

persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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 has neither solicited nor received comments on 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 publishes its reasons for so finding or (ii) as to which the Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2008-25 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-BSE-2008-25. 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 BSE. 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-BSE-2008-25 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57767; File No. SR-CHX-2008-06]

### **Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Regarding the Definition of Qualified Contingent Trade**

May 2, 2008.

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> notice is hereby given that on April 29, 2008, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by CHX. On May 1, 2008, CHX submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its rules to delete from the definition of Qualified Contingent Trade the requirement that such transactions be for a minimum size of either 10,000 shares or \$200,000 in transaction value. The text of the proposed rule change is available at CHX, the Commission's Public Reference Room, and [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm).

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

In its filing with the Commission, CHX 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. CHX 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 Exchange's rules currently define the term "Qualified Contingent Trade" according to the definition included in an exemptive order issued by the Commission on August 31, 2006.<sup>5</sup> Pursuant to the Exemptive Order, Qualified Contingent Trades are exempt from the trade-through restrictions of

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

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

<sup>5</sup> See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS) ("Exemptive Order").

<sup>51</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.

Regulation NMS.<sup>6</sup> The Exchange has incorporated an identical definition of Qualified Contingent Trades in order that such trades could also be exempted from Exchange rules restricting intermarket trade-throughs.

On April 4, 2008, the Commission issued a revised exemptive order eliminating one of the elements of the original Qualified Contingent Trade definition.<sup>7</sup> Based upon a request from the Chicago Board Options Exchange, Incorporated, the Revised Exemptive Order deleted the minimum size restrictions of 10,000 shares or \$200,000 in transaction value which were part of the original definition. The Exchange proposes to eliminate the size and value restrictions from its own definition of Qualified Contingent Trade in order to operate its marketplace in a manner consistent with Commission directives. The Exchange proposes to change its rules to eliminate any minimum size or value restrictions in its definition of the term Qualified Contingent Trade. The Exchange also proposes to eliminate an obsolete reference in the rule to the prospective application of Regulation NMS and to correct an erroneous citation in Article 20, Rule 5 to the Qualified Contingent Trade definition.

## 2. Statutory Basis

CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> The Exchange believes that the proposed changes are consistent with Section 6(b)(5) of the Act,<sup>9</sup> because they would 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 by allowing CHX to amend its rules to reflect the Revised Exemptive Order defining the term Qualified Contingent Trade.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to implement the proposal without needless delay. The Commission notes that it recently modified the definition of Qualified Contingent Trade originally adopted in the Exemptive Order.<sup>14</sup> For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>15</sup>

At any time within 60 days of the filing of such 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.<sup>16</sup>

### 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-CHX-2008-06 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-CHX-2008-06. 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 the filing also will be available for inspection and copying at the principal office of CHX. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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. The Exchange has satisfied the five-day pre-filing notice requirement.

<sup>13</sup> *Id.*

<sup>14</sup> See Revised Exemptive Order, *supra* note 7.

<sup>15</sup> For the 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).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on May 1, 2008, the date on which the Exchange submitted Amendment No. 1.

<sup>6</sup> 17 CFR 242.600 *et seq.* See 17 CFR 242.611.

<sup>7</sup> See Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (Order Modifying the Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS ("Revised Exemptive Order").

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

should refer to File Number SR-CHX-2008-06 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57769; File No. SR-FINRA-2008-015]

### Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Effective Date of Certain FINRA Rule Changes Approved in SR-NASD-2004-183

May 2, 2008.

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> notice is hereby given that on April 17, 2008, 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 substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing a rule change to delay the effective date of paragraphs (c) and (d) of Rule 2821, as approved in SR-NASD-2004-183, until after the Commission has approved or disapproved a proposed substantive rule change to Rule 2821 that FINRA intends to file in the near future. That substantive rule change is not included in this proposed rule change, but will be the subject of a separate filing with the

SEC.<sup>4</sup> There are no changes to the text of NASD Rule 2821 in this proposed rule change.

#### 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

On September 7, 2007, the Commission noticed the filing of Amendment Nos. 3 and 4 and granted accelerated approval of SR-NASD-2004-183, FINRA’s new NASD Rule 2821, regarding broker-dealers’ compliance and supervisory responsibilities for transactions in deferred variable annuities.<sup>5</sup> On November 6, 2007, FINRA published *Regulatory Notice* 07-53, which announced the Commission’s approval of Rule 2821 and established May 5, 2008 as the rule’s effective date. Following SEC approval of the rule and publication of the *Regulatory Notice*, several firms requested that the effective date of the approved rule be delayed to allow firms additional time to make necessary systems changes. In addition, some firms raised various concerns regarding paragraph (c) of Rule 2821 (Principal Review and Approval), which had been revised by Amendment No. 4.

Rule 2821(c), in part, requires principal review and approval “[p]rior

to transmitting a customer’s application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.” A number of firms asserted that seven business days beginning at the time when the customer signs the application may not allow for a thorough principal review in all cases. These firms asked that a different timing mechanism be used.

Rule 2821(c) also states that a principal must treat “all transactions as if they have been recommended for purposes of this principal review” and may only approve the transaction if he or she determines “that there is a reasonable basis to believe that the transaction would be suitable based on the factors delineated in paragraph (b) of this Rule.” A principal who determines that the transaction is unsuitable nonetheless may authorize the processing of the transaction if the principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the principal found it to be unsuitable, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity. Some firms questioned whether broker-dealers that do not make any recommendations to customers (and generally do not employ principals to perform suitability reviews) should be subject to this provision.

Finally, in *Regulatory Notice* 07-53, FINRA stated that Rule 2821(c) does not permit the depositing of a customer’s funds in an account at the insurance company prior to completion of principal review. In response to the *Regulatory Notice*, a number of firms explained that insurers’ financial controls regarding the receipt of money from customers often include holding such funds in a general “suspense” account at the insurer. According to these firms, insurers use an identifier to track money held in the suspense account and, if a contract is not issued, the funds are promptly returned to the customer. The firms further stated that this process has been used for many years without complications, makes processing much more efficient and effective, and receives significant scrutiny by examiners from the SEC and state insurance departments. Accordingly, these firms asked that insurers be allowed to deposit customer funds in suspense accounts under certain circumstances.

In light of those concerns, among others, FINRA staff believed it was prudent to give further consideration to paragraph (c) of Rule 2821 and the

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

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> In the separate filing, FINRA plans to propose changing the event that triggers the beginning of the period within which the principal must review and determine whether to approve or reject the application. FINRA also intends to propose limiting application of the rule to recommended transactions. Finally, FINRA plans to propose to clarify various other issues, including whether (and, if so, under what circumstances) a broker-dealer can forward funds to an affiliated insurance company prior to the principal’s approval of the transactions.

<sup>5</sup> See SEC Order Approving FINRA’s NASD Rule 2821 Regarding Members’ Responsibilities for Deferred Variable Annuities, Securities Exchange Act Release No. 56375 (Sept. 7, 2007), 72 FR 52403 (Sept. 13, 2007) (SR-NASD-2004-183); SEC Corrective Order, Securities Exchange Act Release No. 56375A (Sept. 14, 2007), 72 FR 53612 (Sept. 19, 2007) (SR-NASD-2004-183) (correcting the rule’s effective date).