

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63762; File No. SR-CBOE-2010-109]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Notice of Proposed Rule Change Regarding Rule 4.20—Anti-Money Laundering Compliance Program

January 25, 2011.

#### I. Introduction

On December 2, 2010, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“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 amend CBOE Rule 4.20 to require all Trading Permit Holders or TPH organizations to conduct independent testing during the first calendar year of becoming a Trading Permit Holder or TPH organization. The proposed rule change was published for comment in the **Federal Register** on December 22, 2010.<sup>3</sup> The Commission did not receive any comments on the proposal. This order approves the proposed change.

#### II. Background

CBOE proposed to amend CBOE Rule 4.20, *Anti-Money Laundering Compliance Program*, to require all Trading Permit Holders or TPH organizations to conduct independent testing during the first calendar year of becoming a Trading Permit Holder or TPH organization. CBOE Rule 4.20 generally requires annual (on a calendar-year basis) independent testing for compliance. However, if the Trading Permit Holder or TPH organization does not execute transactions for customers or otherwise hold customer accounts, or does not act as an introducing broker with respect to customer accounts (*e.g.*, engages solely in proprietary trading or conducts business only with other

broker-dealers), such “independent testing” is required every two years (on a calendar-year basis). The Exchange believes that it is prudent to amend this rule to require that all Trading Permit Holders or TPH organizations conduct testing during the first calendar year of the Trading Permit Holder’s or TPH organization’s existence to ensure anti-money laundering compliance is in place and established at the outset of the Trading Permit Holder’s or TPH organization’s existence, even if they would thereafter conduct such testing every two years.

CBOE Interpretations and Policies .01 continues to provide that all Trading Permit Holders should undertake more frequent testing than required by Rule 4.20 if circumstances warrant (*e.g.*, should the business mix of the Trading Permit Holder or TPH organization materially change, in the event of a merger or acquisition, in light of a systemic weakness uncovered via testing of the anti-money laundering program, or in response to any other “red flags”).<sup>4</sup>

As explained in the Notice, the Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act and the rules and regulations thereunder, in general, and furthers the objectives of Section 6(b)(5),<sup>6</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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.

#### III. Discussion of Comment Letters

The Commission did not receive any comment letters regarding the proposed rule change.

#### IV. Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities association.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5), of the Act,<sup>8</sup> which, among other things, requires that CBOE rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2010-109), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63763; File No. SR-CBOE-2011-005]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Short Sell Order Handling

January 25, 2011.

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 January 14, 2011, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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 Exchange. The Exchange has designated 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

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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).

<sup>15</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> See Securities and Exchange Act Release No. 63559 (December 16, 2010), 75 FR 80560 (December 22, 2010) (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 57044 (December 27, 2007), 73 FR 2 (January 3, 2008) (SR-CBOE-2007-130).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 amend CBOE Stock Exchange, LLC's ("CBSX," the CBOE's stock trading facility) rules to describe the manner in which the CBSX System<sup>5</sup> will handle short sell orders for openings and reopenings in relation to Rule 201 of Regulation SHO.<sup>6</sup> 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 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 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 201 of Regulation SHO under the Act<sup>7</sup> sets forth a short sale-related circuit breaker that, if triggered, will impose a restriction on the prices at which NMS stocks<sup>8</sup> may be sold short. In anticipation of the upcoming February 28, 2011 compliance date for

<sup>5</sup> The "CBSX System" means the electronic system which performs the functions set out in the CBSX rules including controlling, monitoring, and recording trading by CBSX Traders through CBSX Workstations and trading between CBSX Traders. See Rule 50.1(a). A "CBSX Trader" means an individual who or organization which has the right to trade on CBSX. See Rules 50.1(f) and 50.3. A "CBSX Workstation" means a computer connected to CBSX for the purposes of trading pursuant to the CBSX rules. See Rule 50.1(d).

<sup>6</sup> 17 CFR 242.201. See Securities Exchange Act Release Nos. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) and 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO, 17 CFR 242.200(g), was amended to include a "short exempt" marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of February 28, 2011.

<sup>7</sup> *Id.*

<sup>8</sup> 17 CFR 242.201(a)(1).

Rule 201,<sup>9</sup> the Exchange is proposing to amend CBSX's rules to describe the manner in which the CBSX System will handle short sell orders during opening rotations when a circuit breaker is triggered under Rule 201 of Regulation SHO.<sup>10</sup>

In particular, the Exchange is proposing to amend Interpretation and Policy .02 to its Rule 51.8, *Types of Orders Handled*, to provide that, if a short sale-related circuit breaker is triggered under Regulation SHO, orders marked "short" that are received by the CBSX System *after* the time a circuit breaker is triggered but *prior* to the opening of trading or reopening of trading following a halt, suspension or pause in the NMS stock will be cancelled/rejected.<sup>11</sup> Consistent with the existing text of the rule and a proposed clarifying amendment to that text, (1) short sell orders that are resting in the CBSX Book<sup>12</sup> at the time a circuit breaker is triggered will be permitted to continue resting and/or execute,<sup>13</sup> and (2) short sell orders that are received by the CBSX System *after* the time a circuit breaker is triggered *and while the NMS stock is open for trading on CBSX* that are (A) priced above the National Best Bid will be permitted to rest and/or execute or (B) priced at or below the National Best Bid will be rejected/cancelled.<sup>14</sup>

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and, in particular, furthers the objectives of

<sup>9</sup> See Securities Exchange Act Release No. 63247, note 6, *supra*, which extended the compliance date for Rule 201, 17 CFR 242.201 and Rule 200(g), 17 CFR 242.200(g), from November 10, 2010 to February 28, 2011.

<sup>10</sup> Opening and reopening rotations are conducted pursuant to Rule 52.2, *Opening Procedures*. Rule 52.2 provides that the CBSX System shall automatically open each security at the price that provides the highest matched quantity of order volume. Subsequent to any such opening prints, or immediately if there are no pre-opening orders in a security, the CBSX System shall disseminate regular quotations.

<sup>11</sup> See proposed paragraph (a)(3) of Rule 51.8.02.

<sup>12</sup> The "CBSX Book" means all unexecuted orders currently held by the CBSX System. See Rule 50.1(c).

<sup>13</sup> Short sell orders that are resting in the CBSX Book at the time a circuit breaker is triggered by definition are priced above the National Best Bid at the time of initial display and therefore will be permitted to continue resting and/or execute intraday and during any opening/reopening rotations that occur while a circuit breaker is in effect. 17 CFR 242.201(b)(1).

<sup>14</sup> See existing paragraphs (a)(1) through (2) of Rule 51.8.02 and proposed changes to clarify that subparagraph (2) (which is also numbered as item (2) in the description above) applies to short sale orders received *while the NMS stock is open for trading on CBSX*.

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

Section 6(b)(5) of the Act,<sup>16</sup> which requires that an exchange have rules that are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposed change will provide clarity on the short sell order handling procedures that the CBSX System will apply for openings and reopenings when a short sale-related circuit breaker is triggered under Rule 201 of Regulation SHO.

#### 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 rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

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-2011-005 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-2011-005. 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 Web site viewing and printing 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 CBOE. 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-2011-005 and should be submitted on or before February 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-1984 Filed 1-28-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63764; File No. SR-MSRB-2010-17]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Consisting of Amendments to Rule A-3, on Membership on the Board

January 25, 2011.

#### I. Introduction

On November 30, 2010, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule consisting of amendments to Rule A-3, on membership on the Board, in order to establish a Nominating Committee in compliance with MSRB transitional Rule A-3(i). The proposed rule change was published for comment in the **Federal Register** on December 17, 2010.<sup>3</sup> The Commission received no comment letters about the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to make changes to MSRB Rule A-3(c) as are necessary and appropriate prior to the creation of the Nominating Committee of the MSRB.

On September 30, 2010, the SEC approved MSRB Rule A-3(i), a transitional rule for MSRB fiscal year 2011 intended to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection

Act, Public Law 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").<sup>5</sup> The transitional rule provides that on or after October 1, 2010, and prior to the formation of the Nominating Committee for purposes of nominating Board members for fiscal year 2012, the Board will amend the provisions of Rule A-3(c) to (a) reflect the composition of the Board as provided under the Dodd-Frank Act, (b) assure that the Nominating Committee will be composed of a majority of public members and will have fair representation of broker-dealers, bank dealers, and municipal advisors, and (c) reflect such other considerations consistent with the provisions of Section 15B of the Exchange Act and the Dodd-Frank Act as the Board deems appropriate. The proposed rule change is intended to amend Rule A-3(c) to comply with the requirements of transitional Rule A-3(i), as approved by the SEC.

Consistent with Rule A-3(i), the Nominating Committee (hereinafter, "Nominating and Governance Committee") would consist of eleven members, six of whom would be public members and five of whom would be industry members. The Chair of the Committee would be a public member. Establishing an eleven member committee would allow for fair representation of regulated entities by reserving five positions for brokers, dealers, municipal securities dealers and municipal advisors.

Each constituency identified in the Dodd-Frank Act would be guaranteed a minimum of one seat on the Nominating and Governance Committee but the level of each constituency would be capped to avoid overweighting of any one over the others. These ranges of membership are as follows:

- Six public members consisting of (a) at least one, but no more than three, representative of institutional or retail investors; (b) at least one, but no more than three, representative of municipal entities; (c) at least one, but no more than three, members of the public with knowledge of or experience in the municipal industry and not representative of investors or municipal entities;<sup>6</sup> and
- Five regulated members, consisting of (a) at least one, but no more than two, representative of broker-dealers; (b) at

<sup>19</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> See Securities Exchange Act Release No. 63533 (December 13, 2010), 75 FR 79061 (December 17, 2010) (the "Commission's Notice").

<sup>4</sup> On January 13, 2011, Commissioner Aguilar, along with Michael E. Coe, Counsel to the Commissioner, met with representatives of the National Association of Independent Public Finance Advisors to discuss the proposed rule change among other matters. See Memorandum from Michael E. Coe, dated January 13, 2011.

<sup>5</sup> See Exchange Act Release No. 63025 (September 30, 2010), 75 FR 61806 (October 6, 2010).

<sup>6</sup> In order to ensure balance on the committee and reflect the breadth of public representatives on the Board, the proposal would require one to three committee members be selected from Board members who are not representative of municipal entities or investors.