

entities that are effectively restricted from providing auditing services.”<sup>9</sup> Both commenters disagreed with the Board’s response.

The Commission believes the Board appropriately explained its rationale for the difference in the Form 2 and Form 3 reporting requirements and believes that it is not unreasonable for the Board to request this information in the current manner in which it is requested.

#### 6. Requests for Additional Implementation Guidance

As noted in the above discussion, the Commission has considered the concerns and issues raised by commenters and appreciates the feedback. While the Commission believes the aforementioned matters are not unreasonable requirements, the Commission does encourage the Board to monitor implementation of its annual and special reporting rules and to be open to issuing timely implementation guidance as necessary as to these and the other comments raised, as was done with the Board’s implementation of its registration rules.<sup>10</sup>

#### B. Recommendation as to the Annual Fee

Section 102(f) of the Act requires the Board to “assess and collect a registration fee and an annual fee from each registered firm in amounts that are sufficient to recover the Board’s costs of processing and reviewing applications and annual reports.”<sup>11</sup> The PCAOB has collected registration fees from every firm that has registered with the Board since 2003. However, the Board has not assessed or collected annual fees from any registered firms.

In our order approving the PCAOB’s budget and accounting support fee for 2008, the Commission directed the PCAOB to, among other things, analyze historical and planned expenditures related to the review and processing of registrations and annual reports of public accounting firms.<sup>12</sup> We understand from this analysis that there are unrecovered historical costs that need to be collected from registered firms. In addition, the Board needs to determine the amount of current and future costs of reviewing and processing registrations and annual reports and how and over what period to recover those costs. These matters also are impacted due to changes to the Board’s

registration profile that may occur as a result of the requirement for auditors of non-public broker dealers to be registered with the Board for fiscal periods ending on or after January 1, 2009.

The Commission recommends that, in setting its annual fee under PCAOB Rule 2202, *Annual Fee*, the Board recover all of the unrecovered historical costs associated with the Board’s review and processing of registration applications in the first annual fee billed to registered public accounting firms and that these costs be recovered only from registered public accounting firms that were registered prior to January 1, 2009, and that such bill be separately itemized. In addition, for consistency and to aid transparency, the Commission recommends that future costs associated with reviewing and processing registration applications, processing annual and special reporting, and related system maintenance and development costs be recovered over a time period that is consistent with the time period the PCAOB uses for its financial statement purposes to depreciate long-lived assets similar to that used by the PCAOB in processing registration applications and annual and special reports.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed PCAOB rules on annual and special reporting by registered public accounting firms 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 proposed PCAOB Rules on Annual and Special Reporting by Registered Public Accounting Firms (File No. PCAOB–2008–04) be and hereby are approved.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–19838 Filed 8–18–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60491; File No. SR–CBOE–2009–057]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Market-Maker Orders

August 12, 2009.

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 August 10, 2009, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 is proposing to eliminate an order identification rule for Market-Maker and Specialist orders. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE 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 self-regulatory organization 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 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

Rule 6.73(d) currently provides that a Floor Broker holding an order for the account of a Market-Maker or Specialist shall verbally identify the order as such

<sup>9</sup> See PCAOB Release No. 2008–004, June 10, 2008 [page 22].

<sup>10</sup> See, e.g., [http://www.pcaob.org/Registration/Registration\\_FAQ.pdf](http://www.pcaob.org/Registration/Registration_FAQ.pdf); and [http://www.pcaob.org/Registration/2004-03-11\\_FAQ.pdf](http://www.pcaob.org/Registration/2004-03-11_FAQ.pdf).

<sup>11</sup> 15 U.S.C. 7212(f).

<sup>12</sup> See Release No. 34–56986 (December 18, 2007).

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

<sup>2</sup> 17 CFR 240.19b–4.

in open outcry prior to requesting a quote. The rule was originally adopted in 2002 to ensure that Market-Maker and Specialist orders are not inadvertently represented as public customer orders, which receive preferential treatment in certain instances under CBOE Rules.<sup>3</sup>

When the rule was adopted, CBOE noted that orders submitted electronically are required to contain an account origin code. An origin code identifies the type of order such that CBOE can route it to the proper location. For example, "C" orders represent public customer orders. At that time, "C" orders were eligible for routing to the Retail Automatic Execution System ("RAES"), which CBOE no longer utilizes. In addition, only "C" orders were eligible for entry into the limit order book when RAES was utilized, and public customer orders resting in the limit order book had priority over other bids and offers represented in the trading crowd at the same price. "M" orders, on the other hand, indicate the order emanates from a CBOE Market-Maker. "M" orders were not eligible for routing to RAES or for entry into the limit order book when RAES was in use and instead were routed to a crowd printer.<sup>4</sup> Origin codes also assisted, and continue to assist, CBOE and The Options Clearing Corporation in the clearing of trades.

The 2002 rule change simply extended the origin code requirement to the open outcry environment by requiring Market-Maker and Specialist orders to be verbally identified as such. The premise was that requiring the identification of the orders as Market-Maker or Specialist orders would reduce the likelihood that such orders would be inadvertently treated as public customer orders.

The Exchange is proposing to eliminate this requirement as it is superfluous and unnecessary. First, as indicated above, the requirement to verbally identify Market-Maker and Specialist orders was introduced as an added requirement beyond the order marking requirement so that such orders would not be inadvertently represented as public customer orders on the RAES trading platform. However, the

preferential treatment afforded to public customer orders was system enforced through the order marking requirement and, therefore, the requirement to verbally identify such orders was superfluous and unnecessary. Second, as indicated above, the Exchange no longer utilizes the RAES trading platform for which the order identification procedure was introduced. Instead CBOE utilizes the Hybrid Trading System, which permits public customer, Market-Maker, Specialist and other types of broker-dealer orders to be routed for automatic execution and to rest in a consolidated electronic book. Public customer orders resting in the consolidated electronic book do generally continue to have priority over other bids and offers at the same price when utilizing the Hybrid Trading System, however, this priority is system enforced for electronic transactions. For open outcry transactions, members are able to distinguish public customer orders in the consolidated electronic book because they are separately displayed through a public customer limit order book. Thus, the Market-Maker and Specialist verbal order identification requirement continues to be superfluous and unnecessary for the Hybrid Trading System. Third, the Exchange also notes that the CBOE Rules do not require the verbal identification of other order types, such as clearing firm and broker-dealer orders, in open outcry and the Exchange no longer believes it is necessary to single out and verbally identify Market-Maker and Specialist orders in open outcry either.

The Exchange notes that this rule change simply eliminates the requirement to verbally identify Market-Maker and Specialist orders in open outcry. Orders will continue to be required to contain an account origin code that identifies the type of order (e.g., an origin code of "M" is still used for Market-Maker orders).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>5</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</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 to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, by proposing to eliminate Rule 6.73(d) and its requirement to verbally identify Market-Maker and Specialist orders, which the Exchange as [sic] determined to be superfluous and unnecessary, the Exchange believes the proposed rule change should serve to remove an unnecessary burden and simplify the administration of its rules, while also maintaining other existing procedures that would reduce the likelihood that such orders would be inadvertently treated as public customer orders.

## 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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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

<sup>3</sup> See Securities Exchange Act Release No. 46102 (June 21, 2002), 67 FR 43692 (June 28, 2002) (SR-CBOE-2002-33) (immediately effective rule change relating to the identification of Market-Maker and Specialist orders).

<sup>4</sup> When RAES was utilized, the Exchange had also determined that clearing firm and broker-dealer orders utilizing origin codes "F" and "B" (but not Market-Makers or Specialist orders) were allowed to access RAES for automatic executions, but such broker-dealer orders could not be placed in the limit order book.

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Number SR-CBOE-2009-057 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-CBOE-2009-057. 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 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 Number SR-CBOE-2009-057 and should be submitted on or before September 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-19893 Filed 8-18-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60496; File No. PCAOB-2008-05]

### Public Company Accounting Oversight Board; Order Approving Proposed Rules on Succeeding to the Status of a Predecessor Firm

August 13, 2009.

#### I. Introduction

On August 4, 2008, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed rules (File No. PCAOB-2008-05) on succeeding to the status of a predecessor firm, pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 (the "Act"). Notice of the proposed rules was published in the **Federal Register** on June 18, 2009.<sup>1</sup> The Commission did not receive any comment letters relating to this rule proposal. For the reasons discussed below, the Commission is granting approval of the proposed rules.

#### II. Description

On July 28, 2008, the Board adopted rules and submitted to the Commission a rule proposal consisting of two new rules (PCAOB Rules 2108-2109) and a new form, Form 4, related to succeeding to the registration status of a predecessor firm. The proposed rules allow, in certain circumstances, a registered public accounting firm's registration status to continue with a firm that survives a merger or other change in the registered firm's legal form. If approved by the Commission, the rules on succession reporting would take effect 60 days after Commission approval. For firms that had a change in legal form, or that resulted from an acquisition or combination, in the period between the firm's registration and the effective date of the rules, those firms will be required to report the change on Form 4 within 14 days after the Commission's approval date.

The proposed rules provide the opportunity for continuity of a firm's registration in two categories: (1) changes related to a firm's legal form of organization or jurisdiction; and (2) transactions in which a registered firm is acquired by an unregistered entity or combines with other entities to form a new legal entity. The events to which the rules apply are events for which a firm plans, not unanticipated events to which a firm reacts. The proposed rules

are designed to facilitate a firm's ability to factor into its planning, and to predict with certainty, whether and how continuity of registration can be maintained.

The proposed rules set a deadline of 14 days for a firm to file a report on Form 4, and require certain information and representations in the form. If the firm files the form within the required timeframe, provides the required representations, and certifies that all required information is included, then continuity of registration is automatic, without the need for separate Board action. The rules and Form 4 also build in safeguards to ensure that the Form 1 registration process is not circumvented in circumstances where that process is more appropriate than Form 4 succession.

#### III. Discussion

The Commission did not receive any comment letters relating to the rule proposal.

#### IV. Conclusion

The Commission finds that the proposed PCAOB rules on succeeding to the registration status of a predecessor firm 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 proposed PCAOB Rules on Succeeding to the Registration Status of a Predecessor Firm (File No. PCAOB-2008-05) be and hereby are approved.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9-19839 Filed 8-18-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60492; File No. SR-NASDAQ-2009-074]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

August 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>1</sup> See Release No. 34-60108 (June 12, 2009); 74 FR 29005 (June 18, 2009).

<sup>8</sup> 17 CFR 200.30-3(a)(12).