

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In making this request, the Exchange stated that waiver of this period will permit the text of the Exchange's rules to exactly match the corresponding text of the NYSE's rules as soon as possible and will eliminate any potential confusion to investors and others that might result from the more generalized reference to the effective date of the new rule that is in the current rule text.

The Commission believes that the waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest.<sup>14</sup> The proposal would correctly insert the effective date, as described in the Exchange's prior proposed rule change, into the text of the Exchange's rules to ensure that investors and issuers are aware that the Exchange's rule is operative on the same date as NYSE's rule change. Based on the foregoing, the Commission deems the proposal operative upon filing.

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

as designated by the Commission. The Commission has waived the pre-filing requirement in this case.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-03 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-NYSEAmex-2010-03. 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 available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-03 and should be submitted on or before February 12, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61359; File No. SR-FINRA-2009-082]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating To Reporting of Trade Cancellations to FINRA

January 14, 2010.

On November 24, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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: (1) Amend FINRA trade reporting rules to permit members to report trade cancellations after 5:15 p.m. Eastern Time on the trade date to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF") and the OTC Reporting Facility ("ORF");<sup>3</sup> and (2) make certain conforming changes to the rules relating to the submission of trade cancellations to the Alternative Display Facility ("ADF").<sup>4</sup> Notice of the proposed rule change was published for comment in the **Federal Register** on December 10, 2009.<sup>5</sup> The Commission received no comments on the proposal.

After careful review, the Commission 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>6</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

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

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

<sup>3</sup> This change will allow members to submit reports of trade cancellations on the trade date until the close of the facilities at 8 p.m. Previously, FINRA rules prohibited members from reporting trade cancellations after 5:15 p.m. on the trade date for these two reporting facilities.

<sup>4</sup> Among other changes, the proposed amendments to Rule 6282(j)(2) provide that if a normal market hours trade is cancelled during market hours on trade date, the cancellation must be reported within 90 seconds.

<sup>5</sup> See Securities Exchange Act Release No. 61105 (December 3, 2009), 74 FR 65578.

<sup>6</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>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

general, to protect investors and the public interest.

The proposed amendments are identical to the current rules relating to the FINRA/NYSE Trade Reporting Facility ("FINRA/NYSE TRF") and would make FINRA rules governing the submission of trade cancellations consistent across the "FINRA Facilities."<sup>8</sup> The Commission believes such consistency should enhance market transparency and eliminate systematically imposed delays in the reporting of trade cancellations to the FINRA/Nasdaq TRF and ORF.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2009-082), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-1143 Filed 1-21-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61357; File No. SR-CBOE-2010-001]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Elimination of the Hybrid Electronic Quoting Fee

January 14, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 4, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. On January 12, 2010, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>8</sup> The ADF, FINRA/Nasdaq TRF, FINRA/NYSE TRF and ORF are collectively referred to herein as the "FINRA Facilities."

<sup>9</sup> 17 CFR 200.30-3(a)(12).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule to eliminate the Hybrid Electronic Quoting Fee. The text of the proposed rule change is available on the Exchange's website (<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, CBOE 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. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to eliminate the Hybrid Electronic Quoting Fee ("Quoting Fee"), which is applicable to all Market-Makers, DPMs, and e-DPMs (collectively "liquidity providers"). The Quoting Fee was implemented in February 2007 with the purpose of promoting and encouraging more efficient quoting.<sup>1</sup> Under the Quoting Fee, CBOE assesses all liquidity providers who are submitting electronic quotations to CBOE in Hybrid option classes a monthly amount of \$450 per membership utilized. CBOE also assesses or credits fees on liquidity providers that vary depending on: (i) The quality of the liquidity provider's quotation (a quotation is a bid and an offer); and (ii) the value of the underlying security and CBOE's bid in the option series.<sup>2</sup> If a liquidity provider is assessed (or credited) the Quoting Fee, the liquidity provider does not pay

<sup>1</sup> See Securities Exchange Act Release No. 54804 (November 21, 2006), 71 FR 69150 (November 29, 2006). The Quoting Fee was amended three times. See Securities Exchange Act Release No. 56602 (October 3, 2007), 72 FR 57620 (October 10, 2007); Securities Exchange Act Release No. 56927 (December 7, 2007), 72 FR 70912 (December 13, 2007); and Securities Exchange Act Release No. 58513 (September 11, 2008), 73 FR 54186 (September 18, 2008).

<sup>2</sup> See CBOE Fees Schedule, Section 17.

a member dues fee under Section 10 of the Fees Schedule.

The Exchange believes the Quoting Fee is no longer necessary to help mitigate quote message traffic. The Exchange believes liquidity providers generally are quoting more efficiently in response to the expansion of the Penny Pilot Program in order to remain competitive in the penny classes. In addition, the Exchange believes the other quote mitigation strategies it implemented at the inception of the Penny Pilot Program should continue to be effective in mitigating quotations.<sup>3</sup> Also, since the adoption of the Quoting Fee the Exchange has invested heavily to increase its options system capacity to handle greater quote message traffic. Accordingly, the Exchange believes it would be appropriate to eliminate the Quoting Fee.

Liquidity providers will continue to be charged \$450 per month as member dues under Section 10 of the Fees Schedule instead of as a Hybrid Electronic Quoting Fee.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>5</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members. The Exchange believes it is appropriate to eliminate the Quoting Fee because it is no longer necessary to help mitigate quote message traffic.

#### 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 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

<sup>3</sup> See Securities Exchange Act Release No. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).