

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to [Charles.Mierzwa@RRB.GOV](mailto:Charles.Mierzwa@RRB.GOV). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to [Ronald.Hodapp@RRB.GOV](mailto:Ronald.Hodapp@RRB.GOV). Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**  
Clearance Officer.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59524; File No. SR-CBOE-2009-012]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Dividend, Merger and Short Stock Interest Strategies Fee Cap Pilot Program Until March 1, 2010

March 6, 2009.

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 February 26, 2009, Chicago Board Options Exchange, Incorporated (“CBOE” or “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 Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> 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

Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) proposes to amend its Fees Schedule to extend until March 1, 2010, the

dividend, merger and short stock interest strategies fee cap program. 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, 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, Proposed Rule Change

###### (a) Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule (“Strategy Fee Cap”). The Strategy Fee Cap is in effect as a pilot program that is due to expire on March 1, 2009.

The Exchange proposes to extend the Strategy Fee Cap pilot program until March 1, 2010. No other changes are proposed. The Exchange believes that extension of the Strategy Fee Cap pilot program would enable the Exchange to remain competitive for these types of strategies by keeping fees low.

###### (b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes the proposed extension of the Strategy Fee Cap pilot program would continue to benefit market participants who trade these strategies by lowering their fees.

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

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

##### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. 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-2009-012 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.

All submissions should refer to File Number SR-CBOE-2009-012. 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/>

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

<sup>2</sup> 17 CFR 19b-4.

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

<sup>4</sup> 17 CFR 19b-4(f)(2).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

*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 available publicly. All submissions should refer to File Number SR-CBOE-2009-012 and should be submitted on or before April 3, 2009.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59534; File No. SR-FINRA-2008-024]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Discovery Guide To Update the Document Production Lists

March 6, 2009.

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 June 11, 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") and amended by Amendment No. 1 on January 21,

2009,<sup>3</sup> the proposed rule change as described in Items I, II, and III below, which Items substantially 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 proposes to amend the Discovery Guide to update the Document Production Lists. The text of the proposed rule change is available at FINRA, at its Web site (<http://www.finra.org>), 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, 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

The proposed rule change adds clarifying and conforming language to the introduction in the Discovery Guide and updates the Document Production Lists. The text of the proposed rule change is contained in Exhibit 5 and is available on the FINRA Web site at [www.finra.org](http://www.finra.org).

###### Background

In January 1996, the Arbitration Policy Task Force chaired by former SEC chairman David Ruder issued a document entitled, "Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors of NASD" (the "Report"). The Report made a number of broad recommendations to the Board of Governors to improve the securities arbitration process. One of the recommendations states that: "Automatic production of essential documents should be required for all parties, and arbitrators should play a much greater role in directing discovery

and resolving discovery disputes." After the work of the Task Force was completed, several groups were formed to work on discovery issues in response to this recommendation. Each group was composed of persons offering diverse perspectives, including counsel for investors and industry parties, and all made a substantial contribution to the process. The outcome of this process was the Discovery Guide, which the SEC approved after a public comment period,<sup>4</sup> and was made available for use in arbitration proceedings involving customer disputes upon the publication of NASD Notice to Members ("NTM") 99-90 (November 1999).

In March 2004, after more than four years of use, FINRA<sup>5</sup> determined to review the Discovery Guide and consider whether it should be updated. This review was undertaken by FINRA's National Arbitration and Mediation Committee ("NAMC"), a majority public committee of the FINRA Board made up of attorneys who represent investors, attorneys who represent brokerage firms, arbitrators, and mediators. In addition, FINRA staff met with frequent users of the arbitration forum representing both the public and the industry to listen to concerns regarding the Discovery Guide's document production lists, proposals for changes, and reactions to other constituents' proposals. Many of the provisions of the Discovery Guide were incorporated into a major revision of the portion of the Code of Arbitration Procedure for Customer Disputes ("Customer Code"), which was submitted to the SEC in 2003 and approved by the SEC in 2007.<sup>6</sup> The remaining provisions in the Discovery Guide consist primarily of lists of documents that are presumptively discoverable ("Document Production Lists").<sup>7</sup>

###### Summary of Significant Changes

The proposed rule change adds clarifying and conforming language to the introduction in the Discovery Guide and updates the Document Production Lists.

In the introductory language, FINRA proposes to add, "Where additional

<sup>4</sup> See Exchange Act Release No. 41833 (Sept. 2, 1999), 64 FR 49256 (Sept. 10, 1999).

<sup>5</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to FINRA in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

<sup>6</sup> Exchange Act Release No. 55158 (Jan. 24, 2007), 72 FR 4574 (Jan. 31, 2007) (File No. SR-NASD-2003-158).

<sup>7</sup> See Rule 12506.

<sup>9</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> Amendment No. 1 to SR-FINRA-2008-024 replaced and superseded the original rule filing.