seconds of the Specialist commencing it, and during this pair-off any new orders would queue unseen by the Specialist and would not be considered in the pair-off. This brief queuing would ensure that the pair-off is orderly, and that an incoming order that arrives at the same instant that the pair-off commences would not alter the pair-off to such an extent that it would disadvantage investors whose orders might now not be included for execution. During the pair-off itself, orders that were being processed as part of the pair-off could not be altered or canceled, while all other orders would be queued in the AEMI platform (but would not be permitted to enter the AEMI Book). These queued orders could be amended or canceled at any time. If, however, the Specialist failed to complete the pair-off within three seconds, the pair-off session would be automatically canceled, and the queue of new orders that had accumulated would be added into the AEMI Book, where they would be eligible to participate in the new pair-off that the Specialist must perform.

Openings and Closings. The Exchange is proposing to automate certain aspects of its opening session in AEMI. The Specialist would manually start the opening pair-off session at or as close to 9:30 a.m. as possible. The Specialist would perform the opening pair-off to open trading in a security. The Specialist could also open ETFs and Nasdaq UTP securities on a quote if there were no marketable orders in the AEMI Book. As described above, the pair-off would have to be completed within three seconds of the Specialist commencing it. All marketable crowd orders would be considered on parity for the opening pair-off. Any imbalance of marketable orders would be fully or partially filled against the Specialist and Registered Trader orders at the pair-off price on the contra-side of the imbalance. Market and marketable limit odd-lot orders would be automatically executed against the Specialist at the opening price. At the end of the opening pair-off session, any queue that was formed during the pair-off would then be processed, with marketable orders relative to the pair-off trade price being automatically paired off and the imbalance being added to the AEMI Book with the original time stamp priority, and intermarket sweep orders being sent to away markets as necessary.[34] At the open, if the imbalance were too large for the Specialist and the crowd to offset, the Specialist could delay the opening, with appropriate approvals pursuant to proposed Rule 22–AEMI. At the close, if the imbalance were too large for the Specialist and the crowd to offset, the Exchange would declare a trading halt

[31] In Amendment No. 5, the Exchange clarified that Amex would ship an intermarket sweep order to an away market with a better price only if the Amex were publishing an automated quotation.

[32] In the situation where there were equal-priced automated quotations at other markets, the released order would also be resent to those markets if the order exhausted all size on the AEMI Book at the price and were not completely filled. *See* Amendment No. 5.

[33] Amex expects that a late trade report from an away market following such a trade-through, while possible, would be an infrequent event. In such case, however, the Exchange acknowledges that its proposed trade-through treatment would not obviate or invalidate the away market's rules regarding such late trades. *See* Amendment No. 5.

[34] The Exchange modified this sentence in Amendment No. 5 to state that AEMI would ship intermarket sweep orders to away markets as necessary.

and there would be no closing rotation in that security.

The Exchange is also proposing to automate certain aspects of its closing process. The Specialist would conduct the closing pair-off session in his specialty security. In both UTP and listed securities, an on-close imbalance of 25,000 shares or more would be automatically published to the tape at 20 and then ten minutes before the market close at 4:00 p.m.[35] In all securities, the closing pair-off session would commence automatically at the official closing time and auto-ex would be disabled at this time. The Specialist, who would perform a pair-off of orders in the AEMI Book, would manually close each security, and all orders would have to have been entered electronically in order to participate in the close.

At the close, the Specialist would execute any imbalance at an auction price determined in a manner consistent with auction market procedures and would then pair off and execute the remaining executable orders at that closing price. Percentage orders and stop orders that would be elected by the closing price determined by the Specialist could be included in pricing the close. For example, assume that the market is in the closing pair-off session, auto-ex is disabled, and Amex is publishing a manual non-firm auction quote. Also assume that there is a resting limit order, or the Specialist's own bid, on the AEMI Book to buy 10,000 shares at $10; that there is a single market-on-close order to sell 1,000 shares; and that there is a stop order to sell 50,000 shares with a stop price of $10. The Specialist could price the close to take into account the execution of the stop order so that all trades executed at the close would receive the same price. So if the Specialist priced the close at $9.60, the market-on-close order would receive $9.60, the buy order on the AEMI Book would be filled at $9.60 (thereby receiving price improvement of $0.40), and the balance of the stop order would be filled against the Specialist at $9.60 also. Amex believes that this process would ensure price stability at the close and result in a robust close with the maximum volume being traded at a single auction price.[36]

The Specialist would conduct a post trade allocation with respect to the shares necessary to offset the imbalance, as with a regular auction. Until this post-trade allocation process were completed, the Specialist would be responsible for the contra-side of the imbalance traded. If there were no on-close orders, the closing price would be the last sale in the security.

In the case of certain ETFs that trade up to 4:15 p.m., the Specialist could perform a ''cash close'' pair-off during the regular trading session at 4:00 p.m., which would occur prior to the official closing session on the Exchange and would be an added service for those investors who wish to mark positions to the cash close. In the event that there are ''market at 4:00 p.m. cash close'' orders for an ETF in the AEMI Book, auto-ex would be disabled automatically in that security at the 4:00 p.m. cash close time. Once the pair-off is concluded, auto-ex would resume until disabled for the official closing pair-off to be conducted at 4:15 p.m.

Implementation of the AEMI Platform. Amex believes that AEMI will be rolled out over a period of time anticipated to begin early in the fourth quarter of 2006 for equities and ETFs, 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 ETF shares, equity shares, and securities that trade like equities would be on the AEMI platform. The Exchange intends to file separate rules with the Commission for a modified version of the AEMI platform to be in effect during the rollout and prior to the Trading Phase Date. The Exchange intends to refer to this pre-Rule 611 version of AEMI as AEMI-One.

Proposed Rule 1A–AEMI, a transitional rule filed as part of this proposal, describes the plan for the phase-in of the AEMI platform and the applicability of various Exchange rules during and after the rollout period. Once the rollout of AEMI is complete for all securities that had been subject to a particular Exchange legacy rule, the Exchange will submit a ''house-keeping'' filing pursuant to Rule 19b–4 under the Exchange Act, which will delete each such rule that is not applicable to the Exchange's then current trading environment.[37] The following is a brief discussion of each proposed new AEMI rule.

Rule 1–AEMI. Hours of Business

The Exchange proposes to adopt this new AEMI rule, which tracks the language of its current Rule 1 with the exception of a reference to ''After Hours Trading'' in the current rule. This facility, which has rarely been utilized, would not be supported by the AEMI platform.

Rule 3–AEMI. General Prohibitions and Duty To Report

The Exchange proposes to adopt this new AEMI Rule, which tracks the language of its current Rule 3 with the primary exception of references in the Commentary to three specific kinds of trading activity that members and member organizations should avoid. The reason for the change is that these particular restrictions would not be compatible with the operation of AEMI, including the use of intermarket sweep orders and the ability of incoming orders to ''walk the book.'' The Exchange is instead proposing to add new language that would emphasize the prohibition of certain ''gaming'' behavior that could occur under the AEMI platform.

Rule 22–AEMI. Authority of Floor Officials

The Exchange proposes to adopt this new AEMI rule, which tracks the language of its current Rule 22 with a few exceptions as follows. First, the Exchange is proposing to add language to paragraph (b) of this rule, regarding reallocation of a security, to assure that the rule is compatible with the provisions of Amex Rule 27 on reallocation. In addition, the Exchange is not including the language in Section (c)(5) of the current rule, which requires a crowd announcement by a member if he is bidding or offering pursuant to an off-floor order for an account in which a member or member organization has an interest. That provision is primarily applicable to ''G'' orders, which would not be accepted under AEMI due to the fact that they are infrequently used on the Amex and would require complex programming for AEMI to be able to execute them properly. Other than in connection with ''G'' orders, there are no other situations that would compel a need to announce in this manner, so this section of the current rule would no longer be necessary. The Exchange is

[35] The imbalances would be published to Consolidated Tape Association (CTA) Tape B for Amex-listed securities. Amex is working with the Nasdaq SIP to publish the imbalances in Nasdaq UTP securities to Tape C. Note that the Exchange is proposing to make the publication of order imbalances optional in Nasdaq UTP securities.

[36] Because a market-on-close order is a contingent order, in that it is seeking to receive the closing price that is determined by the closing pair-off, it would not necessarily be entitled to execution (or partial execution) at the price of a quote or order on the opposite side of the market if auction market principles would result in a closing price inferior to the latter quote or order.

[37] In Amendment No. 5, the Exchange changed the phrase ''all Exchange-traded products'' to ''all securities.''

also proposing to exclude some related language that is in the last paragraph of paragraph (c) of current Amex Rule 22, along with some outdated language involving hand signals. In addition, a provision in the current rule providing for the prohibition of entry of stop or stop limit orders is not being included in the proposed Rule 22–AEMI due to the fact that the election and execution of such orders would be fully automated in AEMI.

The Exchange is also proposing to add language in Commentary .02 to the proposed new rule to recognize the fact that records of rulings and decisions of Floor Officials could be created electronically under AEMI and not just by filling out paper forms. A related revision would provide that the need for Floor Official approval of a particular action with respect to a security could be indicated to the Specialist electronically on a system maintained by the Exchange. It would further provide for the proper response by a Specialist to an electronic message regarding required Floor Official approval.

Rule 60–AEMI. Vendor Liability Disclaimer

The provisions of this proposed new rule track the language of a paragraph in current Amex Rule 60 relating to liability arising out of the use of any electronic system, service, or facility provided by the Exchange to members for the conduct of their business on the Exchange. However, most of the language in the current rule is not being retained in the proposed new rule because it relates to systems and personnel (*i.e.*, ''System Clerks'') that are no longer utilized at the Exchange or would no longer be utilized after AEMI is implemented. These systems include the Post Execution Reporting (''PER'') and Amex Options Switch (''AMOS'') systems, the On-Line Comparison System (''OCS'') system, and the NYSE electronic display book licensed by the Exchange.

Rule 1A–AEMI. Applicability, Definitions, References and Phase-In

Proposed Rule 1A–AEMI is a transitional rule that outlines the plan for the phase-in of AEMI and the applicability of various Exchange rules during and after this period of time. The proposed rule also sets out requirements for members and member organizations and their associated persons with respect to AEMI training and the use of AEMI technology.

During the roll-out period for the AEMI platform, while the Exchange has securities trading on both the legacy and the AEMI platforms, the Exchange's current rules (as amended from time to time) would apply to those securities that continue to trade on the legacy system, while the corresponding AEMI rules would apply to those securities trading on AEMI. When AEMI is fully implemented and there are no more securities trading on the legacy system, the Exchange will file a proposed rule change with the Commission to propose that each AEMI rule completely replace its corresponding counterpart (*e.g.*, proposed Rule 108–AEMI would replace Amex Rule 108) and that certain other rules that are not applicable to transactions in AEMI be rescinded.

The Exchange anticipates that the start of the roll-out would occur 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''). Consequently, a somewhat modified early version of the AEMI platform (referred to as ''AEMI-One'') would be in operation starting with the initial roll-out and continuing through the day prior to the Trading Phase Date. The Exchange intends to file a separate set of rules in the near future that would cover the operation of AEMI-One.

When the AEMI platform is fully implemented, transitional Rule 1A–AEMI would be rescinded except for the definitions contained therein, which would migrate to the ''Definitions'' section at the beginning of the Amex's ''General and Floor Rules.'' [38] Key definitions include:

- ''AEMI Book''—the part of the AEMI platform that would hold and automatically match orders, bids, and offers submitted to it electronically by the Specialists, Registered Traders, Floor Brokers, and off-floor members.
- ''Crowd Order''—an order in the AEMI Book that would be represented by a broker standing in the crowd or a bid or offer in the AEMI Book entered by a Registered Trader standing in the crowd.
- ''Customer''—any person who is not a broker/dealer.
- ''Public order''—an order, initiated either on the Floor by a Floor Broker (*e.g.*, a percentage order or a limit order) or off-floor by a member, that would be entered directly into the Specialist Order Book.
- ''Registered Trader''—a member who would be authorized by the rules of the Exchange to initiate trades while on the Floor for his or her account. Registered Trader transactions in securities traded in AEMI could be effected only in accordance with the provisions of proposed Rule 110–AEMI.
- ''Specialist Order Book''—the accumulation of orders on the AEMI Book that would not be represented by a broker standing in the crowd or other party. It would be a subset of the AEMI Book. The Specialist Order Book would not include the bids and offers of Registered Traders in the crowd.
- ''Automated National Best Bid and Offer'' (''automated NBBO'')—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.
- ''Automatic conversion''—automatic conversion (''auto conversion'') of percentage orders by AEMI. Auto conversions would be governed by certain conditions in the AEMI Book which would qualify a percentage order to be converted. The parameters that would trigger an auto conversion would be configurable. An auto conversion could also take place during an opening, a re-opening, and the closing pair-off.
- ''Manual conversion''—The Specialist could manually convert percentage orders depending on the instruction on the percentage order. The AEMI platform would permit both active and passive manual conversions.
- ''Active manual conversion''—a manually converted percentage order that becomes an immediate-or-cancel (''IOC'') order and immediately aggresses the AEMI Book.
- ''Passive manual conversion''—a manually converted percentage order that becomes a limit order at the APQ. It could set a new APQ or join the existing APQ.
- ''Trade event''—Every execution due to an aggressing order would be considered a ''trade event'' by the AEMI platform. The election of a percentage order, stop order, or stop limit order would be based on a trade event.
- ''Specialist emergency quote''—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 meting his quoting obligations under proposed Rule 170–AEMI. Such a quote would be generated according to parameters set by the Specialist, and would be obligatory if the Specialist were utilizing an AEMI ''front-end'' device to generate quotes. This feature would be disabled if quotes

[38] The Exchange would have to file a proposed rule change with the Commission for this purpose.

were streamed in from a proprietary system.[39]

- ''Stabilizing quote''—a non-firm quote that would automatically be generated by AEMI when auto-ex were disengaged following a tolerance breach or gap trade (*see* proposed Rule 128A–AEMI(g)) and no orders existed on the contra-side of the AEMI Book. Under those circumstances, AEMI would automatically publish a quote for one round lot at one tick away from the price of the automated NBBO on the contra-side.

Rule 108–AEMI. Priority and Parity at Openings and Reopenings

Proposed Rule 108–AEMI is an amended version of current Amex Rule 108 and provides that orders, bids, and offers must be received by AEMI prior to the commencement of the opening pair-off in order to participate in that pair-off. Orders that were not represented electronically in the AEMI Book would not participate in the opening. The proposed new rule, which would also apply to reopenings, provides the priority and parity rules (which replace the current priority and parity rules) that the AEMI platform would apply to the opening pair-off and also would provide requirements for the execution of market and limited price orders and for tick sensitive purchases and short sales. The rule identifies ''Must Trade Orders'' (market orders and certain limited price orders treated as market orders) that would have to be executed on the opening or reopening and ''May Trade Orders'' that are eligible, but are not required, to be executed on the opening or reopening. Orders within each of the two foregoing groupings would be deemed to be on parity, except that orders on the Specialist Order Book (a subset of the AEMI Book) would be executed in the order in which they were received. Further, in the case of ETFs, all customer orders to buy or sell would be executed before any broker-dealer orders, bids, or offers on the same side of the market.

The opening pair-off session for a security, once initiated by the Specialist, would have to be completed with the Specialist's selection of the single opening pair-off price within three seconds. During the opening pair-off session, incoming orders, bids, offers, cancellations, amendments, and other messages would be held in a message queue and would not be included in the opening pair-off. The rule provides that, if the Specialist did not complete the pair-off within three seconds, the pair-off session would terminate, all messages in the message queue would enter the AEMI Book and would be on parity with the orders that were part of the unsuccessful pair-off effort, and the Specialist would have to reinitiate the opening pair-off session to open the security. The Specialist would open the security on a quote if there were no bids, offers, or orders in the AEMI Book that were eligible for execution on the open.

Once any orders that were in a message queue during the opening pair-off session were entered into the AEMI Book after the opening pair-off had been completed, AEMI would attempt to automatically pair off any marketable orders from the queue at the opening price unless this would cause a trade through of a protected quotation in another market center. In the latter case, AEMI would 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. If such a post-opening pair-off could not be effected or there were orders from the message queue that did not participate in the pair-off, the remaining orders from the message queue that entered the AEMI Book would be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required.

The Exchange is also replacing the Specialist book enhanced splits during parity allocation, with an equal split between the book and each crowd participant.[40]

The foregoing proposed opening procedures would replace any conflicting procedures in current Amex Rule 108.

Rule 109–AEMI. ''Stopping'' Stock

The current ability of a Specialist or other member of the Exchange to agree to ''stop'' stock at a specified price (*i.e.*, to guarantee that the order of the member who accepts the stop would be executed at the stop price or better) would not exist under AEMI. Consequently, the current language in Amex Rule 109 governing such agreements is not included in proposed Rule 109–AEMI, which contains a simple prohibition on such arrangements with respect to any security traded in AEMI. The Exchange is including in proposed Rules 131A–AEMI(b) and 118–AEMI(j) (*see* below) language that is in current Amex Rule 109(d) relating to the manner of printing the close.

Rule 110–AEMI. Registered Traders and Floor Trading

The Exchange is proposing Rule 110–AEMI to establish the standards for floor trading by Registered Traders under AEMI, where a Registered Trader is defined as a member who is authorized by the rules of the Exchange to initiate trades while on the floor for his or her account. Under the proposed rule, Registered Traders would be limited to transactions in index warrants, currency warrants, securities listed pursuant to Section 107 of the Amex Company Guide (''Other Securities''), Trust Issued Receipts, Partnership Units, and derivative products (including ETFs).

The proposed new rule incorporates current requirements (*see* Amex Rule 958, Commentary .10) that transactions by Registered Traders in AEMI in index warrants, currency warrants, Other Securities, Trust Issued Receipts, and Partnership Units could be effected only by Registered Traders who were regular members, while transactions by Registered Traders in AEMI in derivative products could be effected by Registered Traders who were regular members, Options Principal Members, or limited trading permit holders.

Most of the provisions in proposed Rule 110–AEMI and its associated commentary are currently in the Exchange's trading rules (primarily current Amex Rules 111, 950 and 958 and their commentaries), so Registered Traders would function under essentially the same requirements that are currently applicable to them. These provisions are being adapted to the AEMI platform and placed in proposed Rule 110–AEMI for convenience of reference and to minimize the burden of multiple cross-references. Consequently,

[39] *See supra,* under ''Quoting'' for a discussion and related example of such an emergency quote.

[40] The allocation split between the in-parity visible size of (i) public orders on the Specialist Order Book (including the Specialist's quote) and (ii) 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 ⅓ 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 a total of 400 shares because the system will round up to the nearest round-lot when computing the allocation to the public orders. Within the public/specialist band, 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.

the Exchange will propose that current Amex Rule 111 be rescinded upon the full implementation of the AEMI platform.

Each Registered Trader electing to engage in transactions in AEMI would be assigned by the Exchange one or more securities in the aforementioned categories, and transactions in AEMI initiated by such Registered Trader for any account in which he or she has an interest shall, to the extent prescribed by the Exchange, be in such assigned securities. Registered Trader transactions should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, including the making of competitive bids and offers as reasonably necessary and engaging in dealings for his or her own account in situations where there is a lack of price continuity, a temporary disparity between supply and demand, or a temporary distortion of price relationships for the products in which he or she is trading and any underlying securities.

The proposed rule would establish minimum percentages of share volume and number of transactions that a Registered Trader would have to execute in person and not through the use of orders entrusted to a broker or Specialist, and it further would require that Registered Traders and Specialists compete with each other to improve the quoted markets in all securities that they trade. The proposed rule would recognize, however, that there are circumstances in which some communication between the Specialist and Registered Traders could be necessary and appropriate, such as making a collective response to a request for a market, provided that the member representing such order requested such response and the size of the order were larger than the size disseminated in AEMI. Such a collective response would happen only in the crowd verbally. For instance, suppose the APQ for an ETF is $3.50 bid for 3,000 shares and 5,000 shares offered at $3.55. If a Floor Broker walks into the crowd with an order to buy 20,000 shares of the ETF at the market, he could request a collective quote from the specialist/crowd. This verbal process would be similar to the auction process when auto-ex is enabled, and the crowd would be required to collectively confirm their verbal interest.

A Registered Trader electing to engage in transactions in AEMI under the proposed rule would be designated as a Specialist on the Exchange for purposes of the Act and the rules and regulations thereunder with respect to transactions initiated and effected in AEMI in the capacity of a Registered Trader. This could include transactions initiated from off the floor in the capacity of a Registered Trader if certain ''in-person'' share volume percentage requirements are met. A Registered Trader who establishes or increases a position for an account in which he or she has an interest while on the floor of the Exchange would not retain priority over an off-floor customer order.

Rule 112–AEMI. Suspension of Registration of Registered Trader

Proposed Rule 112–AEMI replicates the language of current Amex Rule 112 but with cross-references to other AEMI rules which would contain the appropriate provisions being referenced.

Rule 115–AEMI. Exchange Procedures for Use of Unusual Market Exception

The Exchange is proposing Rule 115–AEMI which would extend to Registered Traders the provisions of current Amex Rule 115 that are applicable to Specialists with respect to procedures in the event of an inability to update quotes on a timely basis due to a high level of trading activity or the existence of an unusual market condition. Under the proposed new rule, in the event that the Exchange were 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 would be required to immediately disable auto-ex and disseminate the indicator ''N'' to indicate that Amex's quotation, if a trading halt has not been declared and quotations are being published for such security or securities, was not firm.

A Specialist or Registered Trader unable to update his quotation on a timely basis due to the high level of trading activity or the existence of an unusual market condition would have to promptly notify a Floor Official. The Floor Official, with the involvement of a member of the Amex regulatory staff, would then consult with the Market Operations Division of Amex to determine whether to declare a non-regulatory halt in such security or securities if the ability of the Specialist to promptly communicate quotation data were adversely affected. 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.

A Registered Trader unable to publish a quotation in a security could withdraw or cancel his quotation and inform the Market Operations Division afterward, since he would not have the same quoting obligations of a Specialist as specified in proposed 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.

Rule 118–AEMI. Trading in Nasdaq Securities

Proposed Rule 118–AEMI does not contain the provision in current Amex Rule 118 that allows telephone access to the Exchange Specialists by Nasdaq System market makers and other exchanges trading Nasdaq securities pursuant to Unlisted Trading Privileges (''UTP'') because this is incompatible with the way orders would be processed by AEMI. Certain outdated requirements in current Amex Rule 118 with respect to Specialist registration for trading Nasdaq securities are also not in the language of proposed Rule 118–AEMI. In addition, the proposed rule has been modified to reflect recent changes to current Amex Rule 118 which provide that all Nasdaq listed securities are eligible securities, instead of just the ''National Market'' securities.

Under the proposed rule, odd-lot orders in Nasdaq securities would be executed pursuant to the procedures in proposed Rule 205–AEMI, which is based on the text of NYSE's odd-lot rule, with some modifications. The language of current Amex Rule 118 regarding odd-lot orders would not be a part of the proposed rule. Some change from the NYSE rule text is necessary with respect to Nasdaq securities in connection with provisions that utilize an adjusted ITS bid or offer as an execution price. In those instances, due to its expected use of private linkages instead of ITS at the time that Regulation NMS takes full effect, Amex would instead use the ''qualified national best bid'' or the ''qualified national best offer'', defined as the highest bid and lowest offer, respectively, disseminated by the Exchange or another market center; provided, however, that (i) the bid and offer in another such market center must conform to Exchange requirements for minimum price variations, (ii) the quotation does not result in a locked or crossed market, (iii) the other market center is not having quotation dissemination problems, (iv) the bid or offer is firm, and (v) the quotation disseminated by the other market center is automated.

The Exchange proposes to standardize its closing procedures under AEMI so that the procedures for Nasdaq UTP securities would be substantially the same as for listed stocks. All market-on-close (''MOC'') and limit-on-close

(''LOC'') orders would have to be entered into AEMI by the applicable deadlines in the proposed rule to participate in the closing. Orders not represented electronically would not participate. The Exchange proposes to accept tick-sensitive MOC and LOC orders for Nasdaq UTP securities to offset imbalances, although tick-sensitive MOC and LOC orders whose execution would violate customer restrictions or the Commission's short sale rules at the time of publication would not be reflected in the closing imbalances.[41] The AEMI platform would automatically publish all imbalances to the tape; however, the Exchange proposes in this rule to make publication of imbalances optional for all Nasdaq UTP securities since the Exchange is not the primary market.

The closing procedures for Nasdaq UTP securities would change, as follows. Currently, the imbalance of MOC and marketable LOC orders is printed against the bid or offer, as the case may be. Under AEMI, if there were an imbalance at the close between the buy and sell MOC and marketable LOC orders, the Specialist would, 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 would conduct the post-trade allocation with respect to the shares necessary to offset the imbalance of buy/sell interest at the closing price, and AEMI would 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), as with a regular auction and the associated priority and parity rules.

Following the printing of the closing imbalance, AEMI would print at the same price any paired quantity of MOC and LOC orders. The pair-off transaction would be reported to the tape with an appropriate indicator.[42] Subsequently, AEMI would 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, if those orders were executable based on the order of execution of orders, bids, and offers on the close, as provided in proposed Rule 118–AEMI.

The proposed rule provides 11 categories that determine the order of execution by AEMI at the close, ranging from market orders (including MOC orders), which have the highest priority, to buy percentage orders and sell percentage orders with a limit price equal to the closing price, which have the lowest priority. Certain lower priority stop and percentage orders that are elected would be executed by AEMI only if there were sufficient interest in AEMI to execute them, and AEMI would execute all customer orders in ETFs in these lower priority categories before it executed any broker-dealer orders in these categories.

References to ''G'' orders and certain other order types that are currently acceptable are not included in proposed Rule 118–AEMI and several other proposed rules because these order types would not be available under AEMI. In addition, certain current notification requirements involving paper forms are not being included in proposed Rule 118–AEMI and other proposed rules because the information would be available electronically in AEMI.

Rule 119–AEMI. Indications, Openings and Reopenings

Proposed Rule 119—AEMI tracks the provisions of current Amex Rule 119 with several additional provisions, including the requirement of mandatory dissemination of an indication to the tape 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.

Rule 123—AEMI. Manner of Bidding and Offering

Proposed Rule 123–AEMI describes in detail how the AEMI platform would process bids, offers, and orders. The AEMI platform would accept electronic bids and offers from both the Specialist and Registered Traders and include them in the AEMI Book. The AEMI platform would also accept orders from Floor Brokers standing in the crowd (''Crowd Orders'') and other off-floor orders transmitted to AEMI electronically, and would file all such orders in the AEMI Book. On the basis of this input of bids, offers, and orders, AEMI would disseminate the Amex best quote, together with the associated visible size, to the tape. AEMI would also 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 would not be allowed to submit a bid or offer to AEMI for that security but could give an order to a Floor Broker as a Crowd Order or place an order on the Specialist Order Book for the Registered Trader's account. A Floor Broker who is not in the crowd for a security would not be allowed to submit a Crowd Order to AEMI for that security.

Members could 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 would not be reflected in the published quotation. Because AEMI would not recognize a verbal bid or offer in the crowd, trades executed in AEMI could trade through a verbal bid/offer without satisfying it.

The Exchange is also proposing in Rule 123–AEMI that Specialists and Registered Traders be allowed to stream bids and offers into AEMI at up to five price points, as well as manually updating their bids and offers in AEMI. In addition, both Specialists and Registered Traders would be allowed to automatically generate proprietary bids and offers in AEMI (''Auto-Quote''), and the proposed rule specifies the acceptable bases for those Auto-Quotes (for example, the automated away market best bid or offer, with or without a price adjustment). Registered Traders could also Auto-Quote based on the best bid or offer published by the Amex.[43]

Except when auto-ex is disabled, the AEMI platform would 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 p.m. cash close, or odd-lot orders. AEMI would not display the reserve size of a Crowd Order until it is eligible for display.[44]

If AEMI ships an order, bid, or offer to an away market to comply with Rule 611 or Rule 610 of Regulation NMS,

[41] Commentary .02 to current Amex Rule 7, the Exchange's rule on short sales, provides that Rule 7 does not apply to transactions on the Exchange in Nasdaq securities pursuant to unlisted trading privileges under Amex Rule 118.

[42] The indicator is intended to alert other market participants that (i) there is trading ahead of limit orders, bids, or offers in 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.

[43] Auto-quoting is a separate function from streaming in quotes and also from the generation of an emergency quote. *See supra*, the discussion of these functions and their relationship under ''Quoting.'' *See also infra*, a similar discussion under ''Rule 170–AEMI.''

[44] In Amendment No. 5, the Exchange eliminated an extraneous reference to passive price improvement orders because that order type has been eliminated from the proposed rule change.

AEMI would: (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, could not be traded against and could be traded through. If a shipped order were returned unexecuted, in whole or part, by the away market, the unexecuted portion of the suspended order, bid, or offer shall be incorporated or reinserted into AEMI and quoted or requoted with the same time stamp priority as it would have had if it had not been shipped; provided, however, that additional intermarket sweep orders shall be generated as required under Rule 611 of Regulation NMS in connection with the reaggressing of the AEMI Book by the unexecuted portion of the suspended order.

A floor member whose order, bid, or offer is incorporated into the APQ would be deemed by the Exchange to be the responsible broker or dealer for such quote under the Commission's Firm Quote Rule. A Floor Broker would be responsible for any Crowd Order that he entered into AEMI, even if he leaves the crowd without withdrawing the Crowd Order.

Automated bids and offers disseminated through the AEMI platform would be 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, would be non-firm, and AEMI would disseminate a specified indicator whenever the APQ is not firm. The circumstances under which such a non-firm indicator would be disseminated are: (1) 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; (2) auto-ex has been disabled due to the breach of a tolerance (as defined in proposed 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 proposed Rule 128A–AEMI(g)); or (3) a gap quote situation exists due to an order imbalance (as described in proposed Rule 170–AEMI(f)).[45] In conjunction with publishing a non-firm quote, AEMI would disable auto-ex.

Rule 124–AEMI. Types of Bids and Offers

Proposed Rule 124–AEMI contains provisions that differ from some of the provisions of current Amex Rule 124 regarding acceptable types of bids and offers under AEMI. The term ''regular way'' has been redefined in the proposed new rule to recognize that the normal settlement cycle for a security in AEMI can be either cash, next-day, or the third business day after the day of the contract.

Rule 126–AEMI. Precedence of Bids and Offers

Proposed Rule 126–AEMI sets out the rules of precedence of bids and offers in AEMI for equities and ETFs and other equity-traded securities. The priority and precedence rules are different between ETFs and other equity-traded securities (listed equities, Nasdaq stocks, closed-end funds, *etc.*) because ETFs are traded more like derivative products with market makers in the crowd.

Proposed Rule 126–AEMI would provide that bids (offers) communicated to AEMI within two seconds (the ''parity joining time'') of (i) the establishment of a new highest bid (lowest offer) in AEMI, (ii) a trade in AEMI, or (iii) cancellation of all bids (offers) that are at the APQ, would be considered in parity, for purposes of the next trade, with bids or offers at the same price point remaining in the AEMI Book following any of these three events. In the case of the cancellation of all bids (offers), the participant joining time would apply only to the side of the quote on which the cancellation took place. A related provision in proposed Rule 128A–AEMI specifies that bids (offers) in the AEMI Book would remain firm following any of the three events described above. Bids (offers) at the same price point remaining in the AEMI Book following such event would be considered on parity at that price point unless such bids (offers) were revised or withdrawn. A bid (offer) that is revised would lose its priority and parity status and would be treated as a newly submitted bid (offer). A reduction in order/quote size would not result in a loss of parity status.

The proposed new rule also specifies a number of exceptions to parity for certain types of orders. For a listed stock, UTP stock, or closed-end fund:

- An in-parity specialist bid (offer) would yield to a public bid (offer).
- A specialist bid (offer) would not participate in parity with a crowd bid (offer) if AEMI received a public bid (offer) outside the parity joining time.
- 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 the two prior bullet points, and all such public bids (offers) are subsequently canceled before the next trade in that security, the specialist bid (offer) would, for the next trade, regain the priority and parity status it held or would have held.

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

- An in-parity broker-dealer bid (offer) (including that of a specialist) would yield to a public customer bid (offer) or a crowd customer bid (offer).
- 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 the prior bullet point, 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) would, for the next trade, regain the priority and parity status it held or would have held.

A new provision on parity of refreshed size of reserve orders would provide that, 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 would refresh and the refreshed sizes of those reserve orders would be in parity with each other. In this situation, AEMI would continue to execute the aggressing order until all size resulting from the first refreshment were exhausted. If the aggressing order had not yet been completely filled, the reserve orders would refresh again and the refreshed sizes would again be in parity with each other. (Orders having ''reserve size'' are more fully discussed in subparagraph(s) of proposed Rule 131–AEMI.) Once visible size and reserve size at a price were executed by an aggressing contra-order, AEMI would execute, to the extent possible, portions of percentage orders elected by the foregoing trade events. Finally, marketable stop and stop limit orders would not receive a parity allocation but would be deemed elected by the foregoing trade events only after the aggressing order had completed the final

[45] The indicator ''N'' would be used in connection with the first of these three circumstances, and the indicator ''U'' would be used in connection with the latter two circumstances (breach of a tolerance of a gapped quote). These quote indicators should not be confused with the indicators A, B, and H, which are for firm quotes and denote that a market center is not meeting the Regulation NMS definition of an automated market even though auto-ex is on.

round of the parity allocation process with respect to the foregoing categories.

Proposed Rule 126–AEMI lists the order of priority for various combinations of public and crowd orders. For example, in the case of a listed stock where there were public orders that are in parity (and no public orders outside the in-parity time window), the highest execution priority would belong to visible size of public orders (including passive manual conversion percentage orders), visible size of crowd orders, and the Specialist quote, in parity. The proposed rule describes the parity allocation process under a number of scenarios. In the foregoing example, any securities sold in execution of an aggressing order would be divided equally (with rounding as specified in the rule) among the Specialist Order Book (which includes all public orders and the Specialist quote) and each of the individual Floor Brokers representing the crowd orders. From the quantity allocated to the Specialist Order Book, the individual public orders in parity would be allocated shares in order time priority, and the Specialist quote would not receive an allocation until all of the in-parity public orders had been filled. The allocation of the individual crowd orders among the Floor Brokers in parity would be accomplished pursuant to an ''allocation wheel'' based on order time priority, until the allocation is exhausted.[46] The existing enhanced split for orders on the Specialist's book with respect to securities sold in the execution of simultaneous bids (offers) would be eliminated under the proposed rule.

With respect to ETFs and other equity-traded securities which are not stocks or closed-end funds, proposed Rule 126–AEMI would list the order of priority for various combinations of public and crowd customer orders and public and crowd non-customer (*i.e.*, broker-dealer) orders. Once visible customer size at a price is exhausted, AEMI would then allocate any remaining shares to in-parity bids (offers) for the account of non-customers. If the Specialist's quote is in parity with other non-customer bids (offers), AEMI would calculate the allocation to the Specialist using the appropriate percentage from the Specialist allocation table below, based on the number of crowd participants (and counting all of the public non-customer orders on the AEMI Book as a single crowd non-customer participant for this purpose).[47] The Specialist would not be required to yield precedence to other non-customer orders on the AEMI Book for such ETFs and other equity-traded securities which are not stocks or closed-end funds.

Number of crowd participants	Specialist allocation (percent)	Crowd/public allocation (percent)
1	60	40
2–4	40	60
5–7	30	70
8–15	25	75
16+	20	80

AEMI would then divide the balance of the unfilled aggressing order among visible in-parity non-customer orders based upon the number of members in the crowd representing non-customer orders (again treating all of the public non-customer orders on the AEMI Book as a single crowd non-customer participant for this purpose). From the quantity allocated to public non-customer orders in parity, the individual public non-customer orders in parity would be allocated shares in order time priority. AEMI would allocate the remaining amount of the aggressing order to the individual crowd non-customer orders in parity pursuant to an allocation wheel based on order time priority. Once visible non-customer in-parity orders are filled in full, the next priority level in AEMI for execution of any remaining balance of the aggressing order would be the not-in-parity Specialist quote and visible size of public and crowd non-customer orders, based on time priority. Replenished reserve size at a price would not be filled until non-customer visible size at that price is fully filled, and AEMI would execute customer replenished reserve size before executing any non-customer replenished reserve size.

Proposed Commentaries .01 and .02 relating to certain floor-based cross trades involving 5,000 shares or more have been modified to add certain additional value and size parameters and to clarify the application of precedence under AEMI.[48]

Rule 126A–AEMI. Protected Bids and Offers of Away Markets

Proposed Rule 126A–AEMI would provide for an intermarket sweep order that Amex believes is consistent with the definition of that term in Regulation NMS.[49] Except under eight specific circumstances that are identified in the proposed rule, AEMI would generate an intermarket sweep order to any away market displaying an automated bid or offer that is protected under the Order Protection Rule of Regulation NMS simultaneously with the execution of a transaction on the Amex that would constitute a trade-through. The circumstances under which intermarket sweep orders would not be generated include circumstances in which: (1) The trade-through transaction 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 trade-through transaction was not a ''regular way'' contract; (3) the trade-through transaction was a single-priced opening, reopening, cash closing, or closing transaction by the Amex; (4) the trade-through transaction was executed at a time when a protected bid was priced higher than a protected offer in the NMS

[46] An allocation wheel based on time priority operates in the following manner. For the first aggressing order on a given day for which none of the orders at the price point have participated in such an allocation wheel, the first order to be allocated the lost size would be the visible in-parity Crowd Order with the highest order time priority in the AEMI Book. AEMI would then work its way through the individual Crowd Orders in order time priority, allocating the lot size to each until the total in-parity crowd allocation were exhausted. If this allocation had not been exhausted after all of the Crowd Orders had been allocated one lot, the system would move back to the partially unfilled visible inparity Crowd Order with the highest order time priority at the price point and repeat the process.

If, during the same day, another allocation wheel were required and there were two or more orders in parity at the price point that had participated in a prior allocation wheel on that day, the first order that would be allocated the lot size would be the in-parity Crowd Order have the highest order time priority in the prior allocation wheel not to receive an allocation in the final round of that allocation wheel. *See* Commentary .04 to this rule for an example of the operation of an allocation wheel.

[47] The Specialist allocation talbe is the same table that is currently utilzed on the Exchange for the allocation of options contracts. *See* Amex Rule 935–ANTE. Although the table is not currently applicable to securities traded on the Exchange other than options, the Exchange believes that its application to ETFs and similar securities is appropriate. Similar to options, ETFs are traded in crowds with Registered Traders, and the specialist therefore has to split his participation with these market makers. In contrast, there are no competing market makers on the floor in equities. All ETF specialists also have to create and redeem ETF creation units, and there are attendant expenses involved that an equity specialist is not obligated to incur. In addition to the obvious fact that ETFs are derivatively priced, similar to options, the competitive landscape and market structure for ETFs differ from that for listed equities, where most order routers will go to the primary markets first. Finally, there are a number of other areas in which the ETF order handling rules differ from listed equity rules, including the election of stop orders, order types supported, closing procedures, cash closing, and auxiliary opening procedures.

[48] The additional value and size parameters that will be applicable to floor-based cross trades would not be programmed into the initial version of AEMI. *See supra* note 30 for a discussion of the surveillance and enforcement of these requirements during the short period that it will take to develop these new parameters into a future version of AEMI.

[49] *See* 17 CFR 242.600(b)(30).

stock; (5) the trade-through transaction was the execution of an order identified as an intermarket sweep order; (6) at the time Amex effected the trade-through transaction, 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 trade-through transaction was the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the security 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; or (8) the trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the trade-through transaction, 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.[50] Each outbound intermarket sweep order would be issued as an immediate-or-cancel order but would also carry an expiration delay timer.

The proposed rule also spells out the actions that the Exchange proposes to take if an intermarket sweep order were not filled under several scenarios. Amex would actively monitor all systems relating to private linkage at all times to ensure that systems are functioning correctly. Amex would 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. If AEMI did not receive any response at all to an outbound intermarket sweep order and assuming that no system errors had been detected, AEMI would issue a cancellation at the expiration of the expiration delay timer. This action would release the corresponding order that had been suspended on the AEMI Book pending the response to the intermarket sweep order, and the released order would re-aggress the AEMI Book (including the generation of intermarket sweep orders to other away markets, if necessary).

Finally, 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 would release the corresponding order that had been suspended on the AEMI Book so that it could 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 would still continue to be routed to that particular away market's protected quotation in that security.

Rule 127–AEMI. Minimum Price Variations

For equity-traded securities, the Exchange is proposing in Rule 127–AEMI to provide for a minimum price variation of one one-hundredth of a cent ($.0001) for quotes and orders[51] priced below $1.00 per share, as provided for in Rule 612 (the "Sub-penny Rule") of Regulation NMS. To the extent that the Commission grants an exemption from the Sub-penny Rule for a security (*e.g.*, QQQQ) priced above $1.00, the Exchange would provide for a minimum price variation equal to that set forth in the Commission's exemption order for that security.

Rule 128A–AEMI. Automatic Execution

This rule being proposed by the Exchange governs the auto-ex functionality of the AEMI platform and would replace existing Amex Rule 128A. Under this proposed new rule, AEMI would automatically execute round-lot or partial round-lot orders, bids, or offers in eligible securities for regular-way delivery that are received by AEMI electronically following the opening or reopening of a security on the Exchange. Orders that hit the Amex APQ would receive immediate fills (and notification thereof), and allocations (if any) would follow thereafter.

The rule would provide that, for auto-ex eligible securities that trade until 4 p.m., auto-ex would automatically turn off one second prior to 4 p.m. if there were any on-close orders in the AEMI Book; otherwise it would be turned off at 4 p.m. However, for auto-ex eligible securities that trade until 4:15 p.m., such as ETFs, auto-ex would automatically turn off one second prior to 4 p.m. if there were any on-cash-close orders in the AEMI Book and would remain off until the cash close is performed. Once the Specialist performed the cash close, AEMI would resume automatic execution. Auto-ex would then continue until one second prior to 4:15 p.m., at which time it would automatically turn off if there were on-close orders in the AEMI Book; otherwise it would turn off at 4:15 p.m.

While open outcry would still continue to take place in the trading crowd, a bid or offer in AEMI would not be deemed accepted by a member making a verbal acceptance in the trading crowd until the Specialist had entered a trade into AEMI. Similarly, trades executed by AEMI could trade through a verbal bid or offer in the crowd without satisfying the verbal bid or offer. Verbal bids and offers have no standing in the AEMI Book.

A new auto-ex eligible order, bid, or offer would be executed against the contra-side orders, bids, or offers residing in the AEMI Book in accordance with the rules of precedence for bids and offers until: (i) Filled in full; (ii) the size of the orders, bids, or offers residing in the AEMI Book is exhausted; (iii) a Spread or Momentum Tolerance for the security is breached; or (iv) a gap trade (as defined below) occurs. Automated execution that resulted in a trade-through of a protected quotation at an away market would not occur without such protected quotation being satisfied through the issuance of an intermarket sweep order, unless a valid exception contemplated by Rule 611 of Regulation NMS exists. AEMI would not intentionally publish an automated 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.[52]

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 would 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 would have to be consistent with the requirements of proposed Rule 170–AEMI.

AEMI would automatically execute a trade when a member used 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 could be entered by the member from on or off the floor of the Exchange. Members who wish to use the hit or take functionality would have to specify the price and quantity of the hit or take order. When a member uses the hit or take functionality, AEMI would validate that the specified price is equal to or

[50] Each of these circumstances corresponds to one of the exceptions listed in Rule 611(b) of Regulation NMS.

[51] The language of this sentence, as provided in Amendment No. 4, was revised by Amendment No. 5 to clarify that Rule 612 of Regulation NMS applies to quotes and orders.

[52] In Amendment No. 5, the Exchange modified the last two sentences of this paragraph to clarify that AEMI would not intentionally trade through better prices at away markets, unless a valid exception to Rule 611 exists.

better than the contra-Amex quote and automatically generate a limit order at that price. Equity Specialists who use the hit or take functionality would have to do so in a manner consistent with the requirements of proposed Rule 170–AEMI. An order initiated by a member using the hit or take functionality would expire if not immediately executed but would be capable of generating intermarket sweep orders to clear better away markets before executing on the Amex.

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 would automatically be rejected.[53] 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 would be automatically executed.[54] For all securities, when auto-ex is disabled due to the breach of a Spread or Momentum Tolerance or a gap trade, 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 would participate in the auction trade to eliminate the locked or crossed market and would result in the dissemination of an automated APQ.

Following the termination of a message queue, the AEMI Book would first process any cancellations or order amendments. AEMI then would 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 would 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 would not automatically execute orders that accumulated in a message queue after the close. If such a pair-off cannot be effected or there were orders from the message queue that did not participate in the pair-off, the remaining orders from the message queue that entered the AEMI Book would be treated in the same manner as incoming orders during the regular session, including the generation of intermarket sweep orders as required.

There are six situations in which auto-ex would become unavailable for the execution of trades during the regular trading session, as follows: [55]

(1) Where the automatic execution of a single order causes a breach of the Spread Tolerance in the security, where the Spread Tolerance is (i) measured against the change in price from the first execution of the incoming order on the Amex; (ii) based on a table with three possible values of the Spread Tolerance, depending on the price level of the security (5 cents for price under $5; 15 cents for price range $5–15; 25 cents for price over $15); and (iii) applied dynamically based on the price of the security at the time of the incoming order execution;

(2) Where the automatic execution of one or more orders within a 30-second window causes a breach of the Momentum Tolerance in the security, meaning that 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 (with the high price being established with reference to the price of the lowest Amex trade in the security during the previous 30 seconds and the low price being established with reference to the price of the highest Amex trade in the security during the previous 30 seconds);

(3) Where the opening is delayed, Amex is disseminating a gapped quote (*see* proposed Rule 170–AEMI(f)), or trading is halted in a security;

(4) Where a trade in a security other than an ETF has exceeded the price change parameters of the price change limits specified in proposed Rule 154–AEMI(e)—the ''1%, 2, 1, ½ point'' rule (''gap trade'');

(5) When the Exchange is conducting the ''cash close'' pair-off in an ETF (*see* proposed Rule 131–AEMI, Commentary .03); or

(6) When the Exchange has determined that (i) ''unusual market conditions'' exist in one or more securities as described in proposed Rule 115–AEMI; or (ii) 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.

Under the proposed rule, members could not trade in the open outcry market (other than to consummate an auction trade to remove the conditions that disengaged auto-ex) while auto-ex is disabled as a result of any of the foregoing circumstances but could enter and cancel bids, offers, and orders in AEMI during this time.

In the event of the breach of the Spread Tolerance, the Momentum Tolerance, or gap trade tolerance (each being a ''Tolerance'') for a security, auto-ex and the dissemination of an automated APQ would be automatically disabled for an initial period of ten seconds. The re-enabling of auto-ex and the dissemination of an automated APQ would be contingent on the AEMI Book not being in a locked or crossed condition during, or at the end of, this initial ten-second time period. The Specialist would be required to pair off the remainder of an aggressing order that resulted in a locked or crossed AEMI Book to re-enable auto-ex prior to the expiration of the ten-second time period. The contra-interest applied against the aggressing order in the pair-off would 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 would 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 would automatically disseminate a new automated APQ. Alternatively, the Specialist could re-enable auto-ex prior to the expiration of the ten-second period through a ''front-end'' device if the remainder of the aggressing order (if any) were expired or canceled or the AEMI Book were not locked or crossed.

Following the breach of the Tolerance, the remainder of the

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[53] *See* proposed 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.

[54] The reason for the disparate treatment of ETFs and Nasdaq UTP equity securities is the complexity surrounding the short sale ''tick test'' as it applies to non-ETF Amex-listed securities and non-Nasdaq UTP equity securities. In contrast, the ''tick test'' is not applicable to ETFs and Nasdaq UTP equity securities, and those quotations can be treated in a much simpler fashion.

[55] The Exchange considered including in the list of circumstances in which auto-ex would be unavailable the gap pricing parameters directed at abusive ''gap elections'' of stop orders that the Exchange first implemented on a pilot basis in 1987. *See* Securities Exchange Act Release No. 24021 (January 21, 1987), 52 FR 3370 (February 3, 1987). Although never formally part of the Exchange's rules, the Exchange has nonetheless required its Specialists to adhere to these parameters unless Floor Official approval was obtained ever since their initial application. However, the Exchange believes that, in the automated AEMI environment, the likelihood that Specialists will engage in abusive ''gap elections'' of stop orders will be greatly reduced and it is therefore not necessary to build these numerical parameters into the AEMI platform. This is partly the result of some protection against this form of manipulation in AEMI that will be offered by the ''gap trade'' provisions of proposed Rule 154–AEMI(e) in the foregoing list. Those provisions, plus the enhanced surveillance capabilities inherent in the AEMI platform, should provide adequate protection against potential gap election abuses by Amex Specialists.

aggressing order (if any) would 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 were no remainder because the aggressing order were canceled or expired (*e.g.*, it is an IOC order) or were filled upon the breach of the Tolerance, the APQ would reflect the best bid and offer in the AEMI Book with both sides non-firm. If there were no orders left on the contra-side of the AEMI Book, a stabilizing quote would 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 ten-second time period following the breach of the Tolerance, if the Specialist had not resolved the locked or crossed AEMI Book along with AEMI disseminating a new automated APQ, incoming orders, amendments, and cancels would continue to enter the AEMI Book but would not update the APQ. On the expiration of the ten-second time period following the breach of the Tolerance, if the AEMI Book were not locked or crossed, auto-ex and the dissemination of an automated Amex quote would resume automatically. If the AEMI Book remained locked or crossed following the expiration of the ten-second period, auto-ex and the dissemination of an automated quotation would not resume until the Specialist had taken action to pair off the remainder of the aggressing order (*i.e.*, to resolve the locked or crossed condition). AEMI would perform a recursive check every subsequent ten seconds to determine if the locked or crossed condition had been eliminated and, if it had been eliminated, auto-ex and the dissemination of an automated Amex quote would resume automatically.[56]

Rule 128B–AEMI. Auction Trades

This proposed new rule would provide for the integration of auction trades with orders, bids, and offers on the AEMI Book and away markets. An auction trade could be (1) a trade executed between or among members on the Floor by open outcry (which trades could incorporate orders on the AEMI Book); or (2) a cross trade executed by a member on the floor by open outcry.

Under the provisions of the rule, a Specialist would immediately have to enter an auction trade into AEMI if he participates in the trade. If the Specialist were not part of an auction trade, the member who initiates the trade would have to report the trade to the Specialist for input into AEMI. Upon input, AEMI would: (i) 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); (ii) execute any bids, offers, or orders on the AEMI Book that were able to be executed at the price of the auction trade; (iii) generate intermarket sweep order(s) to away markets; and (iv) disseminate a new automated APQ unless auto-ex were already enabled. The Specialist would conduct the post-trade allocation for trades with more than one contra-side member, and AEMI would then send notification of individual trades to active crowd participants (Registered Traders in the crowd with a bid or offer on the AEMI Book on the opposite side of the aggressing order and Floor Brokers with a Crowd Order on the opposite side of the aggressing order, in each case at the time of the trade) upon the Specialist's confirmation of the post-trade allocation. The requirement that a Specialist confirm the initial post-trade allocation (which would be 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 had not confirmed the allocation within a three-minute period following the trade, the default allocation would be AEMI's estimated allocation to the Specialist and the active crowd participants. The Floor Brokers that are a party to the auction trade, both on the side of the aggressing order and the contra-side, would 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 were reported to AEMI more than 20 seconds later, it would be deemed late but would still be permitted.

If one or more of the intermarket sweep orders generated by an auction trade were unexecuted in whole or in part by away markets, AEMI would release the remaining portion of any order, bid, or offer in AEMI that had been suspended at the time the intermarket sweep orders were generated, and the released order, bid, or offer would 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 that are not executed by an away market would be automatically expired and not executed at the Amex. With respect to intermarket sweep orders to away markets generated by an auction trade, 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 would follow the procedures described for such circumstances in proposed Rule 126A–AEMI, which would 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.

Finally, AEMI would process a cross executed by a member in the crowd in the same manner as other auction trades. However, only the member who executed the cross would 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 the AEMI Book. Further, a clean agency cross that satisfies the size and value parameters in Commentaries .02 and .03 to proposed Rule 126–AEMI could *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 market makers could not interfere with such trades. In addition, a cross that takes precedence based on size (*see* Commentary .01 to proposed Rule 126–AEMI) could *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 would be required to follow the crossing procedures set forth in proposed Rule 152–AEMI (if a member or member organization were taking or supplying stock to fill a customer's order) or proposed Rule 151–AEMI (in all other situations).

Rule 128C–AEMI. Locking or Crossing Quotations in NMS Stocks

The Exchange is proposing the adoption of this new rule which is

[56] *See supra,* related discussion under ''Automated Execution.''

based on the Commission's proposed SRO locking/crossing rule.

Rule 131–AEMI. Types of Orders

The Exchange is proposing to create a number of new order types, as well as to make changes to existing order types, under AEMI, as follows:

• Alternative or either/or orders would no longer be accepted on the Exchange.

• An ''all or none'' order would no longer be accepted on the Exchange.

• An ''immediate-or-cancel'' order received by the AEMI Book would *not* be routed to another market center.

• A buy (sell) limited price order would be immediately executed in AEMI if its limit price were equal to or higher (lower) than the best offer (bid) on the Amex. A buy (sell) limited price order would result in the generation of one or more intermarket sweep orders to access protected quotes at away markets if its limit price were equal to or higher (lower) than the automated national best offer (bid). The unexecuted remainder of a limited price order would be posted on the AEMI Book.

• A new intermarket sweep order would be available, which Amex believes would provide a means to satisfy better away market obligations consistent with the requirements of Regulation NMS.

• A ''fill-or-kill'' order for equity traded securities received in the AEMI Book would be canceled automatically if it could not be executed at the best price point in the AEMI Book. A ''fill-or-kill'' order would *not* be routed to another market center.

• AEMI would *not* accept a ''not held'' order, although such an order type would still be acceptable on the Exchange.

• A ''good until a specified time'' order would no longer be accepted on the Exchange.

• Other current order types that would no longer be accepted on the Exchange when AEMI is implemented are scale orders, switch or contingent orders, and time orders.

• ITS commitments to away markets that are irrevocable for a fixed time period are being retained as a valid order type on the Exchange in situations where auto-ex is not available.

• ''G'' orders could no longer be entered on the Exchange upon the implementation of AEMI.

• Stop and stop limit orders to buy or sell that are ''too marketable'' (*i.e.*, automatically executable with the next trade) would be rejected, and any and all ETF stop and stop limit orders could be elected by a quotation as provided in proposed Rule 154–AEMI(c). The Exchange could not guarantee that an elected stop order would be executed at the electing price.

• AEMI would *not* be programmed to execute (i) ''company buy-back'' orders in conformity with the ''safe harbor'' provisions of Commission Rule 10b–18; or (ii) ''stabilizing'' orders entered pursuant to Rule 104 of Regulation M [57] in connection with purchases of a security in distribution; although such order types would still be acceptable on the Exchange.

A ''percentage order'' would continue as an order type under AEMI, and it would be defined as 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, but it could be entered only with ''last sale'' or buy-minus/sell-plus election instructions. Only a Floor Broker could enter a percentage order, which is a public order for which the Specialist has agency responsibility. In the case of ETFs and other equity-traded products that are not listed or UTP stocks or closed-end funds, the percentage order would have to be on behalf of a customer and not a broker-dealer. Market circumstances could prevent a percentage order from buying (or selling) this percentage through election.

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

A ''percentage order'' would 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 would have to be executed immediately in whole or in part at the price of the conversion, or better. Any automatically converted portion not so executed would revert to its status as an unelected percentage order and be subject to subsequent election or conversion. The Exchange is proposing to not carry over, in this rule and in proposed Rule 154–AEMI, the current restriction requiring a 5,000 share minimum order size for certain conversions, since the average trade size at the Amex is substantially less than 5,000 shares and the restriction significantly limits the execution opportunities for percentage orders with respect to securities in AEMI. The Exchange expects that conversions would primarily occur automatically when AEMI is in effect.

Subparagraph (j) of proposed Rule 154–AEMI contains further regulation concerning the handling and execution of percentage orders.

Another new order type that would be accepted in the proposed AEMI platform is a ''reserve order,'' which is a limited price order submitted to AEMI by a Floor Broker standing in the crowd and which consists of both a visible and an undisplayed (reserve) size. The reserve size is not included in the APQ. A broker could specify the visible size of a reserve order subject to a visible minimum size established by the Exchange. Following a trade that executes against the visible size of a reserve order, AEMI would 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 would be visible to the Specialist. A Specialist would not be permitted to 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.

A new order type that would be available to any member is a ''hit or take'' order, which is an order that would trade against the APQ and could be entered by the member from on or off the floor of the Exchange. It is an order that expires if not immediately executed but that is capable of generating intermarket sweep orders to clear better away markets. A hit or take order can be specified as ''sell short.''

AEMI would also accept several types of electronic ''cross orders,'' but only in ETFs and Nasdaq securities admitted to dealings on Amex on an unlisted basis. A cross order would be an order submitted by a member or member organization to AEMI with both buy and sell interest specified in a single order. The types of electronic cross orders that would be accepted in AEMI are designated in proposed Rule 131–AEMI as: (1) Cross, (2) cross only, (3) mid-point cross, (4) IOC cross, (5) PNP cross, and (6) auction cross. The amount of each of the first five of the foregoing cross order types that is executed (if any), the generation of intermarket sweep orders to markets displaying protected quotes, and the execution price or prices for the order would depend on several factors, including: (1) The relationship between the cross price, the automated NBBO and the

[57] 17 CFR 242.104.

APQ; and (2) pre-existing bids, offers, and orders in the AEMI Book.

In the case of an auction cross, the person entering the cross order would have to specify the side(s) of the cross selected for possible price improvement. AEMI would display the side(s) specified for possible price improvement for a three second ''Auction Cross Duration.'' The side(s) of the cross selected for price improvement would have to be displayed one minimum trading increment worse than the proposed cross price (*i.e.*, the buy side of the cross would have to be displayed one tick below the proposed cross price and/or the sell side of the cross would have to be displayed one tick above the proposed cross price). During the three-second Auction Cross Duration, the displayed order could be price improved by new bids, offers, or orders entering the AEMI Book. If the cross price were equal to or better than the automated NBBO and between the APQ at the end of the Auction Cross Duration, AEMI would execute the auction cross at the cross price; otherwise, the order would be canceled to avoid trading through the automated NBBO or the APQ. If one or both sides selected for display were executed in part during the Auction Cross Duration, the unfilled balance would continue to be displayed and would be executed at the end of the Auction Cross Duration at the cross price, and any remainder would be canceled at the end of the Auction Cross Duration, unless the order were designated Cross and Post (''CNP''), in which case the unexecuted balance of the cross order would be added to the AEMI Book. If a side selected for display were executed in full during the Auction Cross Duration, the other side of the auction cross order would be canceled unless the order were designated CNP. AEMI would reject auction cross orders if the cross price were at the APQ or outside the automated NBBO.

Finally, proposed Rule 131–AEMI sets forth the procedures to be followed for ''Market at 4 p.m. cash close'' orders in Portfolio Depositary Receipts and Index Fund Shares that trade on the Exchange until 4:15 p.m. Such market orders would be executed at one price (which would be the prevailing bid or offer on the Exchange, depending on the imbalance) at 4 p.m., or as soon as practicable thereafter. AEMI would *not* generate an intermarket sweep order to an away market displaying a protected bid or offer, even if the execution price would constitute a trade through. Market at 4 p.m. cash close orders and other market orders would be executed ahead of other limit orders, bids, and offers in AEMI at the time of the cash close.

Rule 131A–AEMI. Market on Close Policy and Expiration Procedures

The closing procedures in proposed Rule 131A–AEMI, which would apply to listed stocks and closed-end funds, are somewhat modified from the current procedures in Amex Rule 131A. Most importantly, 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. Orders entered after the deadline that did not offset a published imbalance would be rejected.

The closing procedures for listed stocks and closed-end funds under AEMI, as set forth in this rule, would basically be the same as those described above under proposed Rule 118–AEMI for Nasdaq securities with unlisted trading privileges, including printing the close and providing for the allocation of the imbalance, as well as the order of execution of orders, bids, and offers in the AEMI Book at the close. The major difference is in the calculation of the 3:40 p.m. and 3:50 p.m. imbalances, where the last Amex sale is used for listed stocks while the consolidated last sale is used for Nasdaq UTP stocks.

Rule 132–AEMI. Price Adjustment of Open Orders on ''Ex-Date''

The After Hours Trading facility on the Amex would not be available under AEMI, and the Exchange is proposing not to carry over any references to the facility in the Exchange's current rules, such as the reference in current Amex Rule 132.

Rule 135–AEMI. Cancellations of, and Revisions in, Transactions Where Both the Buying and Selling Members Agree to the Cancellation or Revision

Proposed Rule 135–AEMI would differ from current Amex Rule 135 by clarifying that a correction to the tape would change the calculation of the ''tick'' of the next trade only if the last published trade were the subject of the correction.

Rule 135A–AEMI. Cancellations of, and Revisions in, Transactions Where Both the Buying and Selling Members Do Not Agree to the Cancellation or Revision

The Exchange is proposing, in Rule 135A–AEMI, a change in its process for ''breaking'' a transaction, or modifying one or more terms of the transaction, in situations where a transaction 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 under one of the three exceptions to the firm quote requirement for bids and offers in AEMI that are set forth in proposed Rule 123–AEMI(h). The first exception involves a circumstance in which 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. The second exception involves a circumstance in which auto-ex has been disabled due to the breach of a Spread or Momentum Tolerance or a gap trade, and auto-ex and the dissemination of an automated quote have not yet resumed. The third exception involves a gap quote situation that exists due to an order imbalance.[58]

A Floor Official would have the authority to review the foregoing transactions and make adjustments to the terms accordingly or declare a transaction null and void. The new rule would provide that any member who seeks to have one or more transactions reviewed would have to 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 had been received, the complainant would have up to 30 minutes, or any longer period specified by the Floor Official, to submit any supporting written information concerning the complaint necessary for a review of the transaction. Other procedural requirements are provided for in the revised rule.

Rule 150–AEMI. Purchases and Sales While Holding Unexecuted Market Order

The Exchange is proposing, in Rule 150–AEMI, to provide three additional exemptions to the current prohibition against a member buying or selling any security on the Exchange for his own account (or for any account in which he or his member organization or certain related parties have a direct or indirect interest) if the member (or member organization or related party) either: (1) Holds an unexecuted market order in that security for a customer, on the same side of the market; or (2) buys or sells that security at a price more favorable than that of an unexecuted limited price order in that security held for a customer on the same side of the market.

The three proposed additional ''trading ahead'' exemptions are: (1) A purchase or sale of any security by a

[58] *See* proposed Rule 170–AEMI(f).

Specialist where the member or member organization entering a percentage order has permitted the Specialist to be on parity with the order; [59] (2) 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.*, proposed Rule 126–AEMI); or (3) 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.

Rule 151–AEMI. ''Open Outcry'' Cross Transactions

Proposed Rule 151–AEMI would have a different title from current Amex Rule 151 to clarify that the subject matter is minimum price variations of trading in open outcry cross transactions, and additional language would clarify that the rule does not apply to cross orders entered into AEMI pursuant to proposed Rule 131–AEMI.

Rule 152–AEMI. Taking or Supplying Stock To Fill Customer's Order

Similar to the changes in the preceding rule, clauses (i) and (ii) of the proposed Rule 152–AEMI(a)(2) contain language that is not in current Amex Rule 152 in order to clarify that their provisions do not apply to cross orders entered into AEMI pursuant to proposed Rule 131–AEMI.

Rule 153–AEMI. Record of Orders

This proposed rule would add provisions that are not in current Amex Rule 153 that would apply the Exchange's record keeping requirements to proprietary systems of members or member firms that are approved by the Exchange and receive orders on the floor. In addition, certain references in the current rule to the After Hours Trading Facility, which would no longer exist under AEMI, are not included in the proposed rule.

Rule 154–AEMI. Orders in the AEMI Platform

Proposed Rule 154–AEMI has a different title from current Amex Rule 154 (which is titled ''Orders Left With Specialist'') on which it is based, and contains additional provisions that reflect the treatment of orders when AEMI is functional. Certain references in current Amex Rule 154 to the Specialist's role in accepting orders would no longer be applicable under AEMI and are not part of the proposed new rule.

Paragraph (a) of proposed Rule 154–AEMI would provide that a Specialist could accept only orders, cancellations, or amendments to orders that are received by him/her through AEMI and could not accept orders, cancellations, or amendments to orders that were handed to him/her in writing or communicated to him/her verbally.

Paragraph (b) of proposed Rule 154–AEMI would further clarify proposed Rule 131–AEMI with respect to the types of orders that would be acceptable under AEMI. It provides that the following order types, although acceptable on the Exchange, would not be accepted by AEMI: Not-held orders, company buy back orders with instructions to adhere to safe harbor conditions of Commission Rule 10b-ndash;18, stabilizing orders, sell orders to be executed under SEC Rules 144 and 145, and sell orders requiring delivery ''with prospectus.''

Paragraph (c) of proposed Rule 154–AEMI would prove that stop and stop limit orders to buy or sell a security whose price is derivatively based upon another security or index of securities would automatically be elected by a quotation in the circumstances specified after the order is received in the AEMI Book. The prior approval of a Floor Official would no longer be required. The paragraph further provides that a Specialist would have to obtain a Floor Official's approval before electing a stop order by selling stock to the existing bid or buying stock at the existing offer for his own account, but that such approval would not be required for ETFs or Nasdaq securities to which the Exchange had extended unlisted trading privileges. Other changes in paragraphs (d) through (i) of proposed Rule 154–AEMI would reflect the fact that certain orders would reside on the AEMI Book rather than being held by the Specialist.

Paragraph (j) of proposed Rule 154–AEMI would supplement proposed Rule 131–AEMI(m) and specify the treatment of percentage orders in AEMI. In addition to removing references to items that are not compatible with the electronic handling of these orders by AEMI—such as time stamping; orders being given to, held and handled by the Specialist; and the use of written instructions—the following changes to the treatment of percentage orders under current Rule 154 are being made:

- In a situation where the Specialist believes that percentage orders would interfere with the maintenance of a fair and orderly market, entry of percentage orders could be banned for a given security, with Floor Official approval, provided this were done before the start of the trading session.
- The Specialist could (but is not required to) manually convert (i) a percentage order to buy into a regular limit order for transactions effected on a ''minus'' or ''zero-minus'' tick or (ii) a percentage order to sell into a regular limit order for transactions effected on a ''plus'' or ''zero plus'' tick (these ticks, under these circumstances, being hereinafter referred to as ''stabilizing ticks'').
- AEMI would 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 proposed Rule 131–AEMI(m) (*i.e.*, maximum conversion size per trade and aggregate maximum conversion amount for the order).
- If an entering Floor Broker were to specify that the Specialist could manually convert a percentage order to buy or sell into a regular limit order for transactions effected on destabilizing ticks (as defined in current Amex Rule 154), this would 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.
- Consecutive automatic conversions would not occur until the passage of a specified period of time. This time period is set for a given security, and could be changed only before the start of the trading session.
- The 5,000-share minimum order size parameter specified in current Amex Rule 154 with respect to certain conversions is not included in the proposed rule.[60]
- In connection with the 25 cent parameter specified in clauses (4) and (7) of paragraph (j) with respect to certain conversions, this parameter could be modified for all percentage orders in a given security with the prior approval of a Senior Floor Official, provided any such change were made before the start of the trading session.

Note that an aggressing order could trade with an existing Specialist quote and this trade could elect a percentage

[59] An example of a situation in which a member who has entered a percentage order might permit the Specialist to be on parity with the order would be if the member was attempting to build a substantial position in a security (or liquidate such a position) and simply wanted to trade along with the Specialist for the day in a passive manner (*i.e.*, without causing price fluctuations). The liquidity provided by the Specialist would be the reason that the member might permit the Specialist to be on parity with the percentage order.

[60] *See* discussion above under proposed Rule 131–AEMI.

order, thereby making the latter eligible for immediate execution. However, if there were no remaining interest from the aggressing order, the elected percentage order would not participate in the trade, in whole or in part, at the price of the electing transaction and would revert back to its status as an unelected percentage order. Such a Specialist dealer trade (as well as a subsequent dealer trade if the percentage order had not been otherwise re-elected at that time) at the limit price of the percentage order would not be deemed a violation of Amex rules prohibiting ''trading ahead'' of a customer order because the percentage order was not eligible for execution at the time of the Specialist trade.

Rule 155–AEMI. Precedence Accorded to Orders Entrusted to Specialists

In proposed Rule 155–AEMI, the Exchange is revising the list of exceptions to the requirement that a Specialist must 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. The exceptions to the precedence requirement would be: (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 proposed 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 had been sent to another market pursuant to the rules of the Exchange. These same exceptions are discussed above under proposed Rule 150–AEMI.

Certain other Specialist obligations in Commentary .03 and .04 of the current Amex Rule 155 are not being included as part of the proposed rule because they would be performed by AEMI. References to orders received by the Specialist through the PER and AMOS systems, which would no longer be operative, are also not included in the proposed rule.

Rule 156–AEMI. Representation of Orders

This proposed rule would not include language that is in existing Amex Rule 156 regarding ''at the close'' orders because that language is duplicative of language regarding such orders that would be in proposed Rules 118–AEMI and 131–AEMI. A reference to a ''switch order'' in the current rule is also not included in the proposed new rule because this order type would no longer exist on the Exchange.

Rule 157–AEMI. Orders With More Than One Broker

This proposed rule, whose purpose is to prohibit deceptive practices in relation to competition, would prohibit a Registered Trader from maintaining a Crowd Order with a broker or maintaining 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.

The Commentary to the proposed rule incorporates into the rules a policy approved by the Commission [61] and would require that, to ensure fairness in trading crowds, Registered Traders in a joint account could 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 had first demonstrated to the Exchange's satisfaction that they were not ''affiliated'' with one another. However, if two or more such related Registered Traders were to trade in the same crowd at the same time, they would 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 would have to 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.'' In addition, if two Registered Traders had a relationship with the same member organization, but were not affiliated with each other, those Registered Traders would not be permitted to trade in the same crowd at the same time if the member organization's share of their profits and/or losses exceeds ''100%'' of those profits and/or losses.[62]

Rule 170–AEMI. Registration and Functions of Specialists

In proposed Rule 170–AEMI, there would be a number of changes from current Rule 170 regarding the registration and functions of Specialists. A new paragraph (f) would allow a Specialist to ''gap the quote'' when a significant order imbalance exists. This could occur as a result of an order represented in the crowd or an incoming electronic order that had swept the book, disabled auto-ex, and left an unmanageable electronic imbalance in the security. In such a situation, the Specialist would 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.,* the 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 would display one round lot for the contra-side size. The price of the contra-side quote would have to represent the Specialist's determination of the price at which the security would trade if no contra-interest developed or no cancellations occurred as a result of the gapped quotation. If the gapped quote were the result of an order represented in the crowd, the Floor Broker whose order imbalance had caused the quote to be gapped would be required to enter his order (*i.e.,* the side and size and the contra-side quote price) into AEMI immediately. The gapped quote would be non-firm. After publishing the gapped quote, the Specialist would be required to ask a Senior Floor Official or an Exchange Official to supervise the process. A gapped quote shall be displayed until offsetting interest is received electronically but shall not exceed two minutes.[63] While the quotation is gapped, orders, cancellations, and other messages would continue to enter AEMI, but would not update the APQ and no trades would occur. In addition, ITS commitments received from other markets during a gapped quote would be canceled. The Senior Floor Official or Exchange Official supervising the gapped quote process would determine whether: (i) To execute the orders immediately and terminate the gapped quote; (ii) to 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) to 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, must either conduct an auction trade and disseminate an automated

[61] *See* Securities Exchange Act Release No. 23145 (April 17, 1986), 51 FR 15564 (April 24, 1986) (File No. SR–Amex–86–9).

[62] The language of this entire paragraph, as provided in Amendment No. 4, was revised by Amendment No. 5.

[63] The language of this sentence, as provided in Amendment No. 4, was revised by Amendment No. 5.

quotation or trading should be halted in the stock.

In connection with the reduction or liquidation of an existing position in a security in which a Specialist is registered by a person or party that is affiliated with the Specialist or Specialist member organization, the new conditions for allowing such orders are that they must: (1) Not be identified to the Specialist as being for an account in which such persons or party has a direct or indirect interest, and (2) be represented by an independent broker. Amex believes that these changes are necessary because existing restrictions on such liquidations require that the orders be identified as being for an account in which the affiliated person or party has a direct or indirect interest. Under AEMI, such orders would not be able to be identified to the Specialist. The Exchange believes that this alternative approach is consistent with the operation of AEMI and provides adequate safeguards against abuses.

To facilitate the Specialist's continuity responsibility, AEMI would automatically update the Specialist's quote with a Specialist emergency quote based on parameters set by the Specialist. If a Specialist were displaying an automated quote and his mandatory quote were reduced to or below a configured size, a new quote would be automatically generated. This feature would be disabled if quotes are streamed in. Emergency quotes that were generated as a result of incoming order flow sweeping the AEMI Book would be injected into the sweep (if appropriately priced) so that the incoming order could receive price improvement.[64]

Commentary .01 of proposed Rule 170–AEMI (which would not apply to the trading of ETFs or Nasdaq securities trading UTP on the Exchange) would revise, and add more flexibility to (consistent with the new automated AEMI environment), the restrictions relating to a Specialist effecting transactions for his own account for the purpose of establishing or increasing a position. The types of transactions prohibited (except when reasonably necessary to render the Specialist's position adequate to the needs of the market; with the approval of a Floor Official; or under specified market conditions) would be:

- 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 the Commission's short sale rule;
- The purchase of all or substantially all of 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;
- The supplying short of all or substantially all the stock bid for on the AEMI Book on a zero-minus tick where permitted by the Commission's short sale rule, when the stock so bid for represents all or substantially all the stock bid for in the market; and
- Failing to re-offer or re-bid where necessary after effecting the transactions described above.

Because of the time delays that are inherent in the process of obtaining Floor Official approval, however, Amex is adding a provision to Commentary .01 of proposed Rule 170–AEMI that would allow a Specialist to effect an auto-ex transaction without the approval of a Floor Official in the destabilizing tick situations described above if he: (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.

Commentary .02 of proposed Rule 170–AEMI (which would not apply to the trading of ETFs or Nasdaq securities trading UTP on the Exchange) would revise, and add more flexibility to (consistent with the new automated AEMI environment), the restrictions relating to a Specialist's transactions for his own account in liquidating or decreasing his position in a security in which he is registered. Unless such transactions are reasonably necessary in relation to the Specialist's overall position and the prior approval of a Floor Official has been obtained, the Specialist could not 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 (equivalent to the restrictions on establishing or increasing a position described in Commentary .01 as described above). However, for the same reason discussed in the preceding paragraph, the Specialist would be permitted to effect an auto-ex transaction without Floor Official approval in the destabilizing tick situations described in the prior sentence if he: (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.

Any 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 would have to 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 the immediately succeeding transactions could 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).

Commentary .03 would clarify that a Specialist's quotation in an ETF or other derivatively priced security should be such that a transaction effected at his quoted price or within the quoted spread would bear a proper relation to the value of underlying or related securities.

In addition, Commentary .07 of proposed Rule 170–AEMI (which would not apply to the trading of ETFs or Nasdaq securities trading UTP on the Exchange) would require that, if a ''net long'' position were 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 could not cover such a short position by purchasing on the offer in the full-lot market on a ''plus'' tick. In addition, he would also have to limit his purchase on the offer to no more than 50% of the security offered on a ''zero plus'' tick, and in no event could he purchase the final full-lot offered. Further, this section proposes to remove the stabilizing restriction on assigning stock to an investment account, since the ability to limit destabilizing transactions would be reduced in the AEMI automated environment.

Finally, proposed Rule 170–AEMI would not contain the language in Commentary .10 of current Amex Rule 170 relating to Quote Assist, since that facility would be replaced by AEMI.

Rule 174–AEMI. Disclosures by Specialists Prohibited

Paragraph (b) of current Amex Rule 174 allows the Specialist, when requested by a member, member organization, or representative of the issuer of the security involved, to disclose to such parties the names of buying and selling member organizations in Exchange transactions

[64] *See supra,* under ''Quoting'' for a discussion and related example of an emergency quote.

unless specifically directed to the contrary by the parties involved. Proposed Rule 174–AEMI would make this disclosure mandatory upon such request, except that it would involve only post-trade disclosure for transactions to which the Specialist were a counterparty due to the fact that, in AEMI, the Specialist would not know the entering firm on an order nor the parties to a trade unless he were a counterparty. Comment .01 to current Amex Rule 174 would then become redundant and is not included in proposed Rule 174–AEMI.

Paragraph (c) of proposed Rule 174–AEMI, regarding the disclosure of information by the Specialist about the quantity of buying or selling interest in the market, would contain provisions that differ from the corresponding provisions of current Amex Rule 174. The proposed new rule would provide that this information also includes the quantity of buying or selling interest on the AEMI Book, other than information about the reserve (undisplayed) size of reserve orders on the AEMI Book (which the Specialist must not disclose). The same prohibition against disclosure of undisplayed reserve order size is being made applicable to the dissemination of depth indication by the Specialist.

Rule 178–AEMI. Responsibility of Specialist

Proposed Rule 178–AEMI, which would address the responsibility of the Specialist in responding to member requests for reports on orders that were, or should have been, executed, is based on the provisions of current Amex Rule 178, modified to cover orders entered into AEMI. (Amex Rule 178 currently references only orders given to the Specialist.) Proposed Rule 178–AEMI would provide that a request for a report and any response thereto would have to be transmitted through AEMI. If a request for a report were not transmitted to the Specialist though AEMI, it would not be deemed to have been given to the Specialist and would be of no force or effect. Several provisions in current Amex Rule 178 and the related Commentary regarding paper requests and reports would no longer be applicable to securities traded in AEMI and are not part of proposed Rule 178–AEMI.

Rule 179–AEMI. Expiring Equity Securities

The provisions of proposed Rule 179–AEMI track those of current Amex Rule 179, except that references relating to orders entered on the Specialist's book have been changed to reflect the fact that orders would henceforth be entered into the AEMI Book. The proposed new rule also contains updated provisions relating to delivery prior to expiration.

Rule 200–AEMI. Odd-Lot Dealer Registration

Proposed Rule 200–AEMI would include certain references that differ from current Amex Rule 200 to reflect the fact that there would no longer be any separate odd-lot dealers on the Exchange and that the Specialist in an equity-traded security is the odd-lot dealer in that security.

Rule 205–AEMI. Manner of Executing Odd-Lot Orders

In proposed Rule 205–AEMI, the Exchange would replace its current approach regarding the execution of odd-lot orders (as reflected in Amex Rule 205) with completely new language based on NYSE's odd-lot rule (although not in its entirety), with additional references to AEMI, where appropriate. Additional provisions have been added in subparagraphs (b)(iv) and (b)(vi) regarding the use, under certain circumstances, of the ''qualified national best bid or offer'' [65] rather than the adjusted ITS bid or offer as under the current NYSE rule with respect to the execution price of odd-lot market orders not executed within 30 seconds of receipt by AEMI, or that are entered within 30 seconds of the close of trading and not executed prior to the closing transaction.

Existing Commentary in current Amex Rule 205 concerning sales erroneously not printed on the tape is not being carried over into the proposed rule because odd-lot executions would be completely automated under AEMI and the situation envisioned should not occur. Commentary .05 in the new rule adds a definition of ''qualified national best bid or offer'' for a security.

Rule 206–AEMI. Prohibition of Round-Lot Transactions Merely for Purpose of Establishing Odd-Lot Prices

References to ''odd-lot dealer'' in current Rule 206 would be changed in the language of proposed Rule 206–AEMI to ''specialist'', as discussed above under proposed Rule 200–AEMI. The first paragraph of Commentary .01 to the proposed rule would differ from the language of the current rule through the addition of the phrase ''to the bid'' to the restrictive language incorporated from the existing rule concerning the sale of a round-lot as principal on a minus or zero-minus tick. Similarly, the second paragraph of Commentary .01 to the new rule would differ from the language of the current rule through the addition of the phrase ''on the offer'' to the restrictive language incorporated from the existing rule concerning the purchase of a round-lot as principal on a plus or zero-plus tick. These changes would align the restrictions with the changes being made in proposed Rule 170–AEMI regarding the prohibition on sales to the bid and purchases on the offer by the Specialist. These changes add more flexibility to the existing restrictions, which the Exchange believes is necessary and appropriate for the new automated AEMI environment. In addition, language has been added to the proposed new rule to clarify that Commentary .01 does not apply to Specialist transactions in ETFs.[66]

Rule 207–AEMI. Limitation on Electing Odd-Lot Stop Orders

References to ''odd-lot dealer'' in current Amex Rule 207 would be changed in the language of the proposed Rule 207–AEMI to ''specialist'', as discussed above under proposed Rule 200–AEMI. In the proposed rule, the phrase ''to the bid'' is being added to the restrictive language incorporated from the existing rule regarding the necessity for prior approval of a Floor Official to allow the Specialist to sell any round lot at a price below the last different price, and the phrase ''on the offer'' is being added to the corresponding restrictive language incorporated from the existing rule regarding the purchase of a round lot at a price above the last different price. These changes are consistent with the changes being made with respect to restrictions in proposed Rules 170–AEMI and 206–AEMI as discussed above, adding additional flexibility for

[65] The ''qualified national best bid or offer'' for a security is defined as 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 would be considered in determining the qualified national best bid or offer in a security only if (i) the quotation conformed to the requirements of proposed Rule 127–AEMI (''Minimum Price Variations''), (ii) the quotation did not result in a locked or crossed market; (iii) the market center were not experiencing operational or system problems with respect to the dissemination of quotation information; (iv) the bid or offer were ''firm,'' that is, members of the market center disseminating the bid or offer had not been relieved of their obligations with respect to such bid or offer under Rule 602(b)(2) of Regulation NMS pursuant to the ''unusual market'' exception of Rule 602(a)(3) of Regulation NMS; and (v) the quotation disseminated by the other market center is automated.

[66] Specialist transactions in ETFs and Nasdaq UTP securities are not subject to the restrictive provisions of proposed Rule 170–AEMI, so the changes being made to Commentary .01 of proposed Rule 206–AEMI are not applicable to ETFs and Nasdaq UTP securities.

the Specialist that the Exchange believes would be necessary and appropriate for the new automated AEMI environment.

Rule 220–AEMI. Communications to and on the Floor

Commentary .04 to proposed Rule 220–AEMI, concerning the Exchange's policies on hand-held terminals (''HHTs''), would contain provisions that update and extend the provisions incorporated from current Amex Rule 220 to cover other means of data communications technology as well (*e.g.,* desktop computers). Proposed Rule 220–AEMI would provide that Registered Traders must develop or secure for use HHTs that would allow them to: (1) Communicate their bids and offers to AEMI; (2) execute trades against orders, bids, and offers in AEMI; and (3) receive notifications from the Specialist regarding the Registered Trader's post-trade allocation. All clock sources would have to utilize millisecond increments and be synchronized to a Stratum-1 time source, and the Exchange would use industry standard radio frequencies for the wireless portion of the data communications infrastructure. A new requirement would be added that 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. The current restriction on image transmission through the data communications infrastructure would be eliminated under the proposed rule change.[67] Finally, the Exchange would require members and member organizations (and their employees or approved persons) that have developed HHTs to maintain a record of any transmissions to or from their HHTs.

Rule 719–AEMI. Comparison of Exchange Transactions

The proposed rule would contain several changes in the account-type codes from those in the current Exchange rule for equity transactions that must be submitted as trade data by each clearing member organization. Code letter ''A'', which previously was available for all agency customer accounts, would be available only for agency non-broker-dealer customer accounts. Several current codes for transactions that result from telephone access to UTP Specialists are not being included in the proposed rule, since transactions would no longer originate in that manner under AEMI. Finally, several new codes would be added in the proposed rule for stock transactions with respect to orders directly tied to expiring index-related derivative contracts.

Rule 1000–AEMI. Portfolio Depositary Receipts

Commentary .04 to proposed Rule 1000–AEMI would not include a paragraph that is in current Amex Rule 1000 requiring manual input for the entry of orders, as this requirement would not be compatible with the operation of AEMI.

Commentary .05 to current Amex Rule 1000 involving facilitation orders would not be included in the language of proposed Rule 1000–AEMI due to those orders being replaced by the operation of the rules on crossing orders.[68] Similarly, Commentaries .07 and .08 to current Amex Rule 1000 would not be included in the language of proposed Rule 1000–AEMI due to the fact that the current ETF parity and allocation rules would be replaced by the parity allocation methodology of proposed Rule 126–AEMI. A minimum price variation of $0.0001 for such quotes and orders[69] priced under $1.00 is being added to the proposed rule as provided for by Regulation NMS.[70] In addition, the proposed rule would provide that the minimum price variation for quotations and orders in a security that has been exempted by the Commission from Rule 612 of Regulation NMS would be the minimum price variation set forth in the Commission's exemption order for that security.

Rule 1000A–AEMI. Index Fund Shares

The same substantive changes from the language of current Amex Rule 1000A are being made to proposed Rule 1000A–AEMI involving Index Fund Shares as described above with respect to proposed Rule 1000–AEMI for Portfolio Depositary Receipts. Commentary .05 to proposed Rule 1000A–AEMI would not include a paragraph that is in current Amex Rule 1000A requiring manual input for the entry of orders; Commentary .06 to current Amex Rule 1000A would not be included in the language of proposed Rule 1000A–AEMI due to the proposed rules on crossing orders that would become effective at that time; and Commentaries .08 and .09 to Rule 1000A would not be included in the language of proposed Rule 1000A–AEMI due to being replaced by the parity allocation methodology of proposed Rule 126–AEMI. A minimum price variation of $0.0001 for such quotes and orders[71] priced under $1.00 is being added as provided for by Regulation NMS. In addition, the proposed rule would provide that the minimum price variation for quotations and orders in a security that has been exempted by the Commission from Rule 612 of Regulation NMS would be the minimum price variation set forth in the Commission's exemption order for that security.

Rule 1200–AEMI. Trading of Trust Issued Receipts—Rules of General Applicability

As with current Amex Rules 1000 and 1000A, the Exchange is proposing to exclude from proposed Rule 1200–AEMI certain language that is in current Amex Rule 1200 requiring manual input for the entry of orders, due to incompatibility with the operation of AEMI.

Rule 1200A–AEMI. Commodity-Based Trust Shares

As with current Amex Rules 1000 and 1000A, the Exchange is proposing to exclude from proposed Rule 1200A–AEMI certain language that is in current Amex Rule 1200A requiring manual input for the entry of orders, due to incompatibility with the operation of AEMI.

Rule 1200B–AEMI. Currency Trust Shares

As with Amex Rules 1000 and 1000A, the Exchange is proposing to exclude from proposed Rule 1200B–AEMI certain language that is in current Amex Rule 1200B requiring manual input for the entry of orders, due to incompatibility with the operation of AEMI.

Rule 1500–AEMI. Trading of Partnership Units

As with current Amex Rules 1000 and 1000A, the Exchange is proposing to exclude from proposed Rule 1500–AEMI certain language that is in current Amex Rule 1500 requiring manual input for the entry of orders, due to incompatibility with the operation of AEMI.

[67] An example of an image transmission would be a picture of a written time stamp of an order. The previous restriction was based on bandwidth limitations.

[68] *See* proposed Rules 126–AEMI, 131–AEMI(r), and 152–AEMI.

[69] In Amendment No. 5, the Exchange changed the language of this sentence that the minimum price increments apply to quotes and orders in a security.

[70] *See* proposed Rule 127–AEMI.

[71] In Amendment No. 5, the Exchange changed the language of this sentence that the minimum price increments apply to quotes and orders in a security.

Company Guide, Section 910–AEMI. Relationship With Specialist Procedures, Rules and Regulations

This section of the Amex Company Guide deals with the relationship between an issuing company and the Specialist in its securities. Proposed Section 910–AEMI contains language not in current Section 910 to reflect the fact that, under AEMI, orders would be transmitted to the Specialist through the Exchange's systems rather than manually or by telephone. The proposed section would also contain revised language in paragraph (d)(i) regarding prohibited disclosure by Specialists to conform to the corresponding provisions of proposed Rule 207–AEMI (discussed above).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Regulation NMS, as well as with Section 6(b) of the Act,[72] in general, and furthers the objectives of Section 6(b)(5),[73] 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 Exchange believes the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[72] 15 U.S.C. 78f(b).

[73] 15 U.S.C. 78f(b)(5).

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 by the Exchange on this proposal.

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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Number SR–Amex–2005–104 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–2005–104. 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. Copies of the 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 Number SR–Amex–2005–104 and should be submitted on or before August 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[74]

J. Lynn Taylor,

Assistant Secretary.

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[74] 17 CFR 200.30–3(a)(12).