

6(b)(4) of the Act,⁸ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Pursuant to the arrangement, EDGX makes the RaceTeam product uniformly available to all customers who voluntarily request it and pay the fees as detailed in the proposal, pursuant to a standard non-discriminatory pricing schedule. In addition, the Commission believes that the proposal will further the protection of investors and the public interest because: (1) Correlix will only be able to view data related to latency for Correlix RaceTeam subscriber firms; (2) Correlix will not see a subscriber's individual order detail such as security, price or size; (3) individual RaceTeam subscribers' logins will restrict access to only their own latency data; and (4) Correlix will not see specific information regarding the trading activity of non-subscribers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-EDGX-2010-09) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62927; File No. SR-FINRA-2010-046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Exemptions from the Trading Activity Fee

September 17, 2010.

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 September 7, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 [sic] amend Section 1(b) of Schedule A to the FINRA By-Laws to remove the exemption from the trading activity fee ("TAF") for transactions in exchange-listed options effected by a member when FINRA is not the designated options examining authority ("DOEA") for that member.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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 TAF is one of three member regulatory fees FINRA uses to fund its member regulation activities, which include examinations, financial monitoring, and FINRA's policymaking, rulemaking, and enforcement activities.³ FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq's Automated Confirmation Transaction system then in place.⁴ Because the TAF funds FINRA's member regulation functions, it is intended to apply to transactions in a way that corresponds with FINRA's regulatory responsibilities.⁵ In general, the TAF is assessed for the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-eligible), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to the reporting requirements of the Municipal Securities Rulemaking Board.⁶ The TAF rules also include numerous exemptions for certain types of transactions.⁷ The proposed rule change would eliminate the exemption from the TAF for transactions in exchange-listed options when FINRA is not the DOEA for that member.⁸

In 2003, FINRA exempted from the TAF "[t]ransactions in exchange listed options effected by a member when FINRA is not the designated options examining authority for that member."⁹ The exemption was added to reflect the

³ See FINRA By-Laws, Schedule A, § 1(b). In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment. See *id.* §§ 1(c), (d).

⁴ See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Eliminate the Regulatory Fee and Institute a New Transaction-Based Trading Activity Fee); see also NASD Notice to Members 02-63 (September 2002); NASD Notice to Members 02-41 (July 2002). The TAF was originally approved on a pilot basis; the SEC approved the TAF on a permanent basis in 2003. See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003); see also NASD Notice to Members 03-30 (June 2003).

⁵ See Securities Exchange Act Release No. 50485 (October 1, 2004), 69 FR 60445 (October 8, 2004).

⁶ See FINRA By-Laws, Schedule A, § 1(b)(1).

⁷ See FINRA By-Laws, Schedule A, § 1(b)(2).

⁸ See FINRA By-Laws, Schedule A, § 1(b)(2)(K).

⁹ FINRA By-Laws, Schedule A, § 1(b)(2)(K). See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

fact that FINRA's regulatory responsibilities with respect to such activity were alleviated somewhat by its participation in a plan filed with the SEC under Rule 17d-2 of the Act¹⁰ ("17d-2 Agreement") in which regulatory responsibilities for certain FINRA members that conducted a public options business were assumed by other self regulatory organizations ("SROs") that would act as the member's DOEA.¹¹ At that time, of the approximately 450 member firms covered by the 17d-2 Agreement, FINRA assumed regulatory responsibilities (i.e., was the DOEA) for about 300 firms, and the remaining firms were divided among six other SROs. Thus, in view of the fact that another SRO performed certain regulatory responsibilities with respect to the options activities of these members, FINRA decided to exempt transactions in exchange listed options by such firms from the TAF.¹²

The exemption was also based on the fact that certain other SROs were assessing or preparing to assess specific regulatory fees for acting as DOEA.¹³ To the extent that other SROs assessed specific fees on firms to fund the SRO's DOEA responsibilities with respect to those firms, FINRA's TAF on options transactions appeared redundant.

Subsequent amendments to the 17d-2 Agreement have consolidated within FINRA sole regulatory responsibility for the public options activities of all of its members.¹⁴ Consequently, FINRA assumes all regulatory responsibility for FINRA members under the 17d-2 Agreement.¹⁵ Based on the foregoing,

¹⁰ 17 CFR 240.17d-2.

¹¹ See Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

¹² Transactions in over-the-counter ("conventional") options are exempted from the TAF with respect to all FINRA members. See FINRA By-Laws, Schedule A, § 1(b)(2)(H).

¹³ See, e.g., Securities Exchange Act Release No. 47577 (March 26, 2003), 68 FR 16109 (April 2, 2003) (SR-PCX-2003-03) (PCX rule filing establishing a DOEA fee).

¹⁴ See Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008) (Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The New York Stock Exchange, LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, and the Philadelphia Stock Exchange, Inc.).

¹⁵ Following the consolidation of NASD and NYSE member regulation operations in 2007, FINRA announced that it serves as the DOEA for all FINRA member firms. See *Regulatory Notice* 08-37 (July 2008). FINRA had previously published a list of firms that had a DOEA other than FINRA and,

FINRA is proposing to delete the exemption from the TAF.¹⁶

Deleting this exemption also will remove any ambiguities over whether FINRA should collect the TAF on sole-FINRA members or with respect to FINRA members that conduct only a proprietary options business. The existing language exempting transactions in exchange listed options from the TAF when FINRA is not the DOEA for the member does not properly align with those situations where FINRA has regulatory responsibility over the member firm. First, the DOEA designation is established only under the 17d-2 Agreement, which by its own terms applies only with respect to firms that are members of more than one SRO. Thus, while FINRA has regulatory responsibility for the options business of its sole members, FINRA is not technically the DOEA for such firms. Second, the 17d-2 Agreement addresses only a firm's public options business. As such, a firm that conducts only a proprietary options business, irrespective of whether such firm is a member of FINRA and another SRO, would not be covered by the 17d-2 Agreement, and FINRA would not technically be the DOEA. Although FINRA's regulatory responsibilities are more limited for a firm that does not conduct a public options business, FINRA still retains regulatory responsibilities over the firm's options activities.

The effective date of the proposed rule change will be the first day of the month following Commission approval. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 30 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁷ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that because

consequently, were exempt from the TAF for transactions in exchange listed options. See *NASD Notice to Members* 05-03 (January 2005).

¹⁶ At the time FINRA (then NASD) proposed the exemption in Amendment No. 4 to SR-NASD-2002-148, it noted that "NASD does not believe it is precluded from seeking further amendments to the TAF with respect to the reduction or elimination of the proposed exemption * * * in the event of a change of factors surrounding its sales practice and other regulatory responsibilities."

¹⁷ 15 U.S.C. 78o-3(b)(5).

it maintains regulatory responsibility over its members' transactions in exchange listed options, the exemption from the TAF for transactions in exchange listed options when FINRA is not the DOEA for that member is no longer necessary. Eliminating the exemption will also ensure that the TAF more accurately reflects the current allocation of regulatory responsibilities to FINRA of its members' transactions in exchange listed options.

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.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove 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-FINRA-2010-046 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-2010-046. 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 website 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 publicly available. All submissions should refer to File Number SR-FINRA-2010-046 and should be submitted on or before October 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62933; File No. SR-CBOE-2010-082]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Withdraw Regulatory Circular RG01-61

September 17, 2010.

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

September 9, 2010, 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 and II 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

CBOE is proposing to withdraw Regulator Circular RG01-61 regarding transactions between related entities. 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

1. Purpose

In 2001, the Securities and Exchange Commission (the "Commission") approved SR-CBOE-2000-13 regarding transactions between related entities.³ In connection with the approval of that filing, the Exchange promulgated CBOE Regulatory Circular RG01-61 ("RG01-61") to act as guidance for such trading. At the time the Exchange adopted SR-CBOE-2000-13 and RG01-61, CBOE's restrictions on transactions between related entities were more restrictive than the rules in place at other national securities exchanges and under the Securities Exchange Act of 1934, as amended (the "Act").⁴

CBOE is proposing to eliminate RG01-61 and defer to the requirements

set forth in Section 9(a)(1) of the Act,⁵ which provides, in relevant part:

It shall be unlawful for any person, directly or indirectly * * * for the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

This is consistent with the requirements in place at other national securities exchanges and this proposal eliminates distinctions between the Exchange's rules regarding transactions between related entities and similar requirements in place at other national securities exchanges, as well as the Commission. Notwithstanding the withdrawal of Regulatory Circular RG01-61, CBOE will continue to conduct surveillance for pre-arranged trading between related entities that violates Section 9(a) of the Exchange Act.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ which requires, among other things, that the Exchange's rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest by eliminating differences between the Exchange's rules regarding transactions between related entities and similar requirements in place at other national securities exchanges, as well as the Commission.

¹ 15 U.S.C. 78i.

² 15 U.S.C. 78f(b).

³ 15 U.S.C. 78f(b)(5).

³ Securities Exchange Act Release No. 34-44152 (April 5, 2001), 66 FR 19262 (April 13, 2001) (SR-CBOE-2000-13).

⁴ Securities Exchange Act Release No. 34-43984 (February 20, 2001), 66 FR 12574 (February 27, 2001) (SR-CBOE-2000-13).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.