

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55378; File No. SR-Amex-2007-17]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Revising the AEMI and AEMI-One Rules Relating to Portfolio Depository Receipts and Index Fund Shares

March 1, 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 February 5, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Amex. The Exchange filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On February 22, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. 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 revise two of its AEMI rules and two of its AEMI-One rules, relating in each case to portfolio depository receipts (“PDRs”) and index fund shares (“IFSs”) that trade on the Amex, in order to conform these rules to changes previously approved by the Commission to the corresponding legacy rules for these securities. Among other things, these proposed changes include generic listing standards for series of PDRs and IFSs that are based on international or global indexes or on indexes previously approved by the Commission for the trading of PDRs, IFSs, options or other specified index-based securities. The proposed conforming rule changes would not make any changes to the manner in which PDRs and IFSs trade on the AEMI platform, but are concerned primarily with eligibility

criteria for index components, index methodology and calculation, and intraday dissemination of information on estimated share value. The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and www.amex.com.

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

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

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

###### 1. Purpose

The Exchange has recently adopted two sets of rules in connection with the operation of its new hybrid market trading platform for equity products and exchange traded funds, designated as AEMI<sup>SM</sup> (the “Auction and Electronic Market Integration” platform). The initial version of AEMI is referred to as “AEMI-One” and is currently operational on a pilot basis<sup>5</sup> through the day 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<sup>6</sup> (the latter date being referred to as the “Trading Phase Date”).<sup>7</sup> On the Trading Phase Date, the regular AEMI rules will become effective<sup>8</sup> and the AEMI-One rules will

cease to be operative. As each security is migrated from the legacy platform to the AEMI platform during the AEMI-One pilot, any legacy rule for which there is a corresponding AEMI-One rule will cease to be applicable and the AEMI-One rule will then become the applicable rule for that security (e.g., Rule 1000 will cease to apply and Rule 1000-AEMI-One will become applicable). Other legacy rules with respect to PDRs and IFSs without corresponding AEMI-One or AEMI counterpart rules (e.g., Rule 1001 or Rule 1001A) will continue to be applicable to AEMI and the AEMI-One pilot.

The Exchange proposes to revise Rules 1000-AEMI-One and 1000-AEMI (relating to PDRs) and Rules 1000A-AEMI-One 1000A-AEMI (relating to IFSs) in order to conform these rules to changes previously approved by the Commission to the corresponding legacy rules for these securities. In particular, the Exchange is proposing to make the same changes to these AEMI-One and AEMI rules that were approved by the Commission for legacy Rules 1000 and 1000A in Securities Exchange Act Release Nos. 54739 and 55018.<sup>9</sup> Among other things, these proposed changes include generic listing standards for series of PDRs and IFSs that are based on international or global indexes or on indexes previously approved by the Commission for the trading of PDRs, IFSs, options or other specified index-based securities. The proposed conforming rule changes would not make any changes to the manner in which PDRs and IFSs trade on the AEMI platform, but are concerned primarily with eligibility criteria for index components, index methodology and calculation, and intraday dissemination of information on estimated share value. The Exchange states that the proposed rule text is substantially identical to the

Rule Change and Amendments No. 1, 2, 3, 4, and 5 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 6, To Establish a New Hybrid Trading System Known as AEMI).

<sup>9</sup> See Securities Exchange Act Release No. 54739 (Nov. 9, 2006), 71 FR 66993 (Nov. 17, 2006) (SR-Amex-2006-78) (Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to Generic Listing Standards for Series of Portfolio Depository Receipts and Index Fund Shares Based on International or Global Indexes); see also Securities Exchange Act Release No. 55018 (Dec. 28, 2006), 72 FR 1040 (Jan. 9, 2007) (SR-Amex-2006-109) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing Standards for Series of Portfolio Depository Receipts and Index Fund Shares).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 54709 (Nov. 3, 2006), 71 FR 65847 (Nov. 9, 2006) (SR-Amex-2006-72) (Order Approving a Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, To Adopt New Rules To Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform For Equity Products and Exchange Traded Funds).

<sup>6</sup> 17 CFR 242.611. The Order Protection Rule requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to certain exceptions.

<sup>7</sup> The Trading Phase Date is currently established as March 5, 2007.

<sup>8</sup> See Securities Exchange Act Release No. 54552 (Sept. 29, 2006), 71 FR 59546 (Oct. 10, 2006) (SR-Amex-2005-104) (Order Approving a Proposed

text of the existing legacy rules mentioned above.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days

prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay because all of the securities trading on the Exchange are trading on the AEMI platform under the AEMI-One pilot and subject to the AEMI-One rules (rather than the legacy rules), which will be replaced by the AEMI rules on the Trading Phase Date.<sup>15</sup> In addition, recently, the Exchange submitted another proposed rule change that would revise legacy Rules 1000 and 1000A.<sup>16</sup> The Exchange states that, upon approval, those rules will require another rule filing to provide for changes to the corresponding AEMI-One and AEMI rules, and believes that there is likely to be less confusion regarding the latter filing if the changes proposed in the instant rule filing are approved and become operative first.

The Commission has determined to waive the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit a smoother transition to the AEMI-One and AEMI rules. The Commission notes that the proposed rule text is substantially identical to the text of CBOE's existing legacy rules.<sup>17</sup> For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.<sup>18</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

<sup>15</sup> The Exchange notes that, in contrast to the Exchange's AEMI-One rules, its AEMI rules (and any changes thereto) will not actually become effective and operative (as provided in Rule 1A-AEMI) until the Trading Phase Date, currently scheduled for March 5, 2007. That date is within the 30-day delay period, so a waiver is needed.

<sup>16</sup> See Securities Exchange Act Release No. 55240 (Feb. 5, 2007), 72 FR 6624 (SR-Amex-2007-07) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Amending Existing Rules for Portfolio Depository Receipts and Index Fund Shares).

<sup>17</sup> See Securities Exchange Act Release Nos. 54739 and 55018, *supra* note 9. The same standards previously approved by the Commission (eligibility criteria for index components, index methodology and calculation, and intraday dissemination of information on estimated share values) that are already in place with respect to securities trading on the legacy platform will, as a result of this proposed rule change, merely continue to apply to those same securities once they are migrated to the AEMI platform.

<sup>18</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.<sup>19</sup>

## IV. Solicitation of Comments

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

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2007-17 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-2007-17. 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

<sup>19</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on February 22, 2007, the date on which the Exchange filed Amendment No. 1.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> *Id.*

Number SR-Amex-2007-17 and should be submitted on or before March 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

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

[FR Doc. E7-4190 Filed 3-8-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55381; File No. SR-CBOE-2007-18]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Request Permanent Approval of a Pilot Program Relating to Market-Makers Quoting Remotely

March 1, 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 February 22, 2007, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CBOE proposes to amend CBOE Rule 8.3 to request permanent approval of a pilot program relating to Market-Makers quoting away from CBOE’s trading floor. The text of the proposed rule change is available on CBOE’s Web site (<http://www.cboe.org/Legal>), at the CBOE’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

The purpose of the proposed rule change is to request permanent approval of an existing Pilot Program that allows a CBOE Market-Maker to submit electronic quotations away from CBOE’s trading floor in his/her appointed Hybrid Classes and Hybrid 2.0 Classes. In March 2005, CBOE amended its rules relating to Market-Maker appointments and quoting obligations.<sup>5</sup> Among other changes, CBOE amended Rule 8.3 to provide that a Market-Maker may submit electronic quotations from a location outside of his/her appointed trading station.<sup>6</sup> Previously, Market-Makers were only permitted to stream electronic quotations in their appointed Hybrid and Hybrid 2.0 classes when they were physically present in the trading crowd. In making this change, CBOE determined to request that it only be approved on a pilot basis to give CBOE the ability to evaluate the effectiveness of allowing Market-Makers to quote remotely. CBOE extended the Pilot Program for an additional year last March 2006.<sup>7</sup> The current Pilot Program is scheduled to expire on March 24, 2007.

CBOE believes that the Pilot Program has been successful, in that it allows Market-Makers to choose how they

<sup>5</sup> See Securities Exchange Act Release No. 51429 (March 24, 2005), 70 FR 16536 (March 31, 2005) (approving SR-CBOE-2004-58).

<sup>6</sup> Last year, CBOE amended its rules to allow Market-Makers to create a “Virtual Trading Crowd” appointment, and also modified the language in Rule 8.3(c) such that it states a Market-Maker can quote electronically away from CBOE’s trading floor pursuant to the Pilot Program. (See Securities Exchange Act Release No. 54182 (July 20, 2006), 71 FR 42692 (July 20, 2006) (approving SR-CBOE-2006-51).)

<sup>7</sup> See Securities Exchange Act Release No. 53410 (March 3, 2006), 71 FR 12747 (March 13, 2006) (granting immediate effectiveness to SR-CBOE-2006-24).

would like to participate in CBOE’s Hybrid Trading System, *i.e.*, electronically, in open outcry, or both. Although not all Market-Makers have chosen to quote electronically away from CBOE’s trading floor in their appointed Hybrid Classes and Hybrid 2.0 Classes, those Market-Makers that have availed themselves of this Pilot Program continue to provide liquidity and increased competition in their appointed option classes when they quote remotely. CBOE has not experienced any negative effects of allowing Market-Makers to quote from a location away from CBOE’s trading floor. Thus, CBOE believes it would be appropriate and beneficial to permanently approve the Pilot Program, and permit Market-Makers to continue to have the option to quote electronically away from CBOE’s trading floor.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,<sup>9</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

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

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4<sup>11</sup>

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).