

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the \$3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security from Rule 5.4.01(d). In addition, the rule filing would amend Rule 5.4.02 by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than \$3. Also, the Exchange proposes to make technical changes throughout the Interpretations and Policies to Rule 5.4 to eliminate references to paragraph (d) of Interpretation and Policy .01 to Rule 5.4.

The Exchange believes that the \$3 market price per share requirement is no longer necessary or appropriate, and states that only those underlying securities meeting the remaining maintenance listing criteria set forth in Rule 5.4.01 will be eligible for 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.

2. Statutory Basis

Because the current rule proposal will permit the Exchange to make options on underlying securities available even if the price of the underlying security is less than \$3, the Exchange believes the

rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act⁵ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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 this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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-2008-127 on the subject line.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

Paper Comments

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

All submissions should refer to File Number SR-CBOE-2008-127. 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 20549-1090. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. 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-2008-127 and should be submitted on or before January 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59147; File No. SR-CBOE-2008-123]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Adopt a Trade, Flash and Cancel Order Type for CBSX

December 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ 17 CFR 200.30-3(a)(12).

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 3, 2008, 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. 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 filing proposes to adopt a Trade, Flash and Cancel order type for the CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this proposed rule change is to revise CBSX Rule 51.8 to adopt a Trade, Flash and Cancel order type. This is a market or marketable limit order to buy or sell that is to be executed in whole or in part on CBSX immediately and automatically after it is received by the CBSX System without delay for any purpose except that it will be electronically exposed pursuant to Rule 52.6 prior to cancellation. Rule 52.6 provides that market or limit orders shall not be executed at a price that would cause a trade-through of a Protected Quotation as defined in Rule 611 of Regulation NMS; instead, these

orders are "flashed" to CBSX Traders³ for potential execution at a price that would not cause a trade-through.⁴ This new order type would allow users to send orders to CBSX for execution even when CBSX is not the NBBO without requiring CBSX to seek an NBBO fill for these orders at away trading centers when price improvement on CBSX is not achieved. Thus, users can seek fills on CBSX while maintaining control over routing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁵ in general and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular in that, by offering users an enhanced price improvement feature and greater control over order routing, it is designed to promote just and equitable principles of trade, and serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

³ "CBSX Trader" is defined in CBOE Rule 50.1. See e-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Andrew Madar, Attorney-Advisor, Commission, dated December 12, 2008.

⁴ If a flash responder attempts to trade against the order by matching the flash price (the NBBO price at the time the order was received by the CBSX System), the order will be executed unless the system determines at the point of execution that the flash price is worse than a revised NBBO in which case the order will be cancelled. See e-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Michael J. Gaw, Assistant Director, and Andrew Madar, Attorney-Advisor, Commission, dated December 19, 2008.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

publishes its reasons for so finding, or (ii) as to which CBOE consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2008-123 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2008-123. 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 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 publicly available. All submissions should refer to File Number SR-CBOE-2008-123 and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

should be submitted on or before January 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59160; File No. SR-FINRA-2008-062]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2267 (Investor Education and Protection) in the Consolidated FINRA Rulebook

December 23, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that 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 ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to adopt new FINRA Rule 2267 (Investor Education and Protection) based on NASD Rule 2280. The proposed rule change would require member firms, with certain exceptions, to provide customers with FINRA's Web site address and information regarding FINRA's BrokerCheck program at least once every calendar year. The text of the proposed rule change is attached as Exhibit 5.³

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

In its filing with the Commission, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),⁴ FINRA is proposing to adopt a new FINRA rule based on NASD Rule 2280 (Investor Education and Protection). The proposed rule would require member firms, with certain exceptions, to provide customers with FINRA's Web site address and information regarding FINRA's BrokerCheck program at least once every calendar year.

NASD Rule 2280 currently applies to all member firms that carry customer accounts and hold customer funds or securities. The Rule requires that each such member firm provide its customers with the following information in writing not less than once every calendar year: (1) The "Public Disclosure Program" hotline number; (2) the NASD Regulation Web site address; and (3) a statement regarding the availability of an investor brochure that includes information describing the "Public Disclosure Program." There is no comparable Incorporated NYSE Rule.

The proposed rule would apply to all member firms, with two general exceptions: (1) a firm that does not have customers or (2) an introducing firm that is party to a carrying agreement where the carrying firm member complies with the Rule.

Unlike NASD Rule 2280, the proposed rule would apply to member

firms that conduct a limited business with customers, such as mutual fund distributors and member firms that deal solely with direct participation programs ("DPPs"). These member firms would be required to comply with the rule and provide the disclosures to their customers at least once every calendar year. To the extent such firms are parties to a carrying agreement and the carrying firm member complies on their behalf, these firms would be excepted from the requirements of the proposed rule.

In December 2003, FINRA announced that its "Public Disclosure Program" would thereafter be known as "BrokerCheck." Accordingly, the proposed rule would include references to "BrokerCheck" rather than the "Public Disclosure Program". Additionally, the proposed rule would include references to the FINRA Web site address rather than the NASD Regulation Web site address. Lastly, the proposed rule would clarify that the information required under the rule may be provided electronically to customers.⁵

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which requires, among other things, that FINRA rules must 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. FINRA believes that, by adopting the investor education and protection rule as a FINRA rule, the proposed rule change will help to ensure that customers continue to receive written information regarding FINRA's BrokerCheck program.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁴ The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) 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"). For more information about the rulebook consolidation process, see *FINRA Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

⁵ See *NASD Notice to Members* 98-3 (Electronic Delivery of Information Between Members and Their Customers). This *Notice* sets forth the policy applicable to electronic delivery of information between member firms and their customers as permitted or required by NASD rules.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at FINRA, the Commission's Public Reference Room, and at <http://www.finra.org>.