

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, 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) of the Act⁹ and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate 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 e-mail to rule-comments@sec.gov. Please include File

Number SR-NYSEArca-2009-21 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-NYSEArca-2009-21. 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 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-NYSEArca-2009-21 and should be submitted on or before April 16, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-6702 Filed 3-25-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59601; File No. SR-CBOE-2009-018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Short Term Option Series

March 19, 2009.

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 March 13, 2009, 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, 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 Substance of the Proposed Rule Change

The Exchange is proposing to make permanent its Short Term Option Series pilot program (the "Weeklys Program"). In addition, the Exchange is proposing certain non-substantive changes to reorganize its rule text related to the Weeklys Program so that applicable terms are located within a single section of the relevant rules. Conforming, non-substantive changes are being proposed to the text of the Exchange's Quarterly Option Series Pilot Program (the "Quarterlys Program"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

¹¹ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 12, 2005, the Commission approved the Weeklys Program.³ The Weeklys Program allows CBOE to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened. Under the Weeklys Program, CBOE can select up to five approved option classes on which Short Term Option Series could be opened. If selected for the Weeklys Program, the Exchange may open up to twenty Short Term Option Series for each expiration date in that class. The strike price of each Short Term Option Series are fixed at a price per share, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened.⁴ If the Exchange opens less than twenty Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying security or index moves substantially from the exercise price or prices of the series already opened. In any event, the total number of series for a given expiration date will not exceed twenty series.

The Exchange has selected the following four options classes to

participate in the Weeklys Program: S&P 500 Index options (SPX), S&P 100 Index American-style options (OEX), Mini-S&P 500 Index options (XSP), and S&P 100 Index European-style options (XEO). CBOE believes the Weeklys Program has been successful and well received by its members and the investing public for the nearly four years that it has been in operation as a pilot.

CBOE is now proposing to make the Weeklys Program permanent. In support of approving the Weeklys Program on a permanent basis, and as required by the Weeklys Program Approval Order, the Exchange has submitted to the Commission a Weeklys Program report (the "Report") detailing the Exchange's experience with the Weeklys Program. Specifically, the Report contains data and written analysis regarding the four options classes included in the Weeklys Program. The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand in the Weeklys Program to warrant its permanent approval. The Exchange believes that, for the nearly four years that it has been in operation, the Weeklys Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any capacity-related problems with respect to Short Term Option Series. The Exchange also represents that it has the necessary system capacity to continue to support the option series listed under the Weeklys Program.

In seeking permanent approval, the Exchange is taking this opportunity to propose certain non-substantive changes to reorganize the rule text related to the Weeklys Program so that applicable terms are located within a single section of Rules 5.5, and 24.9. Conforming, non-substantive changes are being proposed to the text of the Exchange's Quarterly Program. The revisions do not change the substance of either the Weeklys Program or the Quarterly Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act⁵ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with

the Section 6(b)(5)⁷ 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 Exchange believes that permanent approval of the Weeklys Program will result in an ongoing benefit to investors, and will continue to allow them additional means to manage their risk exposures and carry out their investment objectives.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 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

³ See Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR-CBOE-2004-63) ("Weeklys Program Approval Order"). The Weeklys Program has since been extended and is currently scheduled to expire on July 12, 2009. See Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (SR-CBOE-2006-48) (immediately effective rule change extending the Weeklys Program, which would have otherwise expired on July 12, 2006, through July 12, 2007), 56050 (July 11, 2007), 72 FR 39472 (July 18, 2007) (SR-CBOE-2007-76) (immediately effective rule change extending the Weeklys Program through July 12, 2008); and 58094 (July 3, 2008), 73 FR 40000 (July 11, 2008) (SR-CBOE-2008-70) (immediately effective rule change extending the Weeklys Program through July 12, 2009); see also Securities Exchange Act Release Nos. 54338 (August 21, 2006), 71 FR 50952 (August 28, 2006) (SR-CBOE-2006-49) (order approving an amendment to the Weeklys Program that increased the number of series that may be listed for a class selected to participate in the Weeklys Program from five series to seven series), and 58870 (October 28, 2008), 73 FR 65430 (November 3, 2008) (SR-CBOE-2008-110) (immediately effective rule change increasing the number of series that may be listed for a classes selected to participate in the Weeklys Program from seven series to twenty series).

⁴ For example, if seven series are initially opened, there will be at least three strike prices above and three strike prices below the value of the underlying security or calculated index value.

⁵ 15 U.S.C. 78s(b)(1).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Number SR-CBOE-018 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-2009-018. 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 inspection and copying in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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-2009-018 and should be submitted on or before April 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-6703 Filed 3-25-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59605; File No. SR-FINRA-2008-055]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rule 2114 (Recommendations to Customers in OTC Equity Securities) in the Consolidated FINRA Rulebook

March 19, 2009.

I. Introduction

On November 4, 2008, the 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"), 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 adopt FINRA Rule 2114 (Recommendations to Customers in OTC Equity Securities) in the consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on December 10, 2008.³ The Commission received three comments in response to the proposed rule change.⁴ On February 13, 2009, FINRA filed Amendment No. 1 to amend the proposed rule change and respond to the comment letters.⁵ This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change as amended on an accelerated basis.

II. Description of the Proposed Rule Change

FINRA proposed to adopt NASD Rule 2315 (Recommendations to Customers in OTC Equity Securities) as FINRA

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59075 (December 10, 2008), 73 FR 76429 (December 16, 2008) (SR-FINRA-2008-055) ("Rulemaking Notice").

⁴ See Ronald C. Long, Director of Regulatory Affairs, Wachovia Securities LLC, dated December 9, 2008 ("Wachovia Letter"); Dale E. Brown, CAE, President and CEO, Financial Services Institute, dated January 6, 2009 ("FSI Letter"); and Amal Aly, Esq., Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 6, 2009 ("SIFMA Letter").

⁵ Amendment No. 1 permits a General Securities Sales Supervisor (*i.e.*, a Series 8 or Series 9/10 qualified supervisor) to perform certain reviews the proposed rule would otherwise have required a Series 24 principal to perform or supervise.

Rule 2114 in the Consolidated FINRA Rulebook, subject to certain amendments including those contained in Amendment No. 1 discussed further below.

1. The Current Rule

NASD Rule 2315 is intended to address potential fraud and abuse in transactions involving securities not listed on an exchange and certain other higher risk securities. The rule mandates that a member conduct a due diligence review of an issuer's current financial and business information before recommending a covered security. The rule supplements existing FINRA rules and the Federal securities law, including suitability obligations and the requirement that any recommendation to a customer have a reasonable basis. The rule requirements go beyond the basic suitability obligations to ensure that a registered representative has, at a minimum, confirmed the existence of and reviewed essential information that reveals the financial condition and business prospects of these riskier issuers.

Specifically, the rule requires a member to review "current financial statements" and "current material business information" before it recommends the purchase or short sale of those securities that are published or quoted in a "quotation medium" and are either (1) not listed on Nasdaq or a national securities exchange or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape. Such securities may be more susceptible to fraud and abuse because they often are thinly capitalized or lack the profitability, liquidity or available business and financial information that listing standards require. The rule does not apply to recommendations to sell long positions and also exempts certain other transactions, including those with an "institutional account" under NASD Rule 3110(c)(4), a "qualified institutional buyer" under Rule 144A of the Securities Act of 1933 ("Securities Act"), or a "qualified purchaser" under Section 2(a)(51) of the Investment Company Act of 1940.⁶

The rule defines "current financial statements" to include balance sheets, statements of profit and loss and

⁶ Among the other exemptions, the Rule's requirements also do not apply to transactions that meet the requirements of Rule 504 of Regulation D of the Securities Act; those involving a security of an issuer with at least \$50 million in total assets and \$10 million in shareholder's equity; and those involving a security with worldwide average daily trading volume value of at least \$100,000 during each of the six months preceding the recommendation.

⁸ 17 CFR 200.30-3(a)(12).