

based solely on the Processor's quarterly itemized statement audited pursuant to Processor's annual audit. Processor shall pay or bill Participants for the audit adjustments within thirty days of completion of the annual audit. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54938; File No. PCAOB-2006-02]

### Public Company Accounting Oversight Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adjusting Implementation Schedule of Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles

December 14, 2006.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on October 31, 2006, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change described in Items I and II below, which items have been prepared by the Board. The PCAOB has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Securities Exchange Act of 1934 ("Exchange Act") (as incorporated, by reference, into Section 107(b)(4) of the Act), which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Board's Statement of the Terms of Substance of the Proposed Rule Change

The PCAOB is filing with the SEC an adjustment of the implementation schedule for Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles. Specifically the Board will not apply Rule 3523 to tax services

provided on or before April 30, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins. The PCAOB is not proposing any textual changes to the Rules of the PCAOB.

#### II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

##### A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (a) Purpose

On July 26, 2005, the Board adopted certain rules related to registered public accounting firms' provision of tax services to public company audit clients. The rules were designed to address certain concerns related to auditor independence when auditors become involved in marketing or otherwise opining in favor of aggressive tax shelter schemes or in selling personal tax services to individuals who play a direct role in preparing the financial statements of public company audit clients. As part of this rulemaking, the Board adopted Rule 3523 to prohibit registered public accounting firms from providing any tax services to persons in a financial reporting oversight role at an audit client. Rule 3523 was approved by the Securities and Exchange Commission on April 19, 2006. Under the current implementation schedule set by the Board, Rule 3523 will not apply to tax services being provided pursuant to an engagement in process on April 19, 2006, provided that such services are completed on or before October 31, 2006.<sup>1</sup>

Rule 3523 applies to all tax services performed for persons in a financial reporting oversight role during the "audit and professional engagement period." The Board intends to revisit the application of Rule 3523 to tax services provided during the period before a registered public accounting firm becomes auditor of record for an audit client—that is, during only the "audit

period."<sup>2</sup> Accordingly, the Board has decided to adjust the implementation schedule for Rule 3523, as it applies to tax services provided during the "audit period," while it revisits this aspect of the rule. Specifically the Board will not apply Rule 3523 to tax services provided on or before April 30, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins.<sup>3</sup>

The implementation schedule for Rule 3523 as it applies to tax services provided during the professional engagement period remains unchanged.<sup>4</sup> Accordingly, as of November 1, 2006, registered public accounting firms must comply with Rule 3523 as it relates to tax services provided during the professional engagement period.

###### (b) Statutory Basis

The statutory basis for the proposed rule change is Title I of the Act.

##### B. Board's Statement on Burden on Competition

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

##### C. Board's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Board did not solicit or receive written comments on 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) of the Exchange Act (as incorporated, by reference, into Section 107(b)(4) of the Act), in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the

<sup>2</sup> Consistent with the SEC's independence rules, 17 CFR 210.2-01(f)(5), the phrase "audit and professional engagement period" is defined to include two discrete periods of time. The "audit period" is the period covered by any financial statements being audited or reviewed. Rule 3501(a)(iii)(1). The "professional engagement period" is the period beginning when the accounting firm either signs the initial engagement letter or begins audit procedures and ends when the audit client or the accounting firm notifies the SEC that the client is no longer that firm's audit client. Rule 3501(a)(iii)(2).

<sup>3</sup> This will apply whether there is an engagement in process on April 19, 2006 or not.

<sup>4</sup> PCAOB Release No. 2006-001 (March 28, 2006), at 3.

<sup>1</sup> PCAOB Release No. 2006-001 (March 28, 2006), at 2-3.

PCAOB. 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 Exchange Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of 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/pcaob.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number PCAOB–2006–02 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 PCAOB–2006–02. 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/pcaob.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 such filing also will be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without change; we do 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 PCAOB–

2006–02 and should be submitted on or before January 10, 2007.

By the Commission.  
**Nancy M. Morris,**  
*Secretary.*  
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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–54926; File No. SR–CBOE–2006–62]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Amending its Index Obvious Error Rule**

December 13, 2006.  
 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 July 7, 2006, 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, II, and III below, which Items have been substantially prepared by the Exchange. On October 30, 2006, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 amend CBOE Rule 24.16 (“Rule”), which is the Exchange’s rule applicable to the nullification and adjustment of transactions in index options, options on exchange-traded funds (“ETFs”), and options on HOLDing Company Depository Receipts (“HOLDERS”). The Exchange is proposing to amend the Rule in order to: (i) re-define what constitutes an “obvious price error;” (ii) provide for a Market-Maker to Market-Maker adjustment of obvious price errors (currently such erroneous transactions are subject to nullification); (iii) eliminate the nullification and adjustments provisions for erroneous quantity errors; and (iv) make various

<sup>1</sup> 15 U.S.C. 78s(b)(1).  
<sup>2</sup> 17 CFR 240.19b–4.  
<sup>3</sup> Amendment No. 1 (“Amendment No. 1”) supersedes and replaces the original filing in its entirety. The substance of Amendment No. 1 is incorporated into this notice.

non-substantive changes to the text of the Rule.

Below is the text of the proposed rule change. Proposed new language is in *italics* and proposed deletions are in [brackets].

Chicago Board Options Exchange, Incorporated

Rules

\* \* \* \* \*

Rule 24.16. Nullification and Adjustment of [Index Option] Transactions in *Index Options, Options on ETFs and Options on HOLDRS*

RULE 24.16. This Rule only governs the nullification and adjustment of transactions involving index options and options on ETFs or HOLDRS[s]. Rule 6.25 governs the nullification and adjustment of transactions involving equity options. Paragraphs (a)(1), [(2),] [(6)5] and [(7)6] of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review  
 A member or person associated with a member may have a trade adjusted or nullified, *as provided herein*, if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) Obvious Price Error: An obvious price[ing] error will be deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed *minimum error* amount. For series trading with normal bid-ask differentials as established in Rule 8.7(b)(iv), the prescribed *minimum error* amount shall be: [(a) the greater of \$0.10 or 10% for options trading under \$2.50; (b) 10% for options trading at or above \$2.50 and under \$5; or (c) \$0.50 for options trading at \$5 or higher.]

Fair market value	Minimum error amount
Below \$2 .....	\$0.125
\$2 to \$5 .....	\$0.20
Above \$5 to \$10 .....	\$0.25
Above \$10 to \$20 .....	\$0.40
Above \$20 .....	\$0.50

For series trading with bid-ask differentials that are [greater than]a *multiple* of the widths established in Rule 8.7(b)(iv), the prescribed *minimum error* amount shall *have the same multiple applied to the minimum error amount prescribed above*[be: (a) the greater of \$0.20 or 20% for options trading under \$2.50; (b) 20% for options trading at or above \$2.50 and under \$5;