

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-NSX-2009-05 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-NSX-2009-05. 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-NSX-2009-05 and should be submitted on or before October 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60760; File No. SR-CBOE-2009-071]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the CBSX Obvious Error Rule

October 1, 2009.

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 September 25, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 the Exchange. CBOE has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</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 the CBOE Stock Exchange ("CBSX") obvious error rule. 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 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 52.4 in order to improve the CBSX rule regarding clearly erroneous executions. The proposed changes are part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions. This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. The proposed changes are more fully discussed below.

As proposed, the term "clearly erroneous" would be defined as when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. Further, a transaction made in clearly erroneous error and cancelled by both parties or determined by CBSX to be clearly erroneous will be removed from the Consolidated Tape. A trade will only be removed from the Consolidated Tape when the determination is deemed final and any applicable appeals have been exhausted.

Under the proposed rule, a CBSX Trader<sup>4</sup> that receives an execution on an order that was submitted erroneously to CBSX for its own or customer account may request that CBSX review the transaction. One or more senior level officials of CBSX designated by the President ("Official") shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Such request for review shall be made in writing via e-mail or other electronic means specified from time to time by CBSX in a circular distributed to CBSX Traders. Requests for review must be received within thirty (30) minutes of execution time and shall include information concerning the time of the transaction(s), security symbol(s), number of shares, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. Upon receipt of a timely filed request that satisfies the numerical guidelines set forth in paragraph (c)(1) of the Rule, the counterparty to the trade shall be notified by CBSX as soon as practicable,

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> A CBSX Trader is defined as an individual who or organization which has the right to trade on CBSX (See Rule 50.1).

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

but generally within 30 minutes. An Official may request additional supporting written information to aid in the resolution of the matter. If requested, each party to the transaction shall provide, within thirty (30) minutes of the request, any supporting written information. Either party to the disputed

trade may request the supporting written information provided by the other party on the matter.

A transaction executed on CBSX may be found to be clearly erroneous only if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or

exceeds the Numerical Guidelines set forth in the Rule (see chart below). The execution time of the transaction under review determines whether the guideline threshold is regular trading hours or between 8:15 a.m. CT to 8:30 a.m. CT (which occurs before regular trading hours).

Reference price: Consolidated Last Sale	Regular trading hours numerical guidelines (subject transaction's % difference from the consolidated last sale)	8:15 a.m. CT to 8:30 a.m. CT numerical guidelines (subject transaction's % difference from the consolidated last sale)
Greater than \$0.00 and up to and including \$25.00 .....	10% .....	20%.
Greater than \$25.00 and up to and including \$50.00 .....	5% .....	10%.
Greater than \$50.00 .....	3% .....	6%.
Multi-Stock Event-Fileings involving five or more securities by the same CBSX Trader will be aggregated into a single filing.	10% .....	10%.
Leveraged ETF/ETN securities .....	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (i.e. 2×).	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (i.e. 2×)

Establishing Numerical Guidelines within the rule brings regulatory transparency and consistency in the application of the rules of the Exchange. The Numerical Guidelines represent the general consensus approach and were developed based on the collective experiences of a market-wide group. CBSX believes that the thresholds established are fair and appropriate and apply evenly to all participants.

In Unusual Circumstances, which may include periods of extreme market volatility, sustained illiquidity, or widespread system issues, CBSX may, in its discretion and with a view toward maintaining a fair and orderly market and the protection of investors and the public interest, use a Reference Price other than the consolidated last sale. Other Reference Prices may include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions. It may also be necessary to use a higher Numerical Guideline if, after market participants have been alerted to the existence of erroneous activity, the price of the security returns toward its prior trading range but continues to trade beyond the price at which trades would normally be broken. CBSX also may use a different Reference Price and/or higher Numerical Guideline in events that involve other markets in an effort to coordinate a Reference Price and/or Numerical Guideline that is consistent across markets. In order to achieve consistent results across markets, when a ruling is made in conjunction with another market center it may be determined that the number of affected transactions is

such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

In events that involve other markets, CBSX would have the ability to use a different reference price and/or numerical guidelines. In these instances, the reference price would be determined based on a consensus among the Exchanges where the transactions occurred. Furthermore, when a ruling is made across markets, CBSX may determine that the ruling is not eligible for appeal because immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

An Official may also consider additional factors to determine whether an execution is clearly erroneous, including but not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, validity of the consolidated tape's trades and quotes, consideration of primary market indications, and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

CBSX may expand the Numerical Guidelines applicable to transactions occurring between 8:30 a.m. CT and 9 a.m. CT based on the disseminated value of the S & P 500 Futures at 8:15 a.m. CT. When the S & P 500 Futures are up or down from 3% to up to but not including 5% at 8:15 a.m. the Numerical Guidelines are doubled for executions occurring between 8:30 a.m. and 9 a.m. Also, when the S & P 500 Futures are up or down 5% or greater at 8:15 a.m. the Numerical Guidelines are tripled for executions occurring between 8:30 a.m. and 9 a.m.

In the case of an Outlier Transaction, an Official may at his or her sole discretion, and on a case-by-case basis, consider requests received after 30 minutes, but not longer than sixty minutes after the transaction in question, depending on the facts and circumstances surrounding such request. An "Outlier Transaction" is a transaction where: (i) The execution price of the security is greater than three times the current Numerical Guidelines set forth in paragraph (c)(1) of the Rule, or (ii) the execution price of the security in question is not within the Outlier Transaction parameters set forth in paragraph (d)(1)(A) of the Rule but breaches the 52-week high or 52-week low, CBSX may consider Additional Factors (as outlined in paragraph (c)(3) of the Rule), in determining if the transaction qualifies for further review or if the Corporation shall decline to act.

Unless both parties to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Official. If the Official determines that

the transaction is not clearly erroneous, the Official shall decline to take any action in connection with the completed trade. In the event that the Official determines that the transaction in dispute is clearly erroneous, the Official shall declare the transaction null and void. A determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of trading on the following trading day. The parties shall be promptly notified of the determination. Under the proposed rule, the Official will only have the authority to break the trades or rule to let the trades stand. This attempts to remove subjectivity that is necessitated by an adjustment.

If a CBSX Trader affected by a determination made under this Rule so requests within the time permitted below, a Clearly Erroneous Execution Panel ("CEE Panel") will review decisions made by the Official; provided however that the CEE Panel will not review decisions made by an official under paragraph (f) of the Rule (regarding system disruptions and malfunctions) if such Official also determines under paragraph (f) that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.<sup>5</sup>

The CEE Panel will consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and representatives from two (2) CBSX Traders. Further, CBSX shall designate at least ten (10) CBSX Trader representatives to be called upon to serve on the CEE Panel as needed. In no case shall a CEE Panel include a person affiliated with a party to the trade in

question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a CEE Panel on an equally frequent basis.

A request for review on appeal must be made via e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The CEE Panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received between 2 CT and the close of trading, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review. The CEE Panel may overturn or modify an action taken by the Official under the Rule. All determinations by the CEE Panel shall constitute final action by CBSX on the matter at issue.<sup>6</sup>

CBSX proposes to add a section to the Rule that will grant Officials the ability to act on their own motion to review potentially erroneous executions. The proposed rule would allow an Official to review executions and rely on the Numerical Guidelines, under any circumstance. In extraordinary circumstances an Official may apply a lower Numerical Guideline if it is determined that such action is necessary to maintain a fair and orderly market or protect investors and the public interest. In some instances the Exchange may detect a single execution that breaches the Numerical Guidelines but is not the subject of a ruling request. This provision gives the Exchange the ability to review such executions. Additionally, in practice, clearly erroneous executions commonly involve multiple parties and multiple executions. In such instances, all affected parties may not request a ruling. The Exchange proposes this provision to permit an Official to rule on a group of transactions related to the same occurrence or event as a whole, without a formal request for a ruling from every affected party.

The proposed rule also modifies CBSX's policy on trade nullification and for UTP securities that are subject to initial public offerings. Under the proposed rule, Officials must either declare an opening transaction null and void or decline to take action, but can no longer be adjusted. Furthermore, the proposed rule requires that, in extraordinary circumstances, the

reviewing Official must take action in a timely fashion.

The proposed rule language is based on language adopted by NYSE Arca in SR-NYSEArca-2009-36.<sup>7</sup> CBSX anticipates this new obvious error policy to become effective on October 5, 2009.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "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 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 to perfect the mechanism for a free and open market and a national market system, and, in general, to promote the maintenance of fair and orderly markets, and to protect investors and the public interest. The proposed rule change provides transparency and finality for participants and creates consistent results across U.S. equities exchanges with respect to clearly erroneous executions.

### 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

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: (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, it has become effective pursuant to Section

<sup>5</sup> In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of CBSX, or extraordinary market conditions or other circumstances in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the Official, on his or her own motion, may review such transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void. In such events, the Official will rely on the provisions of paragraph (c)(1)–(3) of the Rule, but in extraordinary circumstances may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the Official pursuant to paragraph (f) shall be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Official must be taken by no later than the start of trading on the day following the date of execution(s) under review. Each CBSX Trader involved in the transaction shall be notified as soon as practicable, and the CBSX Trader aggrieved by the action may appeal such action.

<sup>6</sup> If the CEE Panel votes to uphold the decision made pursuant to paragraph (e)(1) of this Rule, CBSX will assess a \$500.00 fee against the CBSX Trader(s) who initiated the request for appeal.

<sup>7</sup> See Exchange Act Release No. 34-60706 (approving SR-NYSEArca-2009-36).

<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).

19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>14</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may implement the new rule on October 5, 2009, the same date as the other equities exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to begin applying the new rule on the same date as the other equities exchanges.<sup>15</sup> Application of the new rule on this date should help foster transparency and consistency among those exchanges that adopt clearly erroneous execution rules substantially similar to those previously approved by the Commission.<sup>16</sup> For these reasons, the Commission designates that the proposed rule change become operative on October 5, 2009.

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-071 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-2009-071. 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-2009-071 and should be submitted on or before October 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60759; File No. SR-BATS-2009-030]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.17, Entitled "Clearly Erroneous Executions"

October 1, 2009.

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 September 28, 2009, BATS Exchange, Inc. ("Exchange" or "BATS") 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 the Exchange. BATS has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</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 is proposing to amend BATS Rule 11.17, entitled "Clearly Erroneous Executions," to modify the Exchange's rule regarding clearly erroneous executions.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, 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, 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 these 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.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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 Exchange has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

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

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

<sup>16</sup> See Securities Exchange Act Release No. 60706 (September 22, 2009) 74 FR 49416 (September 28, 2009) (NYSEArca-2009-36).

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