

begin trading on the Hybrid 2.0 platform without delay.¹¹

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-2007-17 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 SR-CBOE-2007-17. 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 Section, 100 F Street, NE., Washington, DC 20549. 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-2007-17 and should be submitted on or before March 29, 2007.¹²

¹¹ For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹² 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55392; File No. SR-CBOE-2006-112]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendment No. 1 Relating to Its Non-option Security Trading Rules

March 2, 2007.

I. Introduction

On December 29, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposal to modify its trading rules for non-option securities. The proposal was published for comment in the **Federal Register** on January 11, 2007.³ The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 with the Commission on March 2, 2007.⁴ This order provides notice of and solicits comment on the proposed rule change as modified by Amendment No. 1 and approves the proposal on an accelerated basis.

II. Description of the Proposal

In September 2006, the Commission approved Exchange Chapters 50-55 governing the trading of non-option securities on the Exchange through a new electronic trading platform known as Stock Trading on CBOEdirect ("STOC"). Also in September 2006, the

Commission approved⁵ modifications⁶ to the STOC rules to conform them to aspects of Regulation NMS.⁷ In this filing, the Exchange proposes to further modify its trading rules for equity securities and rename its equity trading facility the CBOE Stock Exchange ("CBSX").⁸ CBOE anticipates launching CBSX as of the compliance date for Regulation NMS. A full discussion of the proposed rule change is set forth in the Notice; significant aspects of the proposal are discussed below.

First, the Exchange has proposed to further automate order handling and trade-through prevention. Under the current rules, if CBOE receives an order in an equity security when it is not at the national best bid or offer ("NBBO"), the designated primary market-maker ("DPM") for that security must route the order to the NBBO market for execution if no STOC trader steps up to match the NBBO. The Exchange now proposes to program CBSX to automatically route, via an unaffiliated routing broker, a marketable order in such circumstances (except if the order is labeled immediate-or-cancel ("IOC")).⁹

Second, the Exchange has proposed to move the CBSX opening from 8:30 a.m. Central Time ("CT") to 8:15 a.m. CT and eliminate a DPM's obligation to open its assigned securities at a single price that matches the primary market or at a price that does not trade-through another exchange's quote. At the opening, the CBSX system would automatically execute pre-opening orders at a price that allows the greatest number of shares to trade.

Third, the Exchange is proposing to add a floor component to its electronic trading system. CBSX would dedicate a space on the Exchange's trading floor (the "CBSX Floor Post") that CBSX DPMs will be required to staff for the purpose of responding to price

⁵ See Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (approving SR-CBOE-2004-21).

⁶ Securities Exchange Act Release No. 54526 (September 27, 2006), 71 FR 58646 (October 4, 2006) (approving SR-CBOE-2006-70).

⁷ 17 CFR 242.600 *et seq.*

⁸ The Exchange separately filed with the Commission a proposal to establish a new corporate structure for CBSX (the "CBSX Facility Filing"). See Securities Exchange Act Release No. 55172 (January 25, 2007), 72 FR 4745 (February 1, 2007) (notice of filing of SR-CBOE-2006-110). The Commission also approves the CBSX Facility Filing today. See Securities Exchange Act Release No. 55389 (March 2, 2007).

⁹ IOC orders would be cancelled if a better-priced protected quotation existed on another exchange. See CBOE Rule 51.8(g)(4). In addition, the Commission notes that an Intermarket Sweep Order ("ISO") received by CBSX will be executed or cancelled immediately and not "flashed" to CBSX traders for possible matching of the NBBO. See CBOE Rule 51.8(n).

discovery inquiries from brokers. Open-outcry trading is not permitted, and time priority would attach to the order only when it was entered into the system. Any order entered at the CBSX Floor Post would be executed electronically in the same manner as an order entered from any other location. In Amendment No. 1, the Exchange also proposed to amend the rule governing the CBSX Floor Post to permit only cross orders and IOC orders to be submitted by non-DPM members from the CBSX Floor Post.

The CBSX Floor Post would be located near the Exchange's index options pits in a location that is generally isolated from the equity options trading posts. Proposed Rule 51.12 stipulates that there shall be no direct sightlines between the CBSX Floor Post and the equity option trading posts. In Amendment No. 1, the Exchange is adding restrictions on the use of hand signals between the CBSX Floor Post and the equity option trading posts.

Fourth, the Exchange proposes to adopt the following new order types in connection with the establishment of CBSX:

A *Reserve Order* is a limit order in which the order originator designates a portion of the order for display and dissemination (the "display amount") and designates a portion of the order in "reserve." A reserve portion is not displayed but is available for execution against incoming orders. If a quantity remains on the Reserve Order after an execution, the order would be refreshed to include the display amount while any remaining balance would remain in reserve.

A *Middle Market Cross Order* is an order submitted to trade at the midpoint of the NBBO. It must always be submitted with a contra order for the same size and could be entered only when the bid price for the stock is \$1 or greater. These orders could be executed in increments as small as one-half the minimum quoting increment established under CBSX rules. However, proposed CBSX Rule 51.8(p) would prohibit a member from entering a Middle Market Cross Order as principal buyer (seller) if the NBBO spread is one cent wide and that member is an agent for any customer order resting at the prevailing national best bid (offer).

A *Cross Only Order* is an order that could be executed only against another Cross Only Order for the same size and price. These orders could be entered only at or between the NBBO, and when entered at the CBSX BBO, only when the terms of the orders meet the crossing parameters set forth in proposed CBSX

Rule 52.11 relating to priority for crosses at the CBSX's disseminated market price.

A *Cross and Sweep Order* is an order that is priced outside of the NBBO and/or the BBO where the applicable side of the CBSX book is satisfied by the Cross and Sweep Order and any disseminated better-priced protected quotations at away market centers are swept with ISOs by the CBSX system. In other words, before executing the cross, a Cross and Sweep Order will satisfy (i) Any protected quotations that are priced better than the crossing price, and (ii) any interest on CBSX that is priced at or better than the crossing price. Any remaining imbalance on either side of a partially executed Cross and Sweep Order which results from satisfying protected quotations or other CBSX interest would be cancelled by the CBSX system.

The Exchange proposes to modify the manner in which Stop Orders (including Stop Limit Orders) are handled. CBOE rules currently provide that a stop buy (or sell) order is elected when the stock trades, or is bid (or offered), at or above (or below) the stop price on the Exchange. The Exchange proposes to change the provision that stipulates when a stop buy (or sell) order is elected to state that the order is elected (not when the stock is bid or offered) at, or above or below, the stop price. The Exchange also proposes to change the rule to provide that a stop buy (or sell) order is elected when the stop price is reached on the *primary market for the stock*, rather than on CBSX.

Fifth, in Amendment No. 1, the Exchange has proposed to amend CBOE Rule 52.7, "Sweeping and Trading Through Away Markets," to incorporate any future exemptions from Rule 611 of Regulation NMS (the "Order Protection Rule")¹⁰ granted by the Commission. Rule 52.7 already incorporates several of the exceptions codified in Rule 611(b) of Regulation NMS. With this provision, CBSX would automatically incorporate into its rules any future exemptions from the Order Protection Rule granted by Commission order.

Sixth, CBOE proposes to adopt a provision in Rule 53.55 stating that routine failure to qualify for the thresholds set forth in any fee incentive program¹¹ that may be employed by CBSX from time to time could subject a

DPM to remedial action by CBSX under that rule.

Seventh, certain existing rules are being eliminated because the Exchange does not believe that they are necessary or relevant to the operation and regulation of the CBSX platform.¹² Most notably, all rules regarding the Intermarket Trading System are being deleted as the Exchange anticipates using private linkages with the CBSX platform and because the ITS Plan will terminate upon the trading phase date for Regulation NMS.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The Commission did not receive any comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, in its entirety, although only selected aspects of the proposed rules governing the CBSX system are discussed below.

A. Compliance With the Order Protection Rule

The Order Protection Rule of Regulation NMS provides that a trading center shall establish policies that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within one of the enumerated exceptions of the Rule. The Commission believes that the proposed CBSX rules are reasonably designed to promote compliance with the Order Protection Rule. The CBSX system is programmed to automatically process and route orders to avoid trading through any protected quotations on away markets. Like its predecessor, the STOC system, CBSX will automatically match a market

¹² See Notice, 72 FR at 1352 (discussing these proposed changes).

¹³ 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).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 242.611.

¹¹ CBSX has also adopted, via a separate rule filing, a fee structure that would discount fees for CBSX Market-Makers that meet certain competitive quoting thresholds. See File No. SR-CBOE-2007-25 (filed March 1, 2007).

or marketable limit order against the best-priced orders in the CBSX book until the order is fully executed or until an execution would result in a trade-through of a protected quotation at another automated market center (unless an exception is available). An incoming order (other than an IOC order or ISO) in a security will be "flashed" to CBSX traders for a short period if CBSX is not at the NBBO for that security. If no CBSX trader determines to step up and match the NBBO, the order will be routed to the market center disseminating the protected quotation for execution. Under the existing rules, such orders would be routed manually by the DPM. CBOE now proposes that CBSX would route such orders automatically, via an unaffiliated routing broker. As a result, CBSX DPMs would no longer serve as agent for such orders.

B. CBSX Opening Procedures

Proposed Rule 51.2(a) provides that the CBSX system would open for trading at 8:15 a.m. CT (9:30 a.m. Eastern Time), 15 minutes before the primary markets. The Commission believes that establishing trading hours is generally within the business discretion of an exchange, and CBOE's proposal in this regard does not appear to raise any regulatory issues. The Commission notes that other exchanges have trading sessions before 9:30 a.m. Eastern Time.

Proposed Rule 52.2 provides that the CBSX system would automatically open each security at a price that provides the highest matched quantity of order volume. In connection with the automation of the opening, the Exchange also proposes to eliminate a DPM's obligation to open a security at a single price that matches the opening price on the primary market. The Commission believes that the proposed opening matching algorithm is reasonable and consistent with the Act.

C. Hybrid Trading Model

The Commission believes that CBOE's integration of the electronic CBSX system with a post on the Exchange floor is generally consistent with the Act and is within the business discretion of the Exchange. The Commission previously has found hybrid trading rules of other exchanges to be consistent with the Act.¹⁵

The CBSX Floor Post is near the posts where related options may be traded. CBOE has proposed to prohibit members from using hand signals or other like means of communication to communicate between the CBSX Floor Post and the equity options trading posts. CBOE's proposed rule is substantially similar to policies adopted by the American Stock Exchange in connection with its proposal to permit side-by-side trading that the Commission previously has found consistent with the Act.¹⁶ For the same reasons, the Commission believes that the CBOE rule also is consistent with the Act.

CBOE also has proposed to prohibit members, except DPMs, from entering proprietary orders while at the CBSX Floor Post, unless such orders are cross orders or IOC orders. These restrictions appear reasonably designed to prevent a non-DPM CBOE member from executing a trade ahead of a non-member at the same price and thus are generally consistent with Section 11(a) of the Act.¹⁷

D. New Order Types

The Exchange proposes to adopt several new order types in connection with the establishment of CBSX: Reserve Orders, Middle Market Cross Orders, Cross Only Orders, and Cross and Sweep Orders. The Commission finds that the rules relating to these order types are consistent with the Act and should provide market participants with additional flexibility in executing transactions while protecting displayed interest on the CBSX book and protected quotations of other trading centers.

The Commission notes in particular that it previously has approved order types on other exchanges similar to what CBOE terms the Middle Market Cross Order.¹⁸ The Commission notes that proposed CBSX Rule 51.8(p) prohibits a member from entering a Middle Market Cross Order as principal buyer (seller) if the NBBO spread is one cent wide and that member was an agent for any customer order resting at the prevailing NBBO bid (offer). This provision would preclude a member from trading as principal at a price that is less than one cent better than a price expressed by its customer. By requiring at least a one-cent improvement over the

customer limit order that the member represents as agent, this rule promotes compliance by the member with its Manning obligation to the customer order.¹⁹

E. Accelerated Approval

Pursuant to Section 19(b)(2) of the Act,²⁰ the Commission finds good cause for approving the proposal prior to the thirtieth day after the publication of the proposal, as modified by Amendment No. 1, in the **Federal Register**. The revisions to the proposed rule change made by Amendment No. 1 do not raise any novel or substantive regulatory issues. Therefore, the Commission finds good cause for approving the amended proposal on an accelerated basis.

IV. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change as modified by Amendment No. 1, including whether it 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-2006-112 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CBOE-2006-112. 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

¹⁵ See Securities Exchange Act Releases No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (approving the Amex Auction & Electronic Market Integration hybrid market structure) and 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (approving the NYSE Hybrid Market).

¹⁶ See Securities Exchange Act Release No. 39631 (February 9, 1998), 63 FR 8229 (February 18, 1998) (approving SR-Amex-97-37).

¹⁷ 15 U.S.C. 78k(a).

¹⁸ See, e.g., Securities Exchange Act Releases No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (approving SR-ISE-2006-48) and 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (approving SR-NASD-2005-140).

¹⁹ See NASD Interpretive Materials 2110-2.

²⁰ 15 U.S.C. 78s(b)(2).

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 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-2006-112 and should be submitted on or before March 29, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (File No. SR-CBOE-2006-112), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55389; File No. SR-CBOE-2006-110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Relating to the Establishment of CBOE Stock Exchange, LLC

March 2, 2007.

I. Introduction

On December 26, 2006, the Chicago Board Options Exchange, Incorporated, (the "CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the establishment of the CBOE Stock Exchange ("CBSX"), which will be operated by CBOE Stock Exchange, LLC

("CBSX LLC"). On January 10, 2007, the CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on February 1, 2007.³ The Commission received no comments regarding the proposal. On March 1, 2007, the CBOE filed Amendment No. 2 to the proposed rule change. On March 2, 2007, the CBOE filed Amendment No. 3 to the proposed rule change. This order approves the proposed rule change, grants accelerated approval to Amendment Nos. 2 and 3, and solicits comments from interested persons on Amendment Nos. 2 and 3.

II. Overview

The Exchange proposes to establish CBSX as a facility,⁴ as that term is defined in Section 3(a)(2) of the Act,⁵ of CBOE. As the self-regulatory organization ("SRO") for CBSX, CBOE will have regulatory responsibility for the activities of CBSX.⁶ CBSX will be a fully automated marketplace for the trading of securities other than options by CBOE members. CBSX will be operated by CBSX LLC, a Delaware limited liability company. In the instant proposed rule change, CBOE seeks the Commission's approval of the proposed governance structure of CBSX LLC as reflected in the Operating Agreement of CBSX LLC. CBOE has submitted separate proposed rule changes to establish rules relating to listing, membership and trading on CBSX and to establish a permit program in connection with CBSX.⁷

³ See Securities Exchange Act Release No. 55172 (January 25, 2007), 72 FR 4745.

⁴ Pursuant to Section 3(a)(2) of the Act, the term "facility" when used with respect to an exchange, includes "its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." 15 U.S.C. 78c(a)(2). The Commission notes that although the Operating Agreement refers to CBSX LLC as a facility of CBOE, the scope of the CBSX facility is not limited to CBSX LLC.

⁵ 15 U.S.C. 78c(a)(2).

⁶ CBOE represents that it has adequate funds to discharge all regulatory functions related to the facility. CBOE further represents that CBSX LLC will not be entitled to any revenue generated in connection with penalties, fines, and regulatory fees that may be assessed by CBOE against CBOE members in connection with trading on CBSX. Rather, all regulatory fines, penalties and fees assessed against and paid by CBOE members to CBOE in connection with trading on CBSX will remain with CBOE.

⁷ The Commission approved the Exchange's proposed rule change relating to the CBSX permit program. See Securities Exchange Act Release No. 55326 (February 21, 2007), 72 FR 8816 (February

As a limited liability company, ownership of CBSX LLC is represented by limited liability membership interests. The holders of such interests are referred to as "Owners."⁸ Initially, there are five Owners of CBSX LLC. CBOE is one of the Owners of CBSX LLC, and owns all "Series A" Voting Shares⁹ of CBSX LLC, representing 50% of CBSX LLC.¹⁰ The other four Owners and their respective ownership interests are: VDM Chicago, LLC (20%); LaBranche & Co., Inc. (10%); IB Exchange Corp. (10%); and Susquehanna International Group, LLP. (10%). Each of these four Owners owns "Series B" Voting Shares of CBSX LLC.

Under Section 3.2 of the Operating Agreement, the CBSX LLC Board of Directors ("Board of Directors" or "Board") may authorize the issuance of "Series C" Non-Voting Restricted Shares¹¹ from time to time to employees, consultants, or officers of CBSX LLC, or any other person, each of

27, 2007). The Commission also approved the Exchange's proposed rule change to establish the equity trading rules for CBSX. See Securities Exchange Act Release No. 34-55392 (March 2, 2007).

⁸ "Owner" means a limited liability company "member" as that term is defined in § 18-101(11) of the Delaware Limited Liability Company Act ("DLLCA"), and shall include each Voting Owner and each Management Owner, but only so long as such person is shown on CBSX's books and records as the owner of at least one (1) Share (or fraction of one (1) Share). "Owner" shall include a "Substituted Owner" as defined in Section 6.5(a) of the Operating Agreement, but only upon compliance with all of the requirements of Sections 6.4 and 6.5 of the Operating Agreement. For purposes of clarity, no person shall become an "Owner" as to any Shares, if the acquisition of those Shares will require a change of ownership notice to the Commission, or will constitute a proposed rule change subject to the requirements of the rule filing process of Section 19 of the Act, until all of the requirements of such notice or rule filing process have been accomplished and, if necessary, approved by the Commission. See Section 2.1(16) of the Operating Agreement.

⁹ "Voting Shares" means those Shares entitled to vote on matters submitted to the Owners, which Voting Shares are held by the Voting Owners. See Section 2.1(27) of the Operating Agreement.

¹⁰ As noted in Section 3.2 of the Operating Agreement, it is the intention of the Owners that no other members of CBSX LLC (other than Affiliates of CBOE) be owners of Series A Voting Shares, and that no additional Series A Voting Shares be authorized, created or issued for such purpose; provided however, that this provision is not intended to limit or restrict any rights of CBOE to transfer any of its Series A Voting Shares with the prior approval of the Commission as provided for in Article VI, including Section 6.14 of the Operating Agreement, or any other provision thereof, or any rights to be acquired by a transferee of those Shares as provided therein.

¹¹ "Non-Voting Restricted Share" means a Share held by a Management Owner containing the voting limitations and other restrictions described in the Operating Agreement. See Section 2.1(15) of the Operating Agreement.

²¹ *Id.*

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.