

the securities; the prices quoted; the times and dates the quotations were received; and whether such securities were *First Tier Securities* or *Second Tier Securities*.

(b) Each Money Market Portfolio shall maintain a ledger or other record showing, on a daily basis, the percentage of the Money Market Portfolio's *Total Assets* represented by *Second Tier Securities* acquired from the Dealer.

(c) Each Money Market Portfolio will maintain records sufficient to verify compliance with the volume limitations contained in condition 3, above. The Dealer will provide the Money Market Portfolios with all records and information necessary to implement this requirement.

(d) Each Money Market Portfolio will maintain records sufficient to verify compliance with the repurchase agreement requirements contained in condition 2, above.

The records required by this condition 8 will be maintained and preserved in the same manner as records required under rule 31a-1(b)(1).

9. Guidelines—Each of the compliance departments of the Advisers and of the Dealers (the "Compliance Departments") will prepare and, as necessary, update guidelines for personnel of the Advisers and the Dealer, as the case may be, to make certain that transactions conducted pursuant to the exemption comply with the conditions of the exemption, and that the parties generally maintain arm's-length relationships. In training personnel of the Dealer, particular emphasis will be given to the fact that the Money Market Portfolios are to receive rates as favorable as other institutional purchasers buying the same quantities. The Compliance Departments will periodically monitor the activities of the Advisers and Dealer to make certain that the conditions set forth in the exemption are adhered to.

10. Audit Committee Review—The audit committees of the respective Boards of each of the Money Market Portfolios (each an "Audit Committee"), comprised of trustees or directors who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), will prepare, periodically review and update the guidelines for the Advisers and the Dealer to ensure that transactions conducted pursuant to the exemption comply with the conditions set forth therein and that the above procedures are followed in all respects. The respective Audit Committees will periodically monitor the activities of the Money Market Portfolios, the Advisers,

and the Dealer in this regard to ensure that these matters are being accomplished.

11. Scope of Exemption—Applicants expressly acknowledge that any order issued on the application would grant relief from section 17(a) of the Act only, and would not grant relief from any other section of, or rule under, the Act including, without limitation, rule 2a-7. Any order issued on the application will not extend to any investment company advised or sub-advised by LBI.

12. Board Review—The respective Boards, including a majority of the Independent Trustees, have approved the Money Market Portfolio's participation in transactions conducted pursuant to the exemption and have determined that such participation by the Money Market Portfolios is in the best interests of the Money Market Portfolios and their investors. The minutes of the meetings of the Boards at which this approval was given reflect in detail the reasons for the Boards' determinations. The Boards will review no less frequently than annually the Money Market Portfolios' participation in transactions conducted pursuant to the exemption during the prior year and determine whether the Money Market Portfolios' participation in such transactions continues to be in the best interests of the Money Market Portfolios and their investors. Such review will include (but not be limited to) (a) A comparison of the volume of transactions in each type of security conducted pursuant to the exemption to the market presence of the Dealer in the market for that type of security, and (b) a determination that the Money Market Portfolios are maintaining appropriate trading relationships with other sources for each type of security to ensure that there are appropriate sources for the quotations required by condition 4 above. The minutes of the meetings of the Boards at which such determinations are made will reflect in detail the reasons for the Boards' determinations.

For the Commission, by the Division of Investment Management, under delegated authority.

**Nancy M. Morris,**

*Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56177; File No. SR-CBOE-2007-89]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

August 1, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. 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> which renders it effective upon filing with the Commission.<sup>5</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

The CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the "Rule"), relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System ("Hybrid") through December 31, 2007. No other changes are being made to the Rule. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and (<http://www.cboe.org/Legal>).

#### 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 CBOE included statements concerning

<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).

<sup>5</sup> The Exchange has requested that the Commission waive the 5 day pre-filing notice and 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion *infra* Section III.

the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

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

**1. Purpose**

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.<sup>6</sup> Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit the duration of the Rule until September 14, 2005. The duration of the Rule was thereafter extended through July 31, 2007.<sup>7</sup> As the duration period expires on July 31, 2007, the Exchange proposes to extend the effectiveness of the Rule through December 31, 2007.<sup>8</sup>

<sup>6</sup> See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR-CBOE-2004-75).

<sup>7</sup> See Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (SR-CBOE-2005-76) (extending the duration of the Rule through December 14, 2005); 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (SR-CBOE-2005-102) (extending the Rule through March 14, 2006); 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (SR-CBOE-2006-22) (extending the duration of the Rule through July 14, 2006); 54164 (July 17, 2006), 71 FR 42143 (July 25, 2006) (SR-CBOE-2006-60) (extending the duration of the Rule through October 31, 2006); 54680 (November 1, 2006), 71 FR 65554 (November 8, 2006) (SR-CBOE-2006-86) (extending the duration of the Rule through January 31, 2007); 55219 (February 1, 2007), 72 FR 6305 (February 9, 2007) (SR-CBOE-2007-10) (extending the duration of the Rule through April 30, 2007) and 55676 (April 27, 2007), 72 FR 25348 (May 4, 2007) (SR-CBOE-2007-40) (extending the duration of the Rule through July 31, 2007).

<sup>8</sup> In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange has issued regulatory circulars to members informing them of the applicability of these Section 11(a)(1) requirements each time the

**2. Statutory Basis**

Extension of the duration of the Rule will allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. Accordingly, CBOE 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>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>10</sup> requirements 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*

The Exchange neither solicited nor received comments on the proposal.

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

Because the foregoing proposed 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 thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.<sup>13</sup>

duration of the Rule was extended. See CBOE Regulatory Circulars RG05-103 (November 2, 2005), RG06-001 (January 3, 2006), RG06-34 (April 7, 2006), RG06-79 (July 31, 2006), RG06-115 (November 8, 2006), RG07-21 (February 8, 2007) and RG07-53 (May 17, 2007). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> The Exchange has requested that the Commission waive the requirement that the

A proposed rule change filed under Commission Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For these reasons, the Commission designates the proposed rule change as operative upon filing.<sup>15</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 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.

**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-CBOE-2007-89 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.

Exchange provide 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 on which the Exchange filed the proposed rule change pursuant to Rule 19b-4(f)(6)(iii). The Commission hereby grants this request. See 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

All submissions should refer to File Number SR-CBOE-2007-89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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-CBOE-2007-89 and should be submitted on or before August 28, 2007.

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

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7-15310 Filed 8-6-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56172; File No. SR-NASDAQ-2006-065]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendments No. 1, 3, and 4 Thereto To Reestablish a Quotation and Trading System, The PORTAL<sup>®</sup> Market, for Securities That Are Designated by Nasdaq as PORTAL Securities

July 31, 2007.

#### I. Introduction

On December 22, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") 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> a proposed rule change to reestablish a quotation and trading system, The PORTAL<sup>®</sup> Market ("PORTAL" or the "PORTAL Market"), for securities that are designated by Nasdaq as PORTAL securities. The system would allow PORTAL Participants<sup>3</sup> to trade with one another in a closed system. On March 6, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On April 3, 2007, Nasdaq filed Amendment No. 3 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 1, 2007.<sup>5</sup> The Commission received seven comment letters on the proposal from six commenters.<sup>6</sup> On July 16, 2007, Nasdaq filed Amendment No. 4 to the proposed rule change.<sup>7</sup> This order

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

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

<sup>3</sup> Defined *infra*.

<sup>4</sup> Amendment No. 2 was filed and withdrawn on April 3, 2007.

<sup>5</sup> See Securities Exchange Act Release No. 55669 (April 25, 2007), 72 FR 23874 (May 1, 2007) (the "Notice").

<sup>6</sup> See letters to Nancy M. Morris, Secretary, Commission, from NYPPEX, dated May 18, 2007; Lezlee Westine, President and CEO, TechNet, dated May 22, 2007; William J. Ginivan, General Counsel, Friedman, Billings, Ramsey & Co., Inc. ("FBR"), dated May 22, 2007 and July 18, 2007; Deborah L. Wince-Smith, President, Council on Competitiveness, dated May 25, 2007; and Mary Kuan, Managing Director and Assistant General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated May 30, 2007. In addition, an individual affiliated with Morgan Stanley, John McGuire, submitted a general inquiry with respect to the filing via e-mail on May 9, 2007.

<sup>7</sup> In response to a comment made by SIFMA, in Amendment No. 4, Nasdaq amended proposed Rule 6513 (Compliance with Rules and Registration Requirements) so that it applies only to PORTAL Dealers and PORTAL Brokers. Nasdaq stated that

approves the proposed rule change, as amended.

#### II. Description of the Proposal

The National Association of Securities Dealers, Inc. ("NASD") created the PORTAL Market in 1990,<sup>8</sup> simultaneously with the SEC's adoption of Rule 144A ("Rule 144A") under the Securities Act of 1933 ("Securities Act"),<sup>9</sup> to be a new trading system for the purpose of quoting, trading, and reporting trades in securities eligible for resale by Qualified Institutional Buyers ("QIBs") under Rule 144A.<sup>10</sup>

The PORTAL Market did not develop as anticipated. The Exchange believes this is, in part, because PORTAL securities could only be traded in the PORTAL Market and the original PORTAL rules imposed trade reporting for all transactions in PORTAL securities at a time when there were no trade reporting requirements for privately-placed securities.<sup>11</sup> In addition, Nasdaq believes PORTAL did not develop because it required use of cumbersome technology for access to the PORTAL Market computer system for reporting purposes, which was a stand-alone computer system.

After nearly a decade, NASD filed a proposed rule change to delete many features of the PORTAL Market that had become obsolete including rules governing the registration of PORTAL Dealers, PORTAL Brokers, and PORTAL Qualified Investors and rules that were intended to regulate the quotation and

the inclusion of PORTAL Qualified Investors (defined *infra*) in this rule was an error. In addition, Nasdaq stated that PORTAL would not be operational for debt securities at this time. Once the necessary changes are in place, Nasdaq will file a proposed rule change stating when PORTAL will be available for debt trading. Finally, Nasdaq removed obsolete references in the PORTAL Rules to CINS. This is a technical amendment and is not subject to notice and comment.

<sup>8</sup> See Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990) (SR-NASD-88-23). The PORTAL Rules were subsequently amended. See Securities Exchange Act Release Nos. 28678 (December 6, 1990), 55 FR 51194 (December 12, 1990) (SR-NASD-90-50); 33326 (December 13, 1993), 58 FR 66388 (December 20, 1993) (SR-NASD-91-5); 34562 (August 19, 1994), 59 FR 44210 (August 26, 1994) (SR-NASD-94-39); 35083 (December 12, 1994), 59 FR 65104 (December 16, 1994) (SR-NASD-94-65); 40424 (September 10, 1998), 63 FR 49623 (September 16, 1998) (SR-NASD-98-68); 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (SR-NASD-99-65); 44042 (March 6, 2001), 66 FR 14969 (March 14, 2001) (SR-NASD-99-66).

<sup>9</sup> See Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990).

<sup>10</sup> 17 CFR 230.144A.

<sup>11</sup> Currently, NASD Rule 6732 requires that transactions in PORTAL equity securities be reported to the OTC Reporting Facility and PORTAL debt securities be reported to the Trade Reporting and Compliance Engine Service ("TRACE").