

are subject to the recordkeeping requirements of Rules 17a-3 and 17a-4 of the Act. Information received in response to Rule 12f-3 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: November 1, 2011.

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Market-Maker Trade Prevention Order on CBOE Stock Exchange

November 1, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 28, 2011, the Chicago Board Options

Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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

The Exchange proposes to adopt a Market-Maker Trade Prevention Order on 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, Proposed Rule Change

###### 1. Purpose

The Exchange proposes to adopt a Market-Maker Trade Prevention ("MMTP") Order. The proposed MMTP Order is an immediate-or-cancel order containing a designation that prevents incoming orders for a Market-Maker from executing against resting quotes and orders for the same Market-Maker.

The MMTP Order type designation is intended to prevent a Market-Maker from trading on both sides of the same transaction. Orders would be marked with the MMTP designation on an order-by-order basis. An incoming MMTP Order cannot interact with interest resting on the book from the same Market-Maker. An MMTP Order

that would trade against a resting quote or order for the same Market-Maker will be cancelled, as will the resting quote or order. The MMTP Order will trade against other tradable orders and quotes entered by or on behalf of another market participant (other than those entered by or on behalf of the same Market-Maker) in accordance with the execution process described in Exchange Rule 52.1 (Matching Algorithm/Priority). When available, the MMTP Order type will be available for use by all Market-Makers in all appointments.

For example, assume the Exchange's best bid and offer is \$1.00-\$1.20, 1000 shares on each side. A Market-Maker marks an order to buy 1000 shares at \$1.20 with the MMTP distinction, making it an MMTP Order. The MMTP Order is submitted to the Exchange and it would trade with a resting quote from the same Market-Maker for 1000 shares offered at \$1.20, then both the order to buy and the resting offer quote would be canceled. However, if the resting offer quote from the same Market-Maker was for only 600 shares, then 600 shares from the order to buy would be canceled (as would the resting quote), but the other 400 shares could trade with the resting offer interest of the other market participants.

At this time, the Exchange intends to identify an incoming MMTP Order as being for the same Market-Maker if the MMTP Order and resting quote or order share any of the following: (1) User acronym, (2) login ID, or (3) sub-account code. Each Market-Maker is assigned its own acronym (sometimes multiple acronyms). However, a Market-Maker may have multiple different login IDs or sub-account codes. A login ID is the session through which a Market-Maker routes orders to the Exchange. A Market-Maker may elect to use different login IDs to route different types of communications to the Exchange. For example, a Market-Maker may choose to use login ID #1 for all orders it sends to the Exchange and login ID #2 for all quotes it sends to the Exchange. Or the Market-Maker may be much more specific, and use different login IDs for different types of orders and quotes. A sub-account code is simply a field on each order or quote that lists the account into which a trade clears at the Options Clearing Corporation ("OCC"). A Market-Maker may have different sub-account codes for each trader it employs, so that the Market-Maker may track each trader's activity. Finally, Market-Makers sometimes use different acronyms but clear into the same accounts (thereby using the same sub-accounts codes).

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

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

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

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

Allowing Market-Makers to designate orders as MMTP Orders is intended to allow firms to better manage order flow and prevent unwanted executions resulting from the interaction of executable buy and sell trading interest for the same Market-Maker, as well as prevent the potential for (or appearance of) “wash sales” that may occur as a result of the velocity of trading in today’s high speed marketplace. When a Market-Maker is preparing to submit an order, the Market-Maker may not know whether or not his order is going to trade against his own resting quote. Further, many Market-Makers have multiple connections into the Exchange due to capacity- and speed-related demands. Orders routed by the same Market-Makers via different connections may, in certain circumstances, trade against each other. Finally, the Exchange notes that offering the MMTP modifiers will streamline certain regulatory functions by reducing false positive results that may occur on Exchange-generated wash trading surveillance reports when orders are executed by the same Market-Maker. For these reasons, the Exchange believes the MMTP Order provides Market-Makers enhanced order processing functionality to prevent potentially unwanted trades from occurring.

The proposed rule change is based on rule changes recently proposed by the Chicago Board Options Exchange, Inc. (“CBOE”) and C2 Options Exchange, Inc. (“C2”).<sup>5</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>6</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change advances these objectives by making available to Market-Makers a

type of order that will assist Market-Makers in preventing unwanted executions against themselves.

The proposed rule change is based on rule changes recently proposed by the Chicago Board Options Exchange, Inc. (“CBOE”) and C2 Options Exchange, Inc. (“C2”).<sup>9</sup>

### 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

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

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally may not become operative prior to 30 days after the date of filing. 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 requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>14</sup> which would make the rule change effective and operative upon filing. As indicated above by the Exchange, the

<sup>9</sup> See Note 5.

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> *Id.*

MMTP Order type is intended to prevent unwanted executions resulting from the interaction of executable buy and sell trading interest for the same Market-Maker in a manner that is consistent with other markets that have similar order types. Further, the Exchange stated that the rule is identical to those recently filed by CBOE and C2 (aside from CBOE and C2’s added rule text for MMTP Orders subject to auction processes, which do not exist on C2)<sup>15</sup> and as a result it believes that the proposed rule change does not present any new, unique or substantive issues. 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 order type without delay and may assist with the maintenance of orderly markets. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-102 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-2011-102. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

<sup>15</sup> See Note 5.

<sup>5</sup> See Securities Exchange Act Release No. 65379 (September 22, 2011), 76 FR 60108 (September 28, 2011) (SR-CBOE-2011-079) and Securities Exchange Act Release No. 65380 (September 22, 2011) 76 FR 60102 (September 28, 2011) (SR-C2-2011-017).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 Web site 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 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-2011-102 and should be submitted on or before November 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[[Release No. 34-65663; File No. SR-FINRA-2011-035]]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings to Determine Whether To Approve or Disapprove a Proposed Rule Change, etc.

November 1, 2011.

#### Overview Information

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as modified by Partial Amendment No. 1, to Adopt FINRA Rule 2210 (Communications with the Public), 2212 (Use of

Investment Companies Rankings in Retail Communications), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), 2214 (Requirements for the Use of Investment Analysis Tools), 2215 (Communications with the Public Regarding Security Futures), and 2216 (Communications with the Public About Collateralized Mortgage Obligations (CMOs)) in the Consolidated FINRA Rulebook.

#### I. Introduction

On July 14, 2011, the Financial Industry Regulatory Authority ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-3 through 2210-8 as FINRA Rules 2210 and 2212 through 2216, and to delete paragraphs (a)(1), (i), (j) and (l) of Incorporated NYSE Rule 472, Incorporated NYSE Rule Supplementary Material 472.10(1), (3), (4) and (5) and 472.90, and Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. The proposed rule change was published for comment in the **Federal Register** on August 3, 2011.<sup>3</sup> The Commission received nine comment letters in response to the proposed rule change.<sup>4</sup> On August 31, 2011, FINRA extended the time period in which the Commission must approve

the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to November 1, 2011. On October 31, 2011, FINRA filed Partial Amendment No. 1 to the proposed rule change and a letter responding to comments.<sup>5</sup> The Commission is publishing this notice and order to solicit comments on Partial Amendment No. 1 to the proposed rule change from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.

Institution of these proceedings, however, does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input from interested parties on the issues presented by the proposed rule change, as modified by Partial Amendment No. 1, and on FINRA's Response Letter.

#### II. Description of the Proposed Rule Change and Summary of Comments

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"), FINRA is proposing to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-3 through 2210-8 as FINRA Rules 2210 and 2212 through 2216 in the Consolidated FINRA Rulebook, and to delete paragraphs (a)(1), (i), (j) and (l) of Incorporated NYSE Rule 472, Incorporated NYSE Rule Supplementary Material 472.10(1), (3), (4) and (5), and 472.90, and Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. The proposed rule change would renumber NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-4 as FINRA Rule 2210, NASD Interpretive Material 2210-3 as FINRA Rule 2212, NASD Interpretive Material 2210-5 as FINRA Rule 2213, NASD Interpretive Material 2210-6 as FINRA Rule 2214, NASD Interpretive Material 2210-7 as FINRA

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

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

<sup>3</sup> See Securities Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011) (Notice of Filing of SR-FINRA-2011-035) ("Notice of Filing"). The comment period closed on August 24, 2011.

<sup>4</sup> See letter from Oscar S. Hackett, General Counsel, BrightScope, Inc., dated August 23, 2011 ("BrightScope Letter"); letter from Alexander C. Gavis, Fidelity Investments, dated August 24, 2011 ("Fidelity Letter"); letter from David T. Bellaire, General Counsel and Director of Government Affairs, Financial Services Institute, dated August 24, 2011 ("FSI Letter"); letter from Dorothy M. Donohue, Senior Associate Counsel, Investment Company Institute, dated August 24, 2011 ("ICI Letter"); letter from Z. Jane Riley, Chief Compliance Officer, The Leaders Group, Inc., dated August 24, 2011 ("TLGI Letter"); letter from Peter J. Mougey, President, Public Investors Arbitration Bar Association, dated August 23, 2011 ("PIABA Letter"); letter from John Polanin and Clair Santaniello, Co-Chairs, Compliance and Regulatory Policy Committee 2011, Securities Industry and Financial Markets Association, dated August 25, 2011 ("SIFMA Letter"); letter from Sandra J. Burke, Principal, Vanguard, dated August 24, 2011 ("Vanguard Letter"); and letter from Yoon-Young Lee, WilmerHale, on behalf of Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., JP Morgan Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. LLC, and UBS Securities LLC, dated August 26, 2011 ("Wilmer Letter"). Comment letters are available at <http://www.sec.gov>.

<sup>5</sup> See letter from Joseph P. Savage, FINRA, to Elizabeth Murphy, Secretary, SEC, dated October 31, 2011 ("Response Letter"). The text of proposed Amendment No. 1 and FINRA's Response Letter are 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. FINRA's Response Letter is also available on the Commission's Web site at <http://www.sec.gov>.

<sup>16</sup> 17 CFR 200.30-3(a)(12).