competition that is not necessary or appropriate in furtherance of the purposes of the Act. While it does apply to all market participants except for customers, other market participants generally prefer to execute their orders against customer orders. By exempting customer orders, the Surcharge will not discourage the sending of customer orders, and therefore there should still be plenty of customer orders for other market participants to trade with. Therefore, any potential effects that the adoption of the Surcharge may have on intramarket competition are justifiable. Further, the options industry has a long-standing practice of assessing preferable fee structures to customers. The Exchange does not believe that the adoption of the Surcharge will impose any burden on intramarket [sic] competition that is not necessary or appropriate in furtherance of the purposes of the Act. The imposition of the Surcharge (which is important to offset the costs of the Customer Complex Credit) should not, by itself, attract trading volume from other exchanges (as it requires payment of a surcharge for an activity that did not previously require such payment). Further, other exchanges assess higher fees for complex orders than for non-complex ones.[10]

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange, and the Exchange believes that such structure will help the Exchange remain competitive with those fees and rebates assessed by other venues.

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 proposed rule change.

[10] *See* ISE Schedule of Fees, Section I (which lists regular Maker rebates and fees and Taker fees for Select Symbols) as compared to Section II (which lists complex order fees and rebates for Select Symbols). Market participants are assessed higher fees for executing complex orders, and specifically and especially for executions in complex orders that execute against Priority Customer orders.

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 [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the 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.* Please include File Number SR–CBOE–2013–004 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–2013–004. 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 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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–2013–004, and should be submitted on or before February 15, 2013.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01489 Filed 1–24–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68699; File No. SR–CBOE–2013–003]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

January 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2013, 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, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

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

[2] 17 CFR 240.19b–4.

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 Exchange 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. The Exchange 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 proposes to amend its Fees Schedule. Specifically, the Exchange proposes to adopt a new Clearing Trading Permit Holder Proprietary VIX Options Sliding Scale (the ''VIX Options Sliding Scale''). The VIX Options Sliding Scale allows VIX volatility index options (''VIX options'') transaction fees for Clearing Trading Permit Holder (including its Non-Trading Permit Holder affiliates) proprietary orders to be reduced provided a Clearing Trading Permit Holder (including its Non-Trading Permit Holder affiliates) reaches certain proprietary VIX options volume thresholds during a month. The proposed applicable transaction fees for the different volume tiers on the VIX Options Sliding Scale are as follows:

Tier	VIX Options contracts per month	Transaction fee per contract
1	Contracts 1–250,000	$0.25
2	Contracts 250,001–500,000	0.15
3	Contracts 500,001–750,000	0.10
4	Contracts 750,000+	0.05

The VIX Options Sliding Scale applies to orders bearing the origin codes ''F'' [3] and ''L'' [4]. The purpose of the VIX Options Sliding Scale is to encourage greater Clearing Trading Permit Holder proprietary trading of VIX options.

In conjunction with the adoption of the VIX Options Sliding Scale, the Exchange proposes to amend footnote 11 to its Fees Schedule. Footnote 11 provides the details regarding the Clearing Trading Permit Holder Fee Cap in all products except SPX, SRO, VIX or other volatility indexes, OEX or XEO and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders, both of which apply to Clearing Trading Permit Holder proprietary orders. Because the VIX Options Sliding Scale also applies to Clearing Trading Permit Holder proprietary orders, and because many of the details regarding the Clearing Trading Permit Holder Fee Cap in all products except SPX, SRO, VIX or other volatility indexes, OEX or XEO and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders will also apply to the VIX Options Sliding Scale, the Exchange proposes to add the details regarding the VIX Options Sliding Scale into footnote 11.

First, footnote 11 describes the Clearing Trading Permit Holder Fee Cap in all products except SPX, SRO, VIX or other volatility indexes, OEX or XEO as the ''fee cap'' and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as the ''sliding scale''. In order to avoid confusion that could arise due to the addition of the VIX Options Sliding Scale, the Exchange proposes to define the Clearing Trading Permit Holder Fee Cap in all products except SPX, SRO, VIX or other volatility indexes, OEX or XEO as the ''Fee Cap'' and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as the ''Sliding Scale''. Any references within footnote 11 to the ''fee cap'' will now be referred to as the ''Fee Cap'' and any references within footnote 11 to the ''sliding scale'' will now be referred to as the ''Sliding Scale''. The Clearing Trading Permit Holder Proprietary VIX Options Sliding Scale is also defined within footnote 11 as the ''VIX Options Sliding Scale'' and any references to the Clearing Trading Permit Holder Proprietary VIX Options Sliding Scale within footnote 11 are referred to as the ''VIX Options Sliding Scale.''

Like the Fee Cap and the Sliding Scale, the VIX Options Sliding Scale will apply to (i) Clearing Trading Permit Holder proprietary orders (''F'' origin code), and (ii) orders of Non-Trading Permit Holder Affiliates of a Clearing Trading Permit Holder. A ''Non-Trading Permit Holder Affiliate'' would be defined for the purposes of the VIX Options Sliding Scale the same way it is defined for the Fee Cap and Sliding Scale: A 100% wholly-owned affiliate or subsidiary of a Clearing Trading Permit Holder that is registered as a United States or foreign broker-dealer and that is not a CBOE Trading Permit Holder (''TPH''). As with the Fee Cap and the Sliding Scale, only proprietary orders of the Non-Trading Permit Holder Affiliate (currently, the Fees Schedule reads that such orders have a ''B'' origin code, but such orders actually have an ''L'' origin code, so the Exchange also proposes to correct this error) effected for purposes of hedging the proprietary over-the-counter trading of the Clearing Trading Permit Holder or its affiliates will be included in calculating the VIX Options Sliding Scale, and such orders must be marked with a code approved by the Exchange identifying the orders as eligible for the VIX Options Sliding Scale. As with the Fee Cap and the Sliding Scale, each Clearing Trading Permit Holder is responsible for notifying the TPH Department of all of its affiliations so that fees and contracts of the Clearing Trading Permit Holder and its affiliates may be aggregated for purposes of the VIX Options Sliding Scale and is required to certify the affiliate status of any Non-Trading Permit Holder Affiliate whose trading activity it seeks to aggregate. In addition, each Clearing Trading Permit Holder is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate.

As with the Fee Cap and the Sliding Scale, the Exchange will aggregate the

[3] The ''F'' origin code is used for OCC clearing member firm proprietary account orders.

[4] The ''L'' origin code is used for orders for the account of Non-Trading Permit Holder Affiliates effected for the purpose of hedging the proprietary over-the-counter trading of the Clearing Trading Permit Holder or its affiliates to be aggregated with the trading activity of the Clearing Trading Permit Holder for purposes of the Multiply-Listed Options Fee Cap and CBOE Proprietary Products Sliding Scale for Clearing Trading permit Holder proprietary orders; a ''Non-Trading Permit Holder Affiliate'' is defined as a 100% wholly-owned affiliate or subsidiary of a Clearing Trading Permit Holder that is (i) registered as United States or foreign broker/dealer and (ii) is not itself a CBOE Trading Permit Holder.

fees and trading activity of separate Clearing Trading Permit Holders for the purposes of the VIX Options Sliding Scale if there is at least 75% common ownership between the Clearing Trading Permit Holders as reflected on each Clearing Trading Permit Holder's Form BD, Schedule A. As with the Fee Cap and the Sliding Scale, a Clearing Trading Permit Holder's fees and contracts executed pursuant to a CMTA agreement (i.e., executed by another clearing firm and then transferred to the Clearing Trading Permit Holder's account at the OCC) are aggregated with the Clearing Trading Permit Holder's non-CMTA fees and contracts for purposes of the VIX Options Sliding Scale.

For calculating a Clearing Trading Permit Holder's total proprietary product transaction fees, CBOE will use the following methodology: If using the VIX Options Sliding Scale plus the Sliding Scale (minus VIX options volume) results in lower total Clearing Trading Permit Holder proprietary transaction fees than just using the Sliding Scale, CBOE will apply the new VIX Options Sliding Scale plus the Sliding Scale, and deduct the VIX options volume from the Sliding Scale. If using the VIX options Sliding Scale plus the Sliding Scale (minus VIX options volume) results in higher total Clearing Trading Permit Holder proprietary transaction fees than just using the Sliding Scale, CBOE will apply only the Sliding Scale. The purpose of this methodology is to provide a Clearing Trading Permit Holder with the most beneficial fee arrangement (the lowest fees) without double-counting VIX options volume.

For example, consider a situation in which, in a month, a Clearing Trading Permit Holder has qualifying proprietary multiply-listed options volume of 450,000 contracts, qualifying proprietary VIX options volume of 850,000 contracts, and qualifying volume of other proprietary products of 500,000 contracts (totaling 1,350,000 contracts of proprietary products). Under the Sliding Scale, because the Clearing Trading Permit Holder has executed greater than (or equal to) 375,000 contracts of multiply-listed options volume but less than 1,500,000 such contracts, the Clearing Trading Permit Holder will be assessed an $0.18-per-contract fee on the first 750,000 proprietary products contracts (totaling $135,000), a $0.05-per-contract fee on the next 250,000 proprietary products contracts (totaling $12,500), and a $0.02-per-contract fee on the remaining 350,000 proprietary products (totaling $7,000). Therefore, under the Sliding Scale, the Clearing Trading Permit Holder's proprietary transaction fees would be $154,500 ($135,000 + $12,500 + $7,000).

We would then determine the Clearing Trading Permit Holder's fees using the VIX Options Sliding Scale plus the Sliding Scale (minus VIX options volume). Under the VIX Options Sliding Scale, because the Clearing Trading Permit Holder executed 850,000 VIX contracts, the Clearing Trading Permit Holder would be assessed a $0.25-per-contract fee for contracts 1–250,000 (totaling $62,500), a $0.15-per-contract fee for contracts 250,001–500,000 (totaling $37,500), a $0.10-per-contract fee for contracts 500,001–750,000 (totaling $25,000), and a $0.05-per-contract fee for contracts 750,001–850,000 ($5,000). Therefore, under the VIX Options Sliding Scale, the Clearing Trading Permit Holder's proprietary transaction fees are $130,000 ($62,500 + $37,500 + $25,000 + $5,000). To this we would add the Clearing Trading Permit Holder's proprietary fees using the Sliding Scale (subtracting out the VIX options volume). Under the Sliding Scale, because the Clearing Trading Permit Holder has executed greater than (or equal to) 375,000 contracts of multiply-listed options volume but less than 1,500,000 such contracts, the Clearing Trading Permit Holder will be assessed an $0.18-per-contract fee on the 500,000 non-VIX options proprietary product contracts, which comes out to $90,000. If we add the Clearing Trading Permit Holder's fees under the VIX Options Sliding Scale ($130,000) to fees using the Sliding Scale (minus VIX options volume) ($90,000), the Clearing Trading Permit Holder's total proprietary fees come out to $220,000. Because this amount is greater than the Clearing Trading Permit Holder's fees using just the Sliding Scale (including the VIX options volume) of $154,500, the Exchange would just apply the Sliding Scale to determine the Clearing Trading Permit Holder's proprietary fees, and assess the lower fee of $154,500.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The adoption of the VIX Options Sliding Scale is reasonable because it will allow Clearing Trading Permit Holders who engage in VIX options trading the opportunity to pay lower fees for such transactions. Similarly, aggregating the fees and trading activity of separate Clearing Trading Permit Holders for the purposes of the VIX Options Sliding Scale if there is at least 75% common ownership between the Clearing Trading Permit Holders and aggregating a Clearing Trading Permit Holder's fees and contracts executed pursuant to a CMTA agreement with the Clearing Trading Permit Holder's non-CMTA fees and contracts for the purpose of the VIX Options Sliding Scale is reasonable because this will allow more Clearing Trading Permit Holders to qualify for the lowered fees at the higher volume tiers in the VIX Options Sliding Scale.

The proposed methodology to be used in calculating a Clearing Trading Permit Holder's total proprietary product transaction fees is reasonable because it provides Clearing Trading Permit Holders who engage in VIX options trading with a second way to maximize their ability to limit their proprietary products transaction fees. Subtracting VIX options volume from the Sliding Scale when taking into account the VIX Options Sliding Scale to calculate proprietary product transaction fees is reasonable because it would be illogical (and not financially viable) to count VIX options volume twice (once in the VIX Options Sliding Scale and once in the Sliding Scale) to allow a Clearing Trading Permit Holder to qualify for a lowered fee rate when the VIX options transactions (and volume such transactions created) only occurred once and fees were therefore only assessed on such transactions once.

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

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

Applying the VIX Options Sliding Scale to Clearing Trading Permit Holder (and their affiliates, in the manner described above) proprietary orders only is equitable and not unfairly discriminatory because Clearing Trading Permit Holders take on a number of obligations and responsibilities (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations that other market participants are not required to undertake. Further, the VIX Options Sliding Scale is designed to encourage increased Clearing Trading Permit Holder proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all market participants. Similarly, applying lower fee rates for Clearing Trading Permit Holders who hit the higher VIX options contract volume tiers on the VIX Options Sliding Scale is equitable and not unfairly discriminatory because this is designed to encourage increased Clearing Trading Permit Holder proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all Clearing Trading Permit Holders, including those who are not able to reach the higher-volume tiers. Indeed, this increased VIX options volume and greater trading opportunities may provide such Clearing Trading Permit Holders to reach the higher tiers (and pay the lower fees such tiers entail). Moreover, the Exchange already offers other fee-lowering programs (such as the Fee Cap and Sliding Scale) which entail lower fees for Clearing Trading Permit Holders (and their affiliates, in the manner described above) and are limited to Clearing Trading Permit Holders (and their affiliates, in the manner described above).

Applying the VIX Options Sliding Scale to VIX options and not to other products is equitable and not unfairly discriminatory because the Exchange has expended considerable time and resources in developing VIX options. The VIX Options Sliding Scale is designed to encourage greater VIX options trading, which, along with bringing greater VIX options trading opportunities to all market participants, will bring in more fees to the Exchange, and such fees can be used to recoup the Exchange's costs and expenditures from developing VIX options.

The Exchange proposes to define the Fee Cap, Sliding Scale, and VIX Options Sliding Scale in footnote 11 of the Fees Schedule in order to avoid any potential confusion by investors reading the Fees Schedule. Similarly, the Exchange proposes to correct, in footnote 11, the erroneous reference to the origin code for proprietary orders of the Non-Trading Permit Holder Affiliate effected for purposes of hedging the proprietary over-the-counter trading of the Clearing Trading Permit Holder or its affiliates (changing such reference from the origin code ''B'' to the correct origin code for such orders, ''L'') in order to avoid any potential confusion by investors reading the Fees Schedule. This avoidance of confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

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. The Exchange believes that the adoption of the proposed VIX Options Sliding Scale will not impose any unnecessary burden on intramarket competition because, while it applies only to Clearing Trading Permit Holder proprietary orders, Clearing Trading Permit Holders take on a number of obligations and responsibilities (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations that other market participants are not required to undertake. Further, the VIX Options Sliding Scale is designed to encourage increased Clearing Trading Permit Holder proprietary VIX options volume, which provides increased VIX options volume and greater trading opportunities for all market participants. Therefore, the Exchange believes that any potential effects on intramarket competition that the adoption of the proposed VIX Options Sliding Scale may cause are therefore justifiable. Moreover, the Exchange already offers other fee-lowering programs (such as the Fee Cap and Sliding Scale) which entail lower fees for Clearing Trading Permit Holders (and their affiliates, in the manner described above) and are limited to Clearing Trading Permit Holders (and their affiliates, in the manner described above). The Exchange does not believe that the adoption of the proposed VIX Options Sliding Scale will cause any unnecessary burden on intermarket competition because VIX options is a proprietary product that is traded solely on CBOE.

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 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 [8] and paragraph (f) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the 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.* Please include File Number SR–CBOE–2013–003 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–2013–003. 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 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

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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–2013–003 and should be submitted on or before February 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01493 Filed 1–24–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68700; File No. SR–FINRA–2013–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 2267 (Investor Education and Protection)

January 18, 2013.

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 January 7, 2013, 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 amend FINRA Rule 2267 (Investor Education and Protection) to require that members include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA, on their Web sites, social media pages and any comparable Internet presence and on Web sites, social media pages and any comparable Internet presence relating to a member's investment banking or securities business maintained by or on behalf of any person associated with a 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

FINRA established BrokerCheck in 1988 (then known as the Public Disclosure Program) to provide the public with information on the professional background, business practices, and conduct of FINRA-member firms and their associated persons. The information that FINRA releases to the public through BrokerCheck is derived from the Central Registration Depository (''CRD®''), the securities industry online registration and licensing database. FINRA-member firms, their associated persons and regulators report information to the CRD system via the uniform registration forms. By making most of this information publicly available, BrokerCheck, among other things, helps investors make informed choices about the individuals and firms with which they conduct business.

In January 2011, Commission staff released its *Study and Recommendations on Improved Investor Access to Registration Information About Investment Advisers and Broker-Dealers* (''Study''),[3] in furtherance of Section 919B of the Dodd-Frank Act. The Study contains four recommendations for improving investor access to registration information through BrokerCheck and the Commission's Investment Adviser Public Disclosure (''IAPD'') database. In May 2012, FINRA implemented the Study's three ''near-term'' recommendations.[4] FINRA is currently working on the Study's ''intermediate-term'' recommendation, which involves analyzing the feasibility and advisability of expanding the information available through BrokerCheck, as well as the method and format that BrokerCheck information is displayed.

In light of the Study's ''intermediate-term'' recommendation and FINRA's belief that regular evaluation of its BrokerCheck program is an important part of its statutory obligation to make information available to the public,[5] FINRA has initiated a thorough review of BrokerCheck. As part of this review, FINRA issued *Regulatory Notice* 12–10 requesting comment on ways to facilitate and increase investor use of BrokerCheck information. In addition, FINRA engaged a market research consultant that conducted focus groups and surveyed investors throughout the country to obtain their opinions on the BrokerCheck program.

Participants in the focus groups were asked questions about a variety of topics, including the financial markets, working with a broker or investment adviser, and the BrokerCheck program. Many of the participants stated that they had been unaware of the existence of BrokerCheck prior to their participation in the focus groups.[6] After learning about BrokerCheck, the consensus among focus group participants was that investors should use BrokerCheck when considering whether to work with a new investment professional or firm and that it therefore was important for BrokerCheck to be more widely known among investors. Based on the focus group results and the comments received in response to *Regulatory*

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Study is available online at *http://www.sec.gov/news/studies/2011/919bstudy.pdf.*

[4] These recommendations are to unify search returns for BrokerCheck and IAPD, add the ability to search BrokerCheck by ZIP code, and increase the educational content on BrokerCheck.

[5] *See* Section 15A(i) of the Act. 15 U.S.C. 78*o*–3(i). Since establishing BrokerCheck, FINRA has regularly assessed the scope and utility of the information it provides to the public and, as a result, has made numerous changes to improve the program.

[6] This is consistent with a 2009 study that found that only 15 percent of respondents said that they had checked a financial advisor's background with a state or federal regulator. *See Financial Capability in the United States* (FINRA Investor Education Foundation, Dec. 1, 2009), available at *http://www.finrafoundation.org/web/groups/foundation/@foundation/documents/foundation/p120536.pdf.*