

continued listing and the listing of additional option series. The Exchange believes that the current \$3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment, the Exchange is currently unable to list new series on underlying securities trading below \$3. If there is market demand for series below \$3, the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below \$3.

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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.

CBOE's rules provide that a security underlying an option will not be deemed to meet the requirements for continued approval if the underlying security ceases to be an NMS stock.<sup>7</sup> CBOE's rules also include other minimum standards for continued approval, including requirements related to the minimum number of outstanding shares, number of holders, and trading volume of the underlying security.<sup>8</sup> The Commission believes that securities underlying options traded on CBOE will remain subject to adequate minimum standards for continued approval, which should help to ensure that only options on liquid underlying securities are permitted to trade on CBOE. The Commission also notes that the NYSE Euronext letter generally

supports the proposal.<sup>9</sup> Accordingly, the Commission believes that CBOE's proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2008-127), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59331; File No. SR-CBOE-2009-003]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Trades for Less Than \$1

January 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 29, 2009, 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 prepared by the Exchange. The Exchange filed 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> 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 extend its program that allows transactions to take place at a price that is below \$1 per option contract until May 29, 2009. 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'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 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

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.54, *Accommodation Liquidations (Cabinet Trades)*, which sets forth specific procedures for engaging in cabinet trades. Rule 6.54 currently provides for cabinet transactions to occur via open outcry at a cabinet price of \$1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a PAR Official/OBO, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the PAR Official/OBO cabinet book (which resting cabinet book orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

On December 30, 2008, the Exchange temporarily amended the procedures through January 30, 2009 to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1

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

<sup>7</sup> See CBOE Rule 5.4.01(f). Rule 600 of Regulation NMS defines an NMS security as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options," and an NMS stock as "any NMS security other than an option."

<sup>8</sup> See CBOE Rule 5.4.01(a)-(c).

<sup>9</sup> See NYSE Euronext Letter, *supra* note 4.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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).

per option contract.<sup>5</sup> These lower priced transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also available for trading in option classes participating in the Penny Pilot Program.<sup>6</sup> The Exchange believes that allowing a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the \$1 cabinet price (e.g., the series might be quoted no bid).<sup>7</sup>

The purpose of the instant rule change is to extend the operation of these temporary procedures through May 29, 2009, so that the procedures can continue without interruption

<sup>5</sup> Securities Exchange Act Release No. 59188 (December 30, 2008), 74 FR 480 (January 6, 2009) (SR-CBOE-2008-133).

<sup>6</sup> Currently the \$1 cabinet trading procedures are limited to options classes traded in \$0.05 or \$0.10 standard increment. The \$1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

<sup>7</sup> As with other accommodation liquidations under Rule 6.54, transactions that occur for less than \$1 are not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.54, the transactions are exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 6.24, *Required Order Information*. However, the Exchange maintains quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than \$1 must be reported to the Exchange following the close of each business day. The rule also provides that transactions for less than \$1 will be reported for clearing utilizing forms, formats and procedures established by the Exchange from time to time. In this regard, the Exchange initially intends to have clearing firms directly report the transactions to the Options Clearing Corporation ("OCC") using OCC's position adjustment/transfer procedures. This manner of reporting transactions for clearing is similar to the procedure that CBOE currently employs for on-floor position transfer packages executed pursuant to Exchange Rule 6.49A, *Transfer of Positions*.

pending review by the Commission of a separate proposed CBOE rule change filing that will seek permanent approval of the temporary procedures pursuant to Section 19(b)(2) of the Act.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>9</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than \$1 per option contract better facilitates the closing of options positions that are worthless or not actively trading.

### 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; or (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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78ff(b)(1).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</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

CBOE has requested that the Commission waive the 30-day operative delay to enable Interpretations and Policies .03 to CBOE Rule 6.54 to continue in effect without interruption while the Exchange formulates a permanent rule change that will be submitted for Commission review pursuant to Section 19(b)(2) of the Act.<sup>14</sup> The Exchange argues that the extension of the temporary program that allows for accommodation liquidations to occur at less than \$1 per option contract would allow for the orderly closing of option positions that are worthless and not actively traded. The Commission believes that waiving the 30-day operative delay<sup>15</sup> is consistent with the protection of investors and the public interest. Therefore, the Commission designates 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-003 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-2009-003. This file number should be included on 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. CBOE has satisfied this requirement.

<sup>14</sup> 15 U.S.C. 78s(b)(2). The Commission notes that CBOE has not yet filed that proposal.

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2009-003 and should be submitted on or before February 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59335; File No. SR-FINRA-2008-061]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 5240 (Anti-Intimidation/Coordination) in the Consolidated FINRA Rulebook

February 2, 2009.

On December 11, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")), filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 adopt NASD IM-2110-5 as FINRA Rule 5240 in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook")<sup>3</sup> without material change. The proposed rule change was published for comment in the **Federal Register** on December 29, 2008.<sup>4</sup> The Commission received no comment letters in response to the proposed rule change. This order approves the proposed rule change.

NASD IM-2110-5 currently identifies three general types of conduct that are inconsistent with just and equitable principles of trade:<sup>5</sup> (1) Coordinating activities by members involving quotations, prices, trades, and trade reporting (e.g., agreements to report trades inaccurately or maintain certain minimum spreads); (2) "directing or requesting" another member to alter prices or quotations; and (3) engaging in conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. The IM also sets forth seven specific exclusions that identify bona fide commercial activity that is permitted (e.g., bona fide negotiations and unilateral decisions regarding spreads). The proposed rule change would renumber NASD IM-2110-5 as FINRA Rule 5240 in the Consolidated FINRA Rulebook.

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 that are applicable to a national securities association,<sup>6</sup> and in

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

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

<sup>3</sup> The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual members must also comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 ("Rulebook Consolidation Process").

<sup>4</sup> See Securities Exchange Act Release No. 59119 (December 18, 2008), 73 FR 79527.

<sup>5</sup> NASD Rule 2110 requires members to "observe high standards of commercial honor and just and equitable principles of trade." On September 25, 2008, the Commission approved adopting NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010 without substantive change. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008). That rule change took effect on December 15, 2008. See FINRA *Regulatory Notice* 08-57 (October 2008).

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

particular, with Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that FINRA 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. The Commission notes that FINRA originally adopted NASD IM-2110-5 to fulfill part of its 1996 settlement agreement<sup>8</sup> with the SEC.<sup>9</sup> FINRA's adoption of NASD IM-2110-5 as FINRA Rule 5240 in the Consolidated FINRA Rulebook provides notice to members of behavior that violates just and equitable principles of trade.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-FINRA-2008-061) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59340; File No. SR-FINRA-2008-047]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Codes of Arbitration Procedure To Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to \$100,000

February 2, 2009.

#### I. Introduction

The Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") on September 18, 2008, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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

<sup>8</sup> See *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3-9056, Securities Exchange Act Release No. 37538 (August 8, 1996).

<sup>9</sup> See Securities Exchange Act Release No. 38845 (July 17, 1997), 62 FR 39564 (July 23, 1997). Although FINRA is not making material changes to the rule, one of the minor changes made by FINRA is to add the phrase "or other person" to paragraphs (a)(1) and (a)(3) of the rule to clarify that coordination with or intimidation of a non-FINRA member is covered by the rule.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>16</sup> 17 CFR 200.30-3(a)(12).