fail to comply with Condition 18 of the Prior Orders.

2. Applicants state that the concerns that sections 12(d)(1) was designed to prevent about undue influence, excessive layering of fees and overly complex structures, are not present in the India Portfolio and other pass-through investment vehicles used solely for purposes of achieving favorable tax treatment. Applicants represent that the India Fund is the sole legal and beneficial owner of the India Portfolio, thus eliminating any concerns regarding pyramiding of voting control; the Advisor and Subadvisor direct the portfolio management of both the India Fund and the India Portfolio, which is a pass-through investment vehicle, thus eliminating concerns over any undue influence of the Advisor or Subadvsior; and there is no layering of fees as a result of the India Fund operating through the India Portfolio. Applicants further represent that any Future Fund will operate through a wholly-owned investment vehicle that qualifies for pass-through tax and accounting treatment in a manner similar to that of the India Fund. Applicants believe that given the absence of section 12(d)(1) concerns in this structure, it will not create any additional section 12(d)(1) concerns if Acquiring Funds are permitted to acquire shares of the India Fund and any Future Fund subject to the terms and conditions of the Prior 12(d)(1) Relief, as amended by this application.

3. Applicants submit that the proposed amendment to Condition 18 of the Prior Orders addresses the concerns underlying the limits in section 12(d)(1) of the Act and that the requested exemption is consistent with the public interest and the protection of investors. Applicants state that all representations contained in the relevant Prior Applications relating to the operation of the India Fund will remain in effect and will apply to any Future Funds.

Section 24(d) of the Act:

4. Applicants seek to amend the Index Order to delete the relief granted from section 24(d) of the Act. Applicants state that the deletion of the exemption from section 24(d) that was granted in the Index Order is warranted because the adoption of the Summary Prospectus Rule should supplant any need by a Fund to use a product description. The deletion of the relief granted with respect to section 24(d) of the Act from the Index Order also will result in the deletion of related discussion in the Index Applications, revision of the Index Applications to delete references to product descriptions, including in the conditions, and the deletion of condition 6 to the Index Order.

**Conditions**

Applicants agree that any Order of the Commission granting the requested relief will be subject to the same conditions as those imposed by the Prior Orders, except for Condition 18 to the Prior Orders, which will be amended as follows:

No Fund 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 limits contained in Section 12(d)(1)(A) of the Act, other than the India Portfolio or any similar wholly-owned subsidiary.

In addition, with respect to the Index Order, condition 6 will be deleted and conditions 4 and 7 will be amended as follows: [7]

4. The Web site for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

7. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–13204 Filed 6–5–09; 8:45 am]

**BILLING CODE 8010–01–P**

[7] All representations and conditions contained in this application and the Prior Applications that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall remain effective with respect to the Fund until the time that the Fund complies with the disclosure requirements contained in the Summary Prospectus Rule.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60018; File No. SR–CBOE–2009–031]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Amending CBOE Rules Relating to the Penny Pilot Program

June 1, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 28, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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 Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE rules relating to the Penny Pilot Program. The text of the rule proposal 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 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 parts of such statements.

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

1. Purpose

CBOE proposes to extend and expand the Penny Pilot Program, which

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

commenced on January 26, 2007. Presently, the Penny Pilot Program is in effect in fifty-eight multiply-listed option classes, representing approximately 53% of the national volume in April 2009.[4] For all classes in the Program except for the QQQQs, the minimum increment for bids and offers is 0.01 for all option series below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, the minimum increment is $0.01 for all option series. The Penny Pilot Program is scheduled to expire on July 3, 2009.

During the course of the Penny Pilot, CBOE has thoroughly analyzed the impact of penny quoting in the Pilot classes, including in such areas as average spread, average size, quote message traffic, and industry volume. CBOE has submitted several reports to the SEC describing the impact of the changes to the minimum increments in the Pilot classes, and has identified various trends that have manifested themselves.[5] These trends include: a significant reduction in liquidity at the BBO; a decrease in volume in some classes[6]; a dramatic rise in quote traffic; and a reduction in average spread width. With respect to quote traffic, five of seven options exchanges have set all-time peak message rates thus far in 2009, three of which occurred in the past three weeks.

In an effort to develop a long-term solution to the issue of penny pricing in options, last March 2008 CBOE proposed that the industry adopt a structure whereby option series of less than $1 premium value are quoted in penny increments, and series at $1 or above quoted in nickel increments. CBOE has explained the advantages of its proposal, which include:

- Providing the benefits of penny quoting and trading in those option contracts that customers actually trade. 61% of customer contract volume is in series priced up to $1. In the Penny Pilot classes, 52% of customer contract volume is in series priced up to $1;
- Introducing penny increments in nearly all listed option classes;
- Reducing the current dime increment to nickels in those same classes for series priced $1 and above;
- Helping to reduce the explosion of quote traffic that would otherwise occur if the current $3 breakpoint was maintained as part of a large expansion;
- Providing a simple and easily understood standard for investors as to which options are quoted in penny increments; and
- Providing flexibility in that if it is determined that the benefits of penny quoting at a breakpoint higher than $1 outweigh any negatives, modifying the breakpoint would be fairly easy to implement.

CBOE's proposal to reduce the $3 breakpoint to $1 for the Penny Pilot classes has been endorsed by the Equity Options Committee of SIFMA, which has stated that ''retail order flow is far more likely to concentrate activity in low premium options as opposed to those with much larger premium levels.''[7] CBOE reiterated its long-term solution to the issue of penny pricing in options in its September 4, 2008, and March 9, 2009 Penny Pilot Report to the SEC.

CBOE believed then and continues to believe that developing a long-term solution is necessary so that the exchanges, its members, market data vendors, and other market participants can make informed decisions regarding systems and capacity planning. Accordingly, CBOE proposes to extend the Pilot Program through December 31, 2010. CBOE also proposes to significantly expand Pilot Program to all equity and ETF option classes, such that at the end of a brief roll-out period all equity and ETF option classes would be included in the Penny Pilot Program. Moreover, in all Pilot classes, option series of less than $1 premium value would be quoted in penny increments, and series at $1 or above would be quoted in nickel increments. Specifically, CBOE proposes the following[8]:

- Extend the existing Penny Pilot Program until 60 days following SEC approval of this rule change, at which time the minimum increment ''breakpoint'' would be reduced from $3 to $1 in all Penny Pilot classes, such that all option series of less than $1 premium value are quoted in penny increments with all series $1 and above quoted in nickel increments. Although all series in the QQQQ currently are quoted in penny increments, CBOE believes that the same $1 breakpoint standard should apply in the QQQQs as well.[9]
- 90 days following SEC approval of this rule change, an additional forty-two classes would be added to the Penny Pilot Program bringing the total number of classes in the Pilot Program to 100. These forty-two new classes would be among the most active, multiply-listed equity and ETF option classes that are not currently in the Pilot Program.
- 120 days following SEC approval of this rule change, an additional 200 option classes would be added to the Penny Pilot Program bringing the total number of classes in the Pilot Program to 300. These 200 new classes would be among the most active, multiply-listed equity or ETF option classes that are not currently in the Pilot Program.
- 150 days following SEC approval of this rule change, an additional 400 option classes would be added to the Penny Pilot Program bringing the total number of classes in the Pilot Program to 700. These 400 new classes would be among the most active, multiply-listed equity or ETF option classes that are not currently in the Pilot Program.
- 180 days following SEC approval of this rule change, all remaining equity and ETF option classes would be added to the Penny Pilot Program.

The above roll-out schedule contemplates the launch of the new Linkage Plan, which is scheduled to occur in the 3rd quarter of 2009, prior to any expansion of the Penny Pilot Program. CBOE believes strongly the new Linkage Plan should be implemented before a significant expansion occurs because intermarket sweep orders (ISOs) will be available in the new Linkage Plan, and thus allow market participants to simultaneously access better priced quotations across all options exchanges. The new option classes to be added to the Pilot Program would be identified based on national average daily volume in the six calendar months prior to the date the classes are added to the Program.[10] CBOE will work jointly with the SEC to identify the option classes to be added to the Pilot Program and to determine the exact dates the classes will be added, and will

[4] CBOE's rules also provide that for so long as SPDR options (SPY) and options on Diamonds (DIA) participate in the Penny Pilot Program, the minimum increments for Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), respectively, are $0.01 for all option series below $3, and $0.05 for all option series $3 and above. *See* CBOE Rule 6.42.03.

[5] CBOE has submitted five reports analyzing the Penny Pilot Program. *See* letters from CBOE's President Edward Joyce to Elizabeth King, dated June 1, 2007, November 1, 2007, March 4, 2008, September 4, 2008, and March 9, 2009.

[6] CBOE recognizes that it is difficult to discern the extent to which the reduction in volume in some Pilot classes may be attributable to the Penny Pilot, as opposed to some combination of the Penny Pilot and market conditions overall and/or conditions in a particular security.

[7] *See* letter from Melissa MacGregor, Vice President and Assistant General Counsel, SIFMA, to Elizabeth King dated March 10, 2008.

[8] The proposed roll-out schedule assumes that the new Linkage will be implemented in the 3rd quarter of 2009, and that this proposed rule change is approved on or about July 1, 2009.

[9] The minimum increment breakpoint for XSP options and DJX options similarly would be reduced from $3 to $1. *See* CBOE Rule 6.42.03.

[10] CBOE would use volume data from the Options Clearing Corporation.

submit proposed rule changes pursuant to Section (b)(3)(A) of the Exchange Act announcing the names of the new classes prior to their being added to the Pilot Program in each of the phases mentioned above.[11] Based on the proposed roll-out described above, CBOE anticipates that all equity and ETF option classes would be included in the Penny Pilot Program by early 2010.

CBOE also will submit to the SEC semi-annual reports analyzing the Penny Pilot Program for the following time periods:

- July 1, 2009–December 31, 2009
- January 1, 2010–June 30, 2010
- July 1, 2010–December 31, 2010

CBOE anticipates that its reports will assess the impact of the changes to the minimum increments during the specific time period being analyzed, including, among other things, effects on (i) market participants and customers; (ii) market performance and quality, such as quoted spreads, effective spreads, and the displayed size in the Pilot classes; and (iii) OPRA, vendor and exchange capacity. CBOE's reports will be submitted within one month following the end of the period being analyzed.

CBOE believes that extending and expanding the Penny Pilot Program as proposed is balanced, responsible, and reasonable. It will benefit investors by expanding the Pilot Program in all equity and ETF option classes over a relatively short period of time, which will enable investors to obtain the benefits of penny quoting and trading in those option contracts that customers actually trade. The proposal is balanced in that it recognizes that the Pilot Program, while providing certain clear benefits such as reducing spreads, also has resulted in a significant reduction in liquidity at the BBO, a decrease in volume in some classes, and a significant rise in quote traffic. Moreover, CBOE's plan eliminates investor confusion as to which options are quoted in penny increments, and helps to reduce the growth of quote traffic.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act'') and the rule and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[13] 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. The Exchange believes that expanding the current Penny Pilot Program as proposed will enable investors to obtain the benefits of penny quoting and trading in those option contracts that customers actually trade. It will also eliminate investor confusion as to which options are quoted in penny increments, and help to reduce the growth of quote traffic.

*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 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**

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 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. In addition, the Commission seeks comment on the following issues:

1. The Commission requests comment generally on the impact on quote capacity, if any, were the Commission to approve SR–NYSEArca–2009–44, NYSE Arca's proposal to expand the Penny Pilot program to include the next 300 most actively traded, multiply listed options classes over four successive quarters, in addition to this proposed rule change.

2. The Commission requests comment on the impact, if any, to market participants' technological systems and platforms to accommodate the proposed change in breakpoint at $1.00 applied to all option classes.

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–2009–031 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–2009–031. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–2009–031 and should be submitted on or before June 29, 2009.

[11] CBOE also intends to issue a Regulatory Circular, which will be published on its Web site, identifying these option classes added to the Pilot Program.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60012; File No. SR–FINRA–2008–062]**

## 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, as Modified by Amendment No. 1, To Adopt FINRA Rule 2267 (Investor Education and Protection) in the Consolidated FINRA Rulebook

May 29, 2009.

### I. Introduction

On December 11, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to 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 proposed rule change was published for comment in the **Federal Register** on January 2, 2009.[3] The Commission received two comment letters regarding the proposal.[4] On April 28, 2009, FINRA responded to comments,[5] and on April 29, 2009, FINRA filed Amendment No. 1 to the proposal. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change, as amended, on an accelerated basis.

### II. Description of the Proposal

FINRA proposed to adopt a rule based on NASD Rule 2280 (Investor Education and Protection), which requires 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 member firms that carry customer accounts and hold customer funds or securities and requires each member firm to 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.''

As initially proposed, FINRA Rule 2267 would have applied to all member firms, with two general exceptions: a firm that does not have customers, and an introducing firm that is party to a carrying agreement where the carrying member firm complies with the rule. FINRA stated that FINRA Rule 2267 would be broader in scope than NASD Rule 2280 and 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'').[6] In Amendment No. 1, FINRA modified its proposal in response to the comments to permit a member whose contact with customers is limited to introducing customer accounts that will be held at an entity other than a FINRA member, and thereafter does not carry customer accounts or hold customer funds or securities,[7] to furnish a customer with the information required by the rule at or before the time of the customer's initial purchase, in lieu of once every calendar year.[8]

FINRA stated in the Notice that it would announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than ninety days following Commission approval.

### III. Summary of Comments and Amendment No. 1

The Commission received two comment letters on the proposed rule change.[9] One commenter expressed concern that, without the inclusion of additional disclosure noting that information in BrokerCheck may have been dismissed or expunged, customers may be mislead into believing a broker or other financial professional has not been involved in customer complaints.[10] FINRA responded that it believed this comment was outside the scope of the proposal, and also noted that its Web site describes the contents of a BrokerCheck report and the type of information that is not disclosed through BrokerCheck.[11]

Another commenter stated that the proposed FINRA rule would place a significant burden on member firms, such as itself, that conduct a limited business where customer accounts are introduced to a non-FINRA member product issuer and have no direct contact with the customers after the initial transaction.[12] The commenter stated that these firms do not carry customer accounts or hold customer funds or securities after the initial transaction. The commenter argued that because these firms do not send statements or trade confirmations, they do not have an easy method to provide information to customers, and a special annual mailing for the purposes of complying with the rule as initially proposed could be burdensome and substantial.[13]

FINRA responded that it would amend the proposal to clarify the application of Rule 2267.[14] Specifically, FINRA stated it would codify the interpretive guidance regarding current NASD Rule 2280, which requires these firms to provide the requisite disclosures to customers only at the time of the initial transaction.[15]

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[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59160 (December 23, 2008), 74 FR 152 (''Notice'').

[4] *See* letter to the Commission from Richard Sacks, Investors Recovery Service, dated January 6, 2009 (''IRS Letter''), and letter to Florence E. Harmon, Acting Secretary, Commission, from John S. Watts, Senior Vice President & Chief Counsel, PFS Investments Inc., dated January 26, 2009 (''PFS Letter'').

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Erika L. Lazar, Senior Attorney, FINRA, Office of General Counsel, dated April 28, 2009 (''Response to Comments'').

[6] These member firms would be required to comply with the rule and provide the disclosures at least once every calendar year. To the extent such firms are parties to a carrying agreement and the member firm that carries the accounts complies on their behalf, these firms would be excepted from the requirements of the proposed rule.

[7] *E.g.,* does not provide account statements or trade confirmations.

[8] In addition, the proposed rule would include references to ''BrokerCheck'' rather than the ''Public Disclosure Program;'' reference the FINRA Web site address rather than the NASD Regulation Web site address; and clarify that the information required under the rule may be provided electronically to customers.

[9] *See supra,* note 4.

[10] *See* IRS Letter.

[11] *See* Response to Comments at 2.

[12] *See* PFS Letter, *supra,* note 4.

[13] *Id.*

[14] *See* Response to Comments at 2.

[15] *See* Response to Comments at 2, citing the *NASD Regulation, Inc. Regulatory and Compliance Alert* (Summer 1999) at 24. *See* Amendment No. 1 which also made non-substantive changes to the rule.