

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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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-2008-132 and should be submitted on or before February 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59210; File No. SR-CBOE-2008-118]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Related to Obvious Error Rules

January 7, 2009.

On November 26, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") 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 amend CBOE Rules 6.25 and 24.16 (collectively, the "Obvious Error Rules") to adopt procedures that would allow CBOE to review transactions on its own motion. The proposed rule change was published for comment in the **Federal Register** on December 8, 2008.³ The Commission received no comment

letters on the proposal. This order approves the proposed rule change.

The proposed rule change would provide that, in the interest of maintaining a fair and orderly market and for the protection of investors, the President of CBOE or his/her designee, who shall be an officer of CBOE but may not be a member (collectively "CBOE officer"), may, on his or her own motion or upon request, determine to review any transaction occurring on CBOE that is believed to be erroneous.⁴ CBOE would nullify or adjust a transaction reviewed pursuant to this new provision only if it is determined that the transaction is erroneous as provided in CBOE Rule 6.25(a)(1)–(6) or Rule 24.16(a)(1)–(6), as applicable.⁵ Trading Officials (or the senior official in the control room, in the case of opening trades in CBOE Rule 5.4 restricted series being reviewed under CBOE Rule 6.25(a)(6) or Rule 24.16(a)(6)) may assist the CBOE officer in reviewing a transaction.

Under the proposed rule change, the CBOE officer would be required to act as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the CBOE officer would be required to act no later than 8:30 a.m. (CT) on the next trading day following the date of the transaction at issue. A member affected by a determination to nullify or adjust a transaction pursuant to this new provision would be permitted to appeal such determination in accordance with Rule 6.25(d) or Rule 24.16(d); however, a determination by a CBOE officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. Transactions adjusted or nullified pursuant to this new provision cannot be reviewed by an Obvious Error Panel under paragraph (c) of Rule 6.25.

⁴ In the event a party to a transaction requests that the President or his/her designee review a transaction, the CBOE officer nonetheless would need to determine, on his or her own motion, whether to review the transaction. In addition, if a transaction is reviewed and a determination is rendered pursuant to paragraphs (b)(1) and (b)(2) of CBOE Rule 6.25 or Rule 24.16, relief shall not be granted under the new provision of the applicable Obvious Error Rule.

⁵ The transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction, including consideration of whether the parties involved are CBOE market-makers, non-CBOE market makers, or customers pursuant to CBOE Rule 6.25(a)(1)(i)–(iv) and CBOE Rule 24.16(c).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6(b) of the Act⁷ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ in that the proposal is 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 Commission notes that, in approving proposals relating to adjustment or nullification of trades involving obvious errors, it has stated that the determination of whether an obvious error has occurred and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.⁹ The Commission notes that the new provisions in the Obvious Error Rules also have specific and objective procedures for determining whether a trade should be adjusted or nullified. The purpose of the new provisions is only to enable a CBOE officer on his/her own motion or upon request, to provide relief in instances where parties failed to meet the established time reporting requirements in CBOE's Obvious Error Rules. The new provisions still require that the transaction be erroneous as provided in CBOE Rules 6.25 or 24.16, as applicable, and the new provisions set forth specific time frames and procedures. Therefore, the Commission believes that that proposed rule change is appropriate.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2008-118) is hereby approved.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See, e.g., Securities Exchange Act Release Nos. 58778 (October 14, 2008), 73 FR 62577 (October 21, 2008) and 54228 (July 27, 2006), 71 FR 44066 (August 3, 2006) (SR-CBOE-2006-14) (approving revisions to CBOE's Obvious Error Rules).

¹⁰ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 59038 (December 2, 2008), 73 FR 74543.

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. 34-59208; File No. SR-FINRA-2008-045]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, To Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

January 6, 2009.

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 8, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended on December 11, 2008,³ the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws.

This Amendment No. 1 to SR-FINRA-2008-045 makes technical changes to the original filing filed on September 8, 2008. The text of the proposed rule change is attached as Exhibit 5 to this filing.⁴ Amendment No.

1 replaces and supersedes the proposed rule change filed on September 8, 2008, in its entirety, except with regard to Exhibit 2, a proposed *Regulatory Notice* that details the proposed related eligibility procedures.⁵

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

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc., and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Section 3(a)(39) of the Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.⁶ Consequently, as further detailed in the proposed *Regulatory Notice* (see Exhibit 2), FINRA's revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations

with certain other persons subject to disqualification.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed *Regulatory Notice* that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the *Regulatory Notice*. As further detailed in the *Regulatory Notice*, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) The type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change would amend FINRA Rule 9522 to address the initiation of eligibility proceedings and the authority of FINRA's Department of Member Regulation ("Member Regulation") to approve applications relating to a disqualification, where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arises under Section 3(a)(39)(E) of the Act (i.e., the added categories of disqualification). Currently, FINRA Rule 9522(a)(1) provides, among other things, that if FINRA staff has reason to believe that a disqualification exists, FINRA staff will issue a written notice to the member or applicant for membership under NASD Rule 1013, specifying the grounds for such disqualification. The proposed amendments to FINRA Rule 9522(a)(1) provide that FINRA staff would issue such written notice with respect to the added categories of disqualification only when the member or applicant is required to file an application pursuant to the *Regulatory Notice*. Similarly, the proposed rule change would amend FINRA Rule 9522(b) to require a member to file an application with FINRA with respect to the added categories of disqualification only when instructed to submit one by the *Regulatory Notice*.

Moreover, under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to SR-FINRA-2008-045 replaced and superseded the original rule filing submitted to the Commission on September 8, 2008.

⁴ The text of the proposed rule change to the FINRA Rule 9520 Series as set forth in Exhibit 5 reflects amendments adopted pursuant to proposed rule change SR-FINRA-2008-021, which was approved by the Commission. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-

2008-021) (approval order). The FINRA Rule 9520 Series, as set forth in SR-FINRA-2008-021, became effective on December 15, 2008. See FINRA *Regulatory Notice* 08-57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

⁵ FINRA would issue the proposed *Regulatory Notice* upon the Commission's approval of the proposed rule change; the *Regulatory Notice* is written in a manner that assumes such approval.

⁶ See Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023) (notice). See also Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR-NASD-2007-023) (approval order), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). See also NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007).