Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5064 Filed 3–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63999; File No. SR–FINRA–2010–061]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change Adopting, as Modified by Amendment No. 1, Rules Governing Guarantees, Carrying Agreements, Security Counts and Supervision of General Ledger Accounts in the Consolidated FINRA Rulebook

March 1, 2011.

I. Introduction

On November 12, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing guarantees, carrying agreements, security counts and supervision of general ledger accounts in the consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on November 24, 2010.[3] The Commission received one comment letter on the proposed rule change.[4] On February 24, 2011, FINRA responded to the comments and filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 63375 (November 24, 2010), 75 FR 74759 (December 1, 2010) (Notice of Filing of Proposed Rule Change; File No. SR–FINRA–2010–061) ("Notice").

[4] *See* Letter from D. Grant Vingoe, Arnold & Porter LLP ("Arnold & Porter"), to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2010 (*available at http://www.sec.gov/comments/sr-finra-2010–061/finra2010061.shtml*).

[5] *See* Amendment No. 1 dated February 24, 2011 ("Amendment No. 1") and FINRA's response to comments, dated February 24, 2011 ("Response to Comments"), which are available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA, and on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml*.

proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change, as Modified by Amendment No. 1

A. Background

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[6] FINRA is proposing to adopt new, consolidated rules governing guarantees, carrying agreements, security counts and supervision of general ledger accounts. FINRA proposes to adopt FINRA Rules 4150 (Guarantees by, or Flow Through Benefits for, Members), 4311 (Carrying Agreements), 4522 (Periodic Security Counts, Verifications and Comparisons) and 4523 (Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts) in the Consolidated FINRA Rulebook and to delete NASD Rule 3230, NYSE Rules 322, 382, 440.10 and 440.20 and NYSE Rule Interpretations 382/01 through 382/05, 409(a)/01 and 440.20/01.[7]

The proposed rules would, in combination with other consolidated financial responsibility rules approved by the SEC,[8] enhance FINRA's authority to execute effectively its financial and operational surveillance and examination programs. Consistent with the approach that FINRA discussed in SR–FINRA–2008–067 and *Regulatory Notice* 09–71, many of the requirements set forth in the proposed rules are substantially the same as requirements found in current rules and, where appropriate, are tiered to apply only to carrying or clearing firms, or to firms that engage in certain specified activities.[9] Certain of the proposed rule provisions are new for FINRA members that are not Dual Members ("non-NYSE members"). Certain other provisions are new for both Dual Members and non-NYSE members alike.

In Amendment No. 1, FINRA proposes new Supplementary Material .04 to Rule 4311. This Supplementary Material is technical in nature. It is intended to remind members that, for purposes of paragraphs (c)(1)(F) and (c)(2) of Rule 4311, the receipt and delivery of customers' funds and securities and the safeguarding of such funds and securities must comply with the requirements of the SEC's financial responsibility rules, in particular Exchange Act Rule 15c3–3 and applicable SEC guidance. Amendment No. 1 would redesignate the original Supplementary Material .04 as .05.

2. Proposed Amendments

FINRA proposes the following amendments to its rules.

(A) Proposed FINRA Rule 4150 (Guarantees by, or Flow Through Benefits for, Members)

As stated in the Notice, Proposed Rule 4150(a) is based in large part on NYSE Rule 322.[10] Proposed Rule 4150(a) requires that prior written notice be given to FINRA whenever a member guarantees, endorses or assumes, directly or indirectly, the obligations [11] or liabilities of another person (including an entity).[12] Paragraph (b) of the rule requires that prior written approval must be obtained from FINRA whenever any member receives flow-through capital benefits in accordance with Appendix C of Exchange Act Rule 15c3–1.[13]

(B) Proposed FINRA Rule 4311 (Carrying Agreements)

Proposed FINRA Rule 4311 is based on NASD Rule 3230 and NYSE Rule 382.[14] The proposed rule governs the requirements applicable to members when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected. Historically, the purpose of the NASD and NYSE rules upon which the proposed rule is based has been to ensure that certain functions and responsibilities are clearly allocated to either the introducing or carrying firm, consistent with the requirements of the self-regulatory organization and SEC's financial responsibility and other rules and regulations, as applicable.[15]

As discussed in the Notice, Proposed FINRA Rule 4311(a)(1) prohibits a member, unless otherwise permitted by FINRA, from entering into an agreement for the carrying on an omnibus or fully disclosed basis, of any customer account in which securities transactions can be effected, unless the agreement is with a carrying firm that is a FINRA member.

Proposed FINRA Rule 4311(b)(1) requires that the carrying firm must submit to FINRA for prior approval any agreement for the carrying of accounts, whether on an omnibus or fully disclosed basis, before such agreement may become effective.[16] The proposed rule also provides that the carrying firm must submit to FINRA for prior approval any material changes to an approved carrying agreement before the changes may become effective. The proposed rule codifies the practice under NASD Rule 3230 of permitting use of pre-approved standardized forms of agreement, with the exception of agreements with parties that are not U.S.-registered broker-dealers. The proposed rule requires a carrying firm to submit to FINRA for approval each carrying agreement with a non-U.S.-registered broker-dealer.

FINRA Rule 4311(b)(3) codifies the current practice under NYSE Rule 382 of requiring that as early as possible, but

[6] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[7] For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

[8] *See* Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Granting Accelerated Approval to Proposed Rule Change; File No. SR–FINRA–2008–067). *See also Regulatory Notice* 09–71 (December 2009) (SEC Approves Consolidated FINRA Rules Governing Financial Responsibility) and *Regulatory Notice* 09–03 (January 2009) (Financial Responsibility and Related Operational Rules).

[9] For purposes of the new consolidated financial responsibility rules and the proposed rules, FINRA has specified in the rule text where appropriate that all requirements that apply to a member that clears or carries customer accounts also apply to any member that, operating pursuant to the exemptive provisions of Exchange Act Rule 15c3–3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder. For further discussion, *see* 74 FR 58334. *See also* proposed FINRA Rule 4523.02 in this rule filing.

[10] NASD Rules do not have a provision that corresponds to NYSE Rule 322. Accordingly, the requirements of proposed FINRA Rule 4150 would be new to non-NYSE members.

[11] FINRA noted that the term "obligations" includes financial obligations, as well as other obligations that may have a financial impact on a member, such as performance obligations.

[12] NASD Rule 0120(n) defines "person" to include any natural person, partnership, corporation, association, or other legal entity. Similarly, NYSE Rule 2(d) states that "person" means a natural person, corporation, limited liability company, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not. All references to "persons" in this filing include entities.

[13] FINRA notes the proposed rule is designed to align with the requirements of Appendix C.

[14] Proposed FINRA Rule 4311 also is based on NYSE Rule Interpretations 382/01 through/05 and 409(a)/01.

[15] *See, e.g., Notice to Members* 94–7 (February 1994) (SEC Approves New NASD Rule Relating to the Obligations and Responsibilities of Introducing and Clearing Firms) and NYSE *Information Memo* 82–18 (March 1982) (Carrying Agreements—Amendments to Rules 382 and 405).

[16] Proposed FINRA Rule 4311(b)(1) is consistent with the requirements of NASD Rule 3230(e) and NYSE Rule 382(a).

not later than 10 business days, prior to the carrying of any accounts of a new introducing firm (including the accounts of any piggyback or intermediary introducing firm(s)), the carrying firm must submit to FINRA a notice identifying each such introducing firm by name and CRD number and include such additional information as FINRA may require.[17] FINRA Rule 4311(b)(4) expressly requires each carrying firm to conduct appropriate due diligence with respect to any new introducing firm relationship. The rule provides that such due diligence must assess the financial, operational, credit and reputational risk that such arrangement will have upon the carrying firm. The rule also provides that FINRA, in its review of any arrangement, may in its discretion require specific items to be addressed by the carrying firm as part of the firm's due diligence requirement under the rule. The rule further provides that the carrying firm must maintain a record, in accord with the time frames prescribed by Exchange Act Rule 17a–4(b), of the due diligence conducted for each new introducing firm.

Proposed FINRA Rule 4311(c) requires that each carrying agreement in which accounts are to be carried on a fully disclosed basis must specify the responsibilities of each party to the agreement.[18] The proposed rule also requires each carrying agreement in which accounts are to be carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for preparing and transmitting statements of account to customers.

FINRA Proposed Rule 4311(d) requires that each customer whose account is introduced on a fully disclosed basis must be notified in writing upon the opening of the account of the existence of the carrying agreement and the responsibilities allocated to each respective party.[19]

Proposed FINRA Rule 4311(e) requires that each carrying agreement must expressly state that to the extent that a particular responsibility is allocated to one party, the other party or parties will supply to the responsible organization all appropriate data in their possession pertinent to the proper performance and supervision of that responsibility.[20]

Proposed FINRA Rule 4311(f) provides that a carrying agreement may authorize an introducing firm to issue negotiable instruments directly to its customers on the carrying firm's behalf, using instruments for which the carrying firm is the maker or drawer, provided that the parties comply with Exchange Act Rule 15c3–3 and further that the introducing firm represents to the carrying firm in writing that the introducing firm maintains, and will enforce, supervisory policies and procedures with respect to such negotiable instruments that are satisfactory to the carrying firm.[21]

Proposed FINRA Rules 4311(g) and 4311(h) generally address obligations of parties to provide referenced information, such as any written customer complaints and exception reports, to each other and/or to FINRA and are based upon existing NASD and NYSE rule provisions.

Proposed FINRA Rule 4311(i) provides that all carrying agreements must require each introducing firm to maintain its proprietary and customer accounts, and the proprietary and customer accounts of any introducing firm for which it is acting as an intermediary in obtaining clearing services from the carrying firm, in such a manner as to enable the carrying firm and FINRA to specifically identify the proprietary and customer accounts belonging to each introducing firm.[22]

(C) Proposed FINRA Rule 4522 (Periodic Security Counts, Verifications and Comparisons)

Proposed FINRA Rule 4522(a) requires each member firm that is subject to the requirements of Exchange Act Rule 17a–13 to make the counts, examinations, verifications, comparisons, and entries set forth in that rule.[23] Proposed FINRA Rule 4522(b) requires each carrying or clearing member subject to Exchange Act Rule 17a–13 to make more frequent counts, examinations, verifications, comparisons, and entries where prudent business practice would so require.[24]

(D) Proposed FINRA Rule 4523 (Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts)

Proposed FINRA Rule 4523 is intended to help assure the accuracy of each member's books and records.[25] Proposed FINRA Rule 4523(a) requires that each member must designate an associated person to be responsible for each general ledger bookkeeping account and account of similar function used by the member. The associated person must control and oversee entries into each such account and determine that the account is current and accurate as necessary to comply with all applicable FINRA rules and federal securities laws governing books and records and financial responsibility requirements.

Proposed FINRA Rule 4523(b) requires that each carrying or clearing member must maintain a record of the name of each individual assigned primary and supervisory responsibility for each account as required by paragraph (a) of the rule.

Proposed FINRA Rule 4523(c) provides that each member must record, in an account that must be clearly identifiable as a suspense account, money charges or credits and receipts or deliveries of securities whose ultimate disposition is pending determination.

(E) Implementation Date

FINRA will announce the implementation date of these proposed rule changes in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Summary of Comment Letter and FINRA's Response

The proposed rule change was published for comment in the **Federal Register** on November 24, 2010, and the comment period closed on December 22, 2010. The Commission received one comment letter in response to the proposing release, the Arnold & Porter letter.[26] Arnold & Porter expressed concerns about the scope of proposed FINRA Rule 4311. Specifically, the commenter suggested that proposed FINRA Rule 4311 was not clear as to whether a FINRA member firm that

[17] This is a new requirement for non-NYSE carrying members, and permits FINRA to obtain additional information that enables it to evaluate the impact of the new carrying arrangement on the financial and operational condition of the member.

[18] Proposed FINRA Rule 4311(c) is based in part on NASD Rule 3230(a) and NYSE Rule 382(b).

[19] Proposed FINRA Rule 4311(d) is based in part on NASD Rule 3230(g), NYSE Rule 382(c), and NYSE Rule Interpretation 382/03.

[20] This is a new requirement for non-NYSE members.

[21] Proposed FINRA Rule 4311(f) is based in part on NASD Rule 3230(d) and NYSE Rule 382(f).

[22] Proposed FINRA Rule 4311(i) is based largely on NASD Rule 3230(h) and does not have a corresponding provision in NYSE Rule 382.

[23] Proposed FINRA Rule 4522(a) is based in part on NYSE Rule 440.10.

[24] *Id.*

[25] Proposed FINRA Rule 4523 is based on NYSE Rule 440.20. NASD Rules do not have a provision that corresponds to NYSE Rule 440.20; therefore, the requirements of proposed FINRA Rule 4523 are new to non-NYSE members.

[26] *See supra* note 4.

operates pursuant to the exemptive provision of Exchange Act Rule 15c3–3(k)(2)(i) is engaged in carrying activity and, thereby, subject to the rule. In FINRA's response, it noted that FINRA had specified in the rule text where appropriate those requirements of the proposed rule which are intended to apply to firms that operate pursuant to the exemptive provisions of Exchange Act Rule 15c3–3(k)(2)(i).[27]

The Arnold & Porter letter also raised concerns as to whether proposed FINRA Rule 4311 impacts the status of DVP/RVP clearance and settlement arrangements across international borders that may be structured as omnibus accounts where U.S.-registered broker-dealers seek to designate these accounts at a foreign affiliate as approved foreign control locations under Exchange Act Rule 15c3–3. As FINRA stated in its response, the proposed rule applies to arrangements to carry customer accounts and is "not meant to address the substantive requirements of SEA Rule 15c3–3(c) as it applies to good control locations nor to apply to cross-border clearance and settlement arrangements that are structured on a basis that is permissible under and consistent with SEC rules."[28]

Finally, FINRA noted that the propriety of structuring cross-border clearance and settlement arrangements in the manner described by the commenter, and the propriety of a U.S.-registered broker-dealer's reliance on Exchange Act Rule 15c3–3(k)(2)(i) for various business activities, were outside the scope of the proposed rule change.[29]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 1, the comment letter received, and FINRA's response, and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[30] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Exchange Act,[31] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission believes that FINRA adequately addressed the concerns raised by the commenter in its response. Further, the rule language in Amendment No. 1 reminds FINRA members that, for purposes of paragraphs (c)(1)(F) and (c)(2) of Rule 4311, the receipt and delivery of customers' funds and securities and the safeguarding of such funds and securities must comply with the requirements of the SEC's financial responsibility rules, in particular Exchange Act Rule 15c3–3 and applicable SEC guidance. The Commission believes the proposed rule change, as modified by Amendment No. 1, will further the purposes of the Exchange Act by, among other things, clarifying and streamlining the requirements surrounding carrying agreements, as well as the rules governing guarantees, security counts, and supervision of general ledger accounts.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[32] for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The changes proposed in Amendment No. 1 add clarity to Rule 4311 and do not raise novel regulatory concerns. In particular, Amendment No. 1 further reminds FINRA members that, for purposes of paragraphs (c)(1)(F) and (c)(2) of Rule 4311, receipt and delivery of customers' funds and securities and the safeguarding of such funds and securities must comply with the requirements of the SEC's financial responsibility rules, in particular Exchange Act Rule 15c3–3 and applicable SEC guidance.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange 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–FINRA–2010–061 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–FINRA–2010–061. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2010–061 and should be submitted on or before March 28, 2011.

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[27] *See also* Notice, note 6, at FR 74760 (stating, "[f]or purposes of the new consolidated financial responsibility rules and the proposed rules, FINRA has specified in the rule text where appropriate that all requirements that apply to a member that clears or carries customer accounts also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.").

[28] *See* Response to Comments.

[29] *Id.*

[30] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78*o*–3(b)(6).

[32] 15 U.S.C. 78s(b)(2).

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[33] that the proposed rule change (SR–FINRA–2010–061), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5024 Filed 3–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63998; File No. SR–CBOE–2011–018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for Securities Traded on CBSX

March 1, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2011, 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 the Exchange. 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 the Substance of the Proposed Rule Change

This proposal submitted by Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") is to codify a fee schedule for the sale by Market Data Express, LLC ("MDX"), an affiliate of CBOE, of a data product that includes CBOE Stock Exchange ("CBSX") best bid and offer and trade data and certain related market data. 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, 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 the proposed rule change is to establish fees that MDX will charge for the sale of certain market data with respect to the trading of securities on CBSX. CBSX is CBOE's stock trading facility.

CBOE currently collects and processes market data with respect to quotes and orders and the prices of trades for all securities that are traded on CBSX. This market data includes the "best bid and offer," or "BBO", consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size ("BBO data," sometimes referred to as "top of book data"). Data with respect to executed trades is referred to as "last sale" data. CBOE reports CBSX BBO data under the Consolidated Quotation Plan ("CQ Plan") and CBSX last sale data under the Consolidated Tape Association Plan ("CTA Plan") with respect to NYSE-listed securities and securities listed on exchanges other than NYSE and Nasdaq for inclusion in those Plans' consolidated data streams. CBOE reports CBSX BBO data and CBSX last sale data under the Nasdaq Unlisted Trading Privileges Plan ("Nasdaq/UTP Plan") with respect to Nasdaq-listed securities for inclusion in that Plan's consolidated data stream.

MDX provides to "Customers" [3] a real-time, low latency data feed that includes the CBSX BBO data and last sale data. (This data feed is sometimes referred to in this filing as the "BBO Data Feed"). The BBO and last sale data contained in the BBO Data Feed is identical to the data that CBOE sends to the processors under the CQ, CTA and Nasdaq/UTP Plans.[4] In addition, the BBO Data Feed includes certain data that is not included in the data sent to the processors under the CQ, CTA and Nasdaq/UTP Plans, namely, totals of customer versus non-customer shares at the BBO and All-or-None contingency orders priced better than or equal to the BBO. The purpose of this proposed rule change is to establish the fees MDX will charge for the sale of the BBO Data Feed.

MDX would charge Customers a "direct connect fee" of $500 per connection per month. MDX would also charge Customers a "per user fee" of $25 per month per "Authorized User" or "Device" for receipt of the BBO Data Feed by Subscribers. An "Authorized User" is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A "Device" is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form. Either a CBSX Trading Permit Holder or a non-CBSX Trading Permit Holder may be a Customer. All Customers would be assessed the same fees.

The proposed fees would be implemented on March 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 ("Act") [5] in general, and, in particular, with Section 6(b)(4) of the Act [6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among CBSX Trading Permit Holders and other persons using its facilities, and with Section 6(b)(5) [7] of the Act in that there will be no unfair discrimination between customers, issuers, brokers, or dealers in the distribution of the data. In addition, the Exchange believes that the proposed

[33] 15 U.S.C. 78(b)(2).

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "Customer" is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A "Subscriber" is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.

[4] The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to the processors under the CQ, CTA and Nasdaq/UTP Plans. The Exchange also notes that it also makes the BBO data and last sale data that is included in the BBO Data Feed available directly to CBSX Trading Permit Holders, and permits them to redistribute the data to their customers.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).