

determine which matters may be significant, the engagement quality reviewer would need to document every issue and therefore would not perform any review procedures until the engagement team completed all audit work and finalized all of its conclusions.

The Commission does not believe that there is any inconsistency between the example in the adopting release and the requirements of Auditing Standard No. 7. The PCAOB specified in its adopting release that the example applies “if a reviewer identified a significant engagement deficiency to be addressed by the engagement team.” We believe that documentation suggested in the example from the adopting release is appropriate after the engagement quality reviewer has concluded that he or she has identified a significant engagement deficiency. However, since several comments were related to this point, we encourage the PCAOB to provide further implementation guidance on the documentation requirement.<sup>9</sup>

#### Standard of Care

Commenters generally expressed agreement with the revisions that the PCAOB made to the description of due professional care in the standard in response to comments, including establishing the expected standard of performance by referring to AU Section 230, *Due Professional Care in the Performance of Work* (“AU 230”).<sup>10</sup> However, many of the same commenters expressed concern with language in the adopting release about the concept of due professional care. Particularly, many commenters pointed to language in the adopting release that a qualified reviewer who has performed the required review with due professional care “will, necessarily, have discovered any significant engagement deficiencies that could reasonably have been discovered under the circumstances.” Certain commenters expressed a view that the language in the release could be read as requiring absolute assurance or a “flawless” review.<sup>11</sup>

The Commission believes that the PCAOB adequately responded to comments in this area during its reproposal process. We do not find any inconsistency between the PCAOB’s adopting release and the requirement to conduct the EQR with due professional

care as described in paragraphs 12 and 17 of Auditing Standard No. 7. Paragraph 12 of Auditing Standard No. 7 references AU 230, which is the source of guidance regarding due professional care in the PCAOB’s interim auditing standards. Moreover, the PCAOB specified in its adopting release that “the Board is not redefining due professional care in the context of the EQR standard.”

#### Definition of Partner

One commenter suggested that the PCAOB revise the description of the qualifications of the engagement quality reviewer in Auditing Standard No. 7 to specify that equity ownership in the firm is not a requirement for a reviewer.<sup>12</sup> The commenter believed Board language in its adopting release on the distinction between “partner” and “non-partner” could be considered “muddying and potentially biasing (and perhaps unintended) restrictive language.”

The discussion of requiring a partner or an individual in an equivalent position to perform the EQR is consistent with the Commission’s independence rules.<sup>13</sup> We do not believe that equity ownership is necessarily inherent in the analysis; rather the analysis of whether an individual is a partner or in an equivalent position is based on the organization of the individual firm and other related facts and circumstances.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed PCAOB Rules on Auditing Standard No. 7, *Engagement Quality Review*, and Conforming Amendment (File No. PCAOB–2009–02) are consistent with the requirements of the Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.

*It is therefore ordered*, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed PCAOB Rules on Auditing Standard No. 7, *Engagement Quality Review*, and Conforming Amendment (File No. PCAOB–2009–02) be and hereby are approved.

By the Commission.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2010–1028 Filed 1–20–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61349; File No. SR–CBOE–2010–004]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Trading Hours for CBSX

January 14, 2010.

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 January 12, 2010, the Chicago Board Options Exchange, Incorporated (“CBOE” 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 prepared by CBOE. CBOE has submitted the proposed rule change under 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. 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 Exchange proposes to modify trading hours for the CBOE Stock Exchange (“CBSX”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/Legal>), at the Exchange’s Office of the Secretary, and at the Commission.

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

<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>9</sup> We note clarifications have been provided in other contexts. For example, see PCAOB Staff Q&A at [http://www.pcaobus.org/Standards/Staff\\_Questions\\_and\\_Answers/2009/09-02\\_FASB\\_Codification.pdf](http://www.pcaobus.org/Standards/Staff_Questions_and_Answers/2009/09-02_FASB_Codification.pdf).

<sup>10</sup> See comments of CAQ, Deloitte, EY, Grant, KPMG, and PWC.

<sup>11</sup> See comments of Deloitte, Grant, and KPMG.

<sup>12</sup> See comments of PBTk.

<sup>13</sup> 17 CFR 210.2–01(f)(7)(ii).

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

1. Purpose

CBSX proposes to designate the time period from 8:30 a.m. CT until 3 p.m. CT as "CBSX Regular Trading Hours" for stock, IPR and IPS transactions and to make certain corresponding changes. CBSX also proposes to designate the time periods from 8 a.m. CT until 8:30 a.m. CT and 3 p.m. CT until 3:30 p.m. CT as "CBSX Extended Trading Hours" and to make certain corresponding changes. The proposed change would be effective as of February 1, 2010. CBOE also proposes to make changes corresponding to SR-CBOE-2009-083, which changed the time at which CBSX opens from 8:15 a.m. CT to 8 a.m. CT.<sup>5</sup> All changes have been requested by CBSX users. Other US-based exchanges permit trading after 3 p.m. CT, including the Nasdaq Stock Market.<sup>6</sup>

These changes do not change the effective "normal trading hours," on CBSX, which is and will remain from 8:30 a.m. CT to 3 p.m. CT. The periods from 8 a.m. CT until 8:30 a.m. CT and 3 p.m. CT until 3:30 p.m. CT will not qualify as "normal trading hours." Therefore, trading rules, policies and Designated Primary Market-Maker ("DPM") obligations during these periods may differ from those during normal trading hours, [sic] Some of these differences already exist in CBSX rules.

Specifically, the "Unusual Market Conditions" rule pertaining to trading halts for trading of IPRs and IPSs imposes different procedures during normal trading hours than it does during the 8 a.m. CT to 8:30 a.m. CT and 3:15 p.m. to 3:30 p.m. periods.<sup>7</sup> This difference already existed in CBSX rules; the proposed rule change would adjust the time periods listed in Rule 52.3(c)(1).

CBSX rules also already included differences between normal trading hours and the non-normal trading periods in the numerical guidelines used to determine whether or not a trade qualifies as "clearly erroneous." The proposed rule change would also adjust the time periods listed in Rule 52.4(c)(1).

Because the periods from 8 a.m. CT to 8:30 a.m. CT and 3 p.m. CT to 3:30 p.m. CT are not "normal trading hours,"

<sup>5</sup> See SR-CBOE-2009-083, 74 FR 57718 (November 9, 2009).

<sup>6</sup> See Nasdaq Stock Market Rules 4617 and 4120(b)(4), NYSEArca Rule 7.34(a), and BATS Rule 11.1(a).

<sup>7</sup> See CBOE Rule 52.3(c)(1).

CBSX DPMs will not be required to provide continuous quotes during these periods. The proposed rule change would amend Rule 53.56 to reflect this.

The Exchange represents that the later closing time will have no implications for CBSX systems. The Exchange represents that CBSX traders will have been notified of the time change via circular prior to the rule change taking effect.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Securities Exchange Act of 1934 ("Act")<sup>8</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes that 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, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Permitting trading until later in the day will permit investors greater opportunity to participate in the market, thereby removing an impediment to trading.

*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**

CBOE has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed

<sup>8</sup> 15 U.S.C. 78s(b)(1).

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

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

rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

CBOE has requested that the Commission waive a portion of the 30-day operative delay to permit the proposed rule change to become operative on February 1, 2010. CBOE believes that such waiver will facilitate CBSX providing its members with extended trading opportunities that are already available on other exchanges.<sup>13</sup> The Commission grants CBOE's request.<sup>14</sup> The Commission believes that such action is consistent with the protection of investors and the public interest because other U.S. exchanges currently provide extended trading hours subject to similar rules relating to investor protection.<sup>15</sup> Accordingly, CBOE's proposal does not appear to present any novel regulatory issues.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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. Please include File Number SR-CBOE-2010-004 on the subject line.

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) also requires an exchange to provide the Commission with 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 the proposed rule change or such shorter time as the Commission may designate. The Exchange satisfied this requirement.

<sup>13</sup> See note 6, *supra*.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> See CBOE Rule 31.5P(2)(a); CBOE Rule 51.2, Interpretation and Policy .01 (providing required disclosures for CBSX extended trading hours); and CBOE Rule 51.8(a) (prohibiting the entry of market orders during CBSX extended trading hours). See also BATS Rules 3.21 and 11.9(a)(2); Nasdaq Rules 4631 and 5740(a)(2); and NYSEArca Rule 7.34(e).

*Paper Comments:*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2010-004. 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 publicly available. All submissions should refer to File Number SR-CBOE-2010-004 and should be submitted on or before February 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-1020 Filed 1-20-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61347; File No. SR-NASDAQ-2010-003]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the NASDAQ Stock Market LLC To Amend the \$1 Strike Program To Allow the Listing of \$1 LEAPS

January 13, 2010.

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 January 11, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to amend its Chapter IV Supplementary Material .02 to Section 6 (Series of Options Contracts Open for Trading) to expand the Exchange's \$1 Strike Price Program ("Program" or "\$1 Strike Program")<sup>3</sup> to allow listing long-term option series ("LEAPS")<sup>4</sup> in \$1 strike price intervals up to \$5 in up to 200 option classes in individual stocks.

The Exchange requests that the Commission waive the 30-day operative

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

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

<sup>3</sup> The \$1 Strike Price Program was initially approved as a pilot on March 12, 2008. See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (order approving). The program was subsequently made permanent and expanded. See Securities Exchange Act Release Nos. 58093 (July 3, 2008), 73 FR 39756 (July 10, 2008) (SR-NASDAQ-2008-057) (notice of filing and immediate effectiveness); and 59588 (March 17, 2009), 74 FR 12410 (March 24, 2009) (SR-NASDAQ-2009-025) (notice of filing and immediate effectiveness).

<sup>4</sup> Long-Term Equity Anticipation Securities (LEAPS) are long term options that expire from twelve to thirty-nine months from the time they are listed. Chapter IV Section 8. Long-term index options are considered separately in Chapter XIV Section 11. For purposes of the Program, long-term options (LEAPS) are considered to be option series having greater than nine months until expiration. Chapter IV Supplementary Material .02 to Section 6.

delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>5</sup>

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com/Filings/>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

This proposed rule change is based on a filing previously submitted by Chicago Board Options Exchange, Incorporated ("CBOE") that was recently approved by the Commission.<sup>6</sup>

The purpose of the proposal is to expand the \$1 Strike Program in a limited fashion to allow NASDAQ to list new series in \$1 strike price intervals up to \$5 in LEAPS in up to 200 option classes on individual stocks.

Currently, under the \$1 Strike Program, the Exchange may not list option series having greater than nine months until expiration (LEAPS) at \$1 strike price intervals for any class selected for the Program. The Exchange also is restricted from listing any series that would result in strike prices being \$0.50 apart, unless the series are part of the \$.50 Strike Program.<sup>7</sup>

NASDAQ believes that its proposal to allow limited listing of option series having greater than nine months until expiration (LEAPS) in the Program is appropriate and will allow investors to

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See Securities Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (SR-CBOE-2009-068) (order approving proposed rule change to allow listing LEAPS in \$1 Strike Program).

<sup>7</sup> Regarding the \$.50 Strike Program, see Chapter IV Supplementary Material .05 to Section 6 and Securities Exchange Act Release No. 60952 (November 6, 2009), 74 FR 59277 (November 17, 2009) (SR-NASDAQ-2009-099) (notice of filing and order approving). The \$.50 Strike Program establishes strike price intervals of \$0.50 for options on stocks trading at or below \$3.00.

<sup>16</sup> 17 CFR 200.30-3(a)(12).