

*Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**  
Clearance Officer.

[FR Doc. E7-7303 Filed 4-17-07; 8:45 am]

BILLING CODE 7905-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55612; File No. 4-536]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Chicago Board Options Exchange, Incorporated and the National Association of Securities Dealers, Inc.

April 10, 2007.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 17d-2 thereunder,<sup>2</sup> notice is hereby given that on April 5, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE") and the National Association of Securities Dealers, Inc. ("NASD") (together with the CBOE, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of regulatory responsibilities with respect to the CBOE Stock Exchange, LLC ("CBSX"), dated April 4, 2007 ("17d-2 Plan"). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

#### I. Introduction

Section 19(g)(1) of the Act,<sup>3</sup> among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.<sup>4</sup> Without

this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act<sup>5</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>6</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>7</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>8</sup> When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.<sup>9</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan

effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

#### II. Proposed Plan

The Commission recently approved proposed rule changes submitted by CBOE to establish the CBSX as a facility of CBOE.<sup>10</sup> CBSX is a fully automated marketplace for trading of non-option securities by CBOE members.

Pursuant to the proposed 17d-2 Plan, NASD would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations. The proposed 17d-2 Plan is intended to reduce regulatory duplication, with respect to CBSX, for firms that are common members of both CBOE and NASD.<sup>11</sup>

The text of the plan delineates regulatory responsibilities with respect to the Parties, including responsibility for CBOE rules applicable to the CBSX. Included in the proposed plan is an exhibit (the "CBOE Certification of Common Rules," referred to herein as the "Certification") that lists every CBOE rule, and the federal securities laws, rules, and regulations thereunder, for which NASD would bear responsibility under the plan for overseeing and enforcing with respect to common members.

In particular, under the 17d-2 Plan, NASD would assume examination and enforcement responsibility relating to compliance by dual members and persons associated therewith with the rules of CBOE that are substantially similar to the applicable rules of NASD

<sup>10</sup> Accordingly, CBOE serves as CBSX's self-regulatory organization and has regulatory responsibility for the activities of CBSX. See Securities Exchange Act Release Nos. 55326 (February 21, 2007), 72 FR 8816 (February 27, 2007) (SR-CBOE-2006-106) (relating to a permit program for CBSX); 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007) (SR-CBOE-2006-110) (relating to governance structure of CBSX); and 55392 (March 2, 2007), 72 FR 10572 (March 8, 2007) (SR-CBOE-2006-112) (relating to trading rules for CBSX).

<sup>11</sup> The proposed 17d-2 Plan refers to these common members as "Dual Members." See Paragraph 1(c) of the proposed 17d-2 Plan.

<sup>5</sup> 15 U.S.C. 78q(d)(1).

<sup>6</sup> See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

<sup>7</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

<sup>8</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>9</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

<sup>1</sup> 15 U.S.C. 78q(d).

<sup>2</sup> 17 CFR 240.17d-2.

<sup>3</sup> 15 U.S.C. 78s(g)(1).

<sup>4</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

("Common Rules"),<sup>12</sup> as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification.<sup>13</sup> Under the plan, CBOE would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving CBOE's own marketplace, including, without limitation, CBOE's rules relating to the rights and obligations of market makers; registration pursuant to its unique rules (i.e., non-Common Rules); its duties as a DEA pursuant to Rule 17d-1 under the Act; and any rules that are not Common Rules.

The text of the 17d-2 Plan is as follows:

**Agreement Between NASD and Chicago Board Options Exchange, Incorporated Pursuant to Rule 17d-2 Under the Securities Exchange Act of 1934**

This Agreement, by and between the National Association of Securities Dealers, Inc. ("NASD") and the Chicago Board Options Exchange, Incorporated ("CBOE"), is made this 4th day of April, 2007 (the "Agreement"), pursuant to section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and rule 17d-2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. NASD and CBOE may be referred to individually as a "party" and together as the "parties."

Whereas, NASD and CBOE desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records as it relates to the CBOE Stock Exchange, LLC; and

Whereas, NASD and CBOE desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, NASD and CBOE hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this

Agreement, the following terms shall have the following meanings:

(a) "*CBOE Rules*" or "*NASD Rules*" shall mean the rules of the CBOE or NASD, respectively, as the rules of an exchange or association are defined in Exchange Act section 3(a)(27).

(b) "*Common Rules*" shall mean the CBOE Rules that are substantially similar to the applicable NASD Rules in that examination for compliance with such rules would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule.

(c) "*Dual Members*" shall mean those CBOE members that are also members of NASD and the associated persons therewith.

(d) "*Effective Date*" shall have the meaning set forth in paragraph 14.

(e) "*Enforcement Responsibilities*" shall mean the conduct of appropriate proceedings, in accordance with the NASD Code of Procedure (the Rule 9000 Series) and other applicable NASD procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the NASD's Code of Procedure and sanctions guidelines.

(f) "*Regulatory Responsibilities*" shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. *Regulatory and Enforcement Responsibilities.* NASD shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, CBOE furnished NASD with a current list of Common Rules and certified to NASD that such rules are substantially similar to the corresponding NASD rule (the "Certification"). NASD hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of CBOE or NASD, CBOE shall submit an updated list of Common Rules to NASD for review which shall add CBOE rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete CBOE

rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be CBOE rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, NASD shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibilities" does not include, and CBOE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following:

(a) surveillance and enforcement with respect to trading activities or practices involving CBOE's own marketplace, including without limitation CBOE's rules relating to the rights and obligations of market makers;

(b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any CBOE Rules that are not Common Rules.

3. *Dual Members.* Prior to the Effective Date, CBOE shall furnish NASD with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.* There shall be no charge to CBOE by NASD for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. NASD shall provide CBOE with ninety (90) days advance written notice in the event NASD decides to impose any charges to CBOE for performing the Regulatory Responsibilities under this Agreement. If NASD determines to impose a charge, CBOE shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that NASD's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. *Reassignment of Regulatory Responsibilities.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations.

<sup>12</sup> See paragraph 1(b) of the proposed 17d-2 plan (defining Common Rules).

<sup>13</sup> See paragraph 1(f) of the proposed 17d-2 plan.

To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. *Notification of Violations.* In the event that NASD becomes aware of apparent violations of any CBOE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, NASD shall notify CBOE of those apparent violations for such response as CBOE deems appropriate. Apparent violations of all other applicable rules, including violations of the Common Rules, various securities acts, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by NASD as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on the CBOE, CBOE may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. *Continued Assistance.* NASD shall make available to CBOE all information obtained by NASD in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, NASD shall furnish CBOE any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, CBOE acknowledges and agrees to take all reasonable steps to maintain its confidentiality. CBOE shall make available to NASD any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

8. *Dual Member Applications.*

(a) Dual Members subject to this Agreement shall be required to submit, and NASD shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of both CBOE and NASD or associated with Dual Members thereof. Upon request, NASD shall advise CBOE of any changes of allied members, partners, officers, registered personnel

and other persons required to be approved by the rules of both CBOE and NASD.

(b) Dual Members shall be required to send to NASD all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions NASD becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, NASD shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep CBOE advised of its actions in this regard for such subsequent proceedings as CBOE may initiate.

(d) Notwithstanding the foregoing, NASD shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination meets the CBOE requirements for general membership or for specified categories of membership or participation in the CBOE. NASD shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of the CBOE, or a person associated with, or requesting association with, a member or participant of the CBOE.

9. *Branch Office Information.* NASD shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, NASD shall advise CBOE of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. *Customer Complaints.* CBOE shall forward to NASD copies of all customer complaints involving Dual Members received by CBOE relating to NASD's Regulatory Responsibilities under this Agreement. It shall be NASD's responsibility to review and take appropriate action in respect to such complaints.

11. *Advertising.* NASD shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with NASD in accordance with

NASD's filing procedures and is accompanied with any applicable filing fees set forth in NASD Rules. Such review shall be made in accordance with then applicable NASD rules and interpretations. The advertising of Dual Members shall be subject only to compliance with appropriate NASD rules and interpretations.

12. *No Restrictions on Regulatory Action.* Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

13. *Termination.* This Agreement may be terminated by CBOE or NASD at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

14. *Effective Date.* This Agreement shall be effective upon approval of the Commission.

15. *Arbitration.* In the event of a dispute between the parties as to the operation of this Agreement, CBOE and NASD hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

16. *Separate Agreement.* This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act between the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange LLC, the National Association of Securities Dealers, Inc., the New York Stock Exchange, LLC, the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on December 1, 2006, and as may be amended from time to time.

17. *Notification of Members.* CBOE and NASD shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

18. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the

Commission before they become effective.

19. *Limitation of Liability.* Neither NASD nor CBOE nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of NASD or CBOE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No

warranties, express or implied, are made by NASD or CBOE with respect to any of the responsibilities to be performed by each of them hereunder.

20. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, NASD and CBOE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve CBOE of any and all responsibilities with respect to matters allocated to NASD pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

In witness whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

National Association Of Securities Dealers, Inc.

By \_\_\_\_\_

Name:

Title:

Chicago Board Options Exchange, Incorporated

By \_\_\_\_\_

Name:

Title:

### Exhibit 1

### CBOE Certification of Common Rules

CBOE hereby certifies that the requirements contained in the CBOE Rules listed below are identical to, or substantially similar to, the NASD or SEC Rules identified.†

CBOE rule(s)	NASD or SEC rule(s)††
4.18 Prevention of the Misuse of Material, Nonpublic Information .....	Section 15(f) of the Securities Exchange Act of 1934 (Exchange Act).†††
4.20 Anti-Money Laundering Compliance Program .....	3011 Anti-Money Laundering Compliance Program.
9.3 Registration and Termination of Representatives .....	1031(a), (b) Registration Requirements 1140(a), (d) Electronic Filing Rules, and NASD By-Laws, Art. V, Sections 2 and 3 Registered Representatives and Associated Persons.
9.3A Continuing Education For Registered Persons .....	1120 Continuing Education Requirements.
9.4(a) Other Affiliations of Registered Associated Persons .....	3030 Outside Business Activities of an Associated Person.
9.12 Statements of Accounts to Customers†††† .....	2340 Customer Account Statements.
9.13 Statement of Financial Condition to Customers .....	Exchange Act Rule 17a-5.
9.16 Restrictions on Pledge and Lending of Customers' Securities .....	2330(a)-(d) Customers' Securities or Funds.
9.18 Guarantees and Profit Sharing .....	2330(e) & (f) Customers' Securities or Funds.†††††
9.20 Transfer of Accounts .....	11870 Customer Account Transfer Contracts.
9.23 Customer Complaints††††† .....	3110(d) Books and Records.
9.24 Telephone Solicitation .....	2212 Telemarketing and 3110(g) Books and Records.
9.25 Borrowing From or Lending to Customers .....	2370 Borrowing From or Lending to Customers.
53.6(c) Duty to Know and Approve Customers .....	2310 Recommendations to Customers (Suitability) and 3110(c) Books and Records.
53.6(d) Branch Offices of Member Organizations .....	1021(a) Registration Requirements and IM-1000-4 Branch Offices and Offices of Supervisory Jurisdiction.
53.6(e) Discretionary Accounts .....	2510 Discretionary Accounts.
53.6(f) Confirmation to Customers .....	2230 Confirmations and Exchange Act Rule 10b-10.†††††††
53.6(g) Communications to Customers .....	2210(b) and(d) Communications with the Public and IM-2210-1(6) Guidelines to Ensure That Communications With the Public Are Not Misleading.
53.6(h) Supervision of Accounts .....	3010(a), (b) Supervision and 3110(c) Books and Records.

†To the extent that any CBOE Rule listed herein makes reference to options, such rule shall be read to apply to equity securities as provided in CBOE Rule 53.6.

††CBOE will be responsible for any significant differences between its rules and the comparable NASD rule identified.

†††NASD shall not have any Regulatory Responsibilities regarding the CBOE requirement to have Form X-17A-5 filed with CBOE; responsibility for such requirement remains with CBOE.

††††NASD shall not have any Regulatory Responsibilities regarding the CBOE requirement that the statement have a legend requesting the customer to advise the member of any material change in the customer's investment objectives or financial situation; responsibility for such requirement remains with CBOE.

†††††The NASD Rule requires, among other things, prior written approval of the member employing the associated person in order for such associated person to share in accounts of a customer, whereas the CBOE rule requires consent of the member *carrying* the account. To the extent that the employing member and carrying member are different firms, the NASD's and CBOE's rule differ, and NASD's Regulatory Responsibility will not cover CBOE's rule; responsibility for such requirement remains with CBOE.

††††††NASD shall not have any Regulatory Responsibilities regarding the CBOE requirement of what must be contained in the complaint file or the timing during which the complaint must be sent to the central file by the branch office; responsibility for such requirement remains with CBOE.

†††††††NASD shall not have any Regulatory Responsibilities regarding the CBOE requirement to disclose on a confirmation whether a transaction was executed on the CBOE; responsibility for such requirement remains with CBOE.

\* \* \* \* \*

### III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act<sup>14</sup> and Rule 17d-2 thereunder,<sup>15</sup> after May 9, 2007, the Commission may, by written notice, declare the plan submitted by CBOE and NASD, File No. 4-536, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

### IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve proposed 17d-2 Plan and to relieve CBOE of the responsibilities which would be assigned to NASD, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-536 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number 4-536. 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/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of the CBOE and NASD. 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 4-536 and should be submitted on or before May 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-7321 Filed 4-17-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55619; File No. SR-Amex-2007-31]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Charges for Equities, ETFs, and Nasdaq UTP Securities

April 12, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 30, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. On April 10, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to revise the equities, Exchange Traded Funds and Trust Issued Receipts ("ETFs"), and Nasdaq UTP Fee Schedules to eliminate

the five percent discount applied to each firm's total charges for customer orders in equities, ETFs, and Nasdaq UTP securities. The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at Amex, and in 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 Exchange recently revised the transaction charges for its members and member organizations largely relating to the Exchange's new hybrid market trading platform (known as AEMI), the implementation of Regulation NMS, and changes in the competitive landscape for equities and ETFs.<sup>3</sup> These new transaction charges became effective on February 22, 2007. As part of the new transaction charges, the Exchange provided that a five percent discount will be applied to each firm's total charges for customer orders in equities, ETFs, and Nasdaq UTP securities. The five percent discount does not apply to charges for specialists and registered traders. The Exchange is now proposing to eliminate the five percent discount in all product lines. The Exchange will eliminate the five percent discount effective April 1, 2007.

###### 2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act<sup>4</sup> regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

<sup>3</sup> See Securities Exchange Act Release No. 55458 (March 13, 2007), 72 FR 13320 (March 21, 2007) (SR-Amex-2007-23).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78q(d)(1).

<sup>15</sup> 17 CFR 240.17d-2.

<sup>16</sup> 17 CFR 200.30-3(a)(34).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.