

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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 No. SR-CBOE-2008-77 and should be submitted on or before August 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58204; File No. SR-CBOE-2008-64]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Amending CBOE Rules 5.3 and 5.4 To Enable the Listing and Trading of Options on Index- Linked Securities

July 22, 2008.

On June 19, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to amend CBOE Rules 5.3 and 5.4 to list and trade options on equity index-linked securities, commodity-linked securities, currency-linked securities, fixed income index-linked securities, futures-linked securities, and multifactor index-linked securities (collectively referred to as "Index-Linked Securities") that are principally traded on a national securities exchange

and an "NMS stock" as defined in Rule 600 of Regulation NMS.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on July 1, 2008 for a 15-day comment period.<sup>4</sup> On July 1, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified.

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one year but not greater than thirty years. Despite the fact that Index-Linked Securities are linked to at least one underlying index or asset ("Reference Asset"), each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options would apply to options on Index-Linked Securities.

After careful consideration, 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 exchange<sup>6</sup> and, in particular, the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed 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.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> for approving the proposed rule change, as modified, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes this proposed rule change, as modified, is

substantively identical to that of NYSE Arca, Inc., which was published for a 21-day comment period and generated no comments.<sup>10</sup> Therefore, the Commission does not believe that this proposal raises any new regulatory issues different from that of the NYSE Arca, Inc. proposal.

### Listing and Trading of Options on Index-Linked Securities

As set out more fully in the Exchange's notice of its proposal, CBOE's proposed rules include requirements regarding initial and continued listing standards, the creation/redemption process for Index-Linked Securities, and trading halts. Index-Linked Securities must be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.<sup>11</sup>

The Commission notes that, pursuant to the proposed Interpretation and Policy .13(3) to CBOE Rule 5.3 and Interpretation and Policy .16 to CBOE Rule 5.4, Index-Linked Securities will be subject to the initial and continuing eligibility standards for underlying securities provided in CBOE Rules 5.3 and 5.4, as applicable. In particular, to be options eligible, an Index-Linked Security must either meet the criteria and guidelines for underlying securities set forth in Interpretation and Policy .01 to CBOE Rule 5.3, or alternately, the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset, and the issuing company must be obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

To continue to be options eligible, the Index-Linked Security must remain an NMS stock listed on a national securities exchange. The Exchange will also consider the suspension of opening transactions in any series of options of the class covering Index-Linked Securities where the Index-Linked security does not satisfy the requirements set out in proposed Interpretation and Policy .16 to CBOE Rule 5.4. These include: (1) Continued compliance with Interpretation and Policy .13 to CBOE Rule 5.3; (2)

<sup>3</sup> See 17 CFR 242.600(b)(47).

<sup>4</sup> See Securities Exchange Act Release No. 58007 (June 23, 2008), 73 FR 37516.

<sup>5</sup> Amendment No. 1 corrects a minor typographical omission. Because the amendment is technical in nature, the Commission is not publishing it for comment.

<sup>6</sup> 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).

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> See Securities Exchange Act Release No. 57950 (June 11, 2008), 73 FR 34815 (June 18, 2008) (SR-NYSEArca-2008-57).

<sup>11</sup> 17 CFR 242.600(b)(47).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

compliance with Interpretation and Policy .01 to CBOE Rule 5.4 or, for options covering Index-Linked Securities approved pursuant to Interpretation and Policy .13(3)(B) to CBOE Rule 5.3, continuing to be an NMS stock listed on a national securities exchange; and (3) the value of the underlying Reference Asset continues to be calculated and available. In addition, the Exchange retains discretion to suspend opening transactions in options on Index-Linked Securities where conditions make further dealings in such options inadvisable.

The Exchange represented that the addition of options on Index-Linked Securities will not have any effect on Exchange rules pertaining to position and exercise limits<sup>12</sup> or margin.<sup>13</sup>

### Surveillance

The Commission notes that Exchange has represented that it will implement surveillance procedures for options on Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable. CBOE further represented that these procedures will be adequate to properly monitor Exchange trading of options on Index-Linked Securities and to deter and detect violations of Exchange rules. This order is based on these representations.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-CBOE-2008-64), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-17212 Filed 7-25-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58206; File No. SR-FINRA-2008-022]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Membership Waive-In Process for Certain New York Stock Exchange Members

July 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") 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 from interested persons.

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

FINRA is proposing to amend NASD IM-1013-1, to address the applicability of the consolidated FINRA rules to member firms of the New York Stock Exchange LLC ("NYSE") that became members of FINRA pursuant to the membership waive-in process set forth in IM-1013-1. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

#### 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

On July 30, 2007, NASD and NYSE consolidated their member firm regulation operations into a combined organization, FINRA. To achieve the transaction's goal to eliminate duplicative member firm regulation and enable FINRA to meet its new regulatory responsibilities, the NYSE amended NYSE Rule 2(b) to require FINRA membership as a condition of being an NYSE member organization ("Mandatory FINRA Membership filing").<sup>3</sup>

As part of the transaction, FINRA incorporated into its existing rulebook NYSE rules related to member firm conduct ("Incorporated NYSE Rules"). Thus, the current FINRA rulebook consists of two sets of rules: (1) NASD rules and (2) the Incorporated NYSE Rules (together referred to herein as the "Transitional Rulebook").<sup>4</sup> The Incorporated NYSE Rules apply only to Dual Members.<sup>5</sup>

In furtherance of the consolidation, FINRA adopted NASD IM-1013-1 to

<sup>3</sup> See Securities Exchange Act Release No. 56654 (October 12, 2007), 72 FR 59129 (October 18, 2007) (SR-NYSE-2007-67) (amending the definition of "member organization" in NYSE Rule 2(b) to make FINRA membership a condition of being an NYSE member organization with a 60-day grace period for compliance); Securities Exchange Act Release No. 56953 (December 12, 2007), 72 FR 71990 (December 19, 2007) (SR-NYSE-2007-115) (extending the grace period for NYSE-only member organizations to apply for and be approved as FINRA members to June 30, 2008); Securities Exchange Act Release No. 58096 (July 3, 2008), 73 FR 39764 (July 10, 2008) (SR-NYSE-2008-54) (extending the grace period for NYSE-only member organizations to apply for and be approved as FINRA members to December 31, 2008). See also Securities Exchange Act Release No. 56751 (November 6, 2007), 72 FR 64098 (November 14, 2007) (SR-FINRA-2007-19) (amending the definition of "member organization" in FINRA's NYSE Rule 2(b) to make FINRA membership a condition of being an NYSE member organization).

<sup>4</sup> Pursuant to Rule 17d-2 under the Act, NASD, NYSE and NYSE Regulation Inc. entered into an agreement to reduce regulatory duplication for firms that are members of both FINRA and the NYSE ("Dual Members") by allocating regulatory responsibilities for the Incorporated NYSE Rules to FINRA. FINRA has assumed examination, enforcement and surveillance responsibilities under the agreement relating to compliance by Dual Members to the extent such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4-544).

<sup>5</sup> The Incorporated NYSE Rules continue to apply to persons affiliated with Dual Members to the same extent and in the same manner as they did before the consolidation. In applying the Incorporated NYSE Rules to Dual Members and such affiliated persons, FINRA has incorporated the related interpretative positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

<sup>12</sup> See CBOE Rules 4.11 and 4.12.

<sup>13</sup> See CBOE Rule 12.3.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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