

*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-FINRA-2012-026 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-FINRA-2012-026. 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2012-026, and should be submitted on or before June 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67082; File No. SR-FINRA-2012-018]

**Self-Regulatory Organizations;  
Financial Industry Regulatory  
Authority, Inc.; Notice of Filing of  
Amendment No. 1 and Order Granting  
Approval of Proposed Rule Change as  
Modified by Amendment No. 1, To  
Amend NASD Rules 1012 (General  
Provisions) and 1017 (Application for  
Approval of Change in Ownership,  
Control, or Business Operations) To  
Adopt Form CMA**

May 31, 2012.

**I. Introduction**

On February 28, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) and to adopt Form CMA ("Form"), a new standardized electronic form. The Form must be used by members who apply for approval of a change in ownership, control, or business operations consistent with Rule 1017. The proposed rule change was published for comment in the **Federal Register** on March 8, 2012.<sup>3</sup> The Commission received four comment letters on the proposed rule change.<sup>4</sup>

On May 8, 2012, FINRA filed Amendment No. 1<sup>5</sup> and a letter in response to the comments.<sup>6</sup> The Commission is approving the proposed

<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. 66508 (March 2, 2012), 77 FR 14052.

<sup>4</sup> See March 14, 2012 letter from Kevin A. Carreno, President, Experts Counsel Inc. ("EC Letter"); March 29, 2012 letter from David T. Bellaire, Esq., General Counsel and Director of Government Affairs, Financial Services Institute, to Elizabeth M. Murphy, Secretary ("Secretary"), Commission ("FSI Letter"); March 29, 2012 letter from Stephen H. Cohen, Partner, Loeb & Loeb LLP, to Secretary, Commission ("LL Letter"); March 29, 2012 letter from Howard Spindel, Senior Managing Director, Integrated Management Solutions, to Secretary, Commission ("IMS Letter").

<sup>5</sup> Amendment No. 1 is technical in nature, and the Commission is not publishing it for public comment.

<sup>6</sup> See May 8, 2012, letter from Patricia Albrecht, Associate General Counsel, FINRA, to Secretary, Commission ("FINRA Letter").

rule change as modified by Amendment No 1.<sup>7</sup>

**II. Description of the Proposal**

NASD Rule 1017 requires members, upon specified changes in ownership, control, or business operations, to file a continuing membership application and enumerates the information that must be provided to FINRA for FINRA to review. FINRA proposes to amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of change in Ownership, Control, or Business Operations) to adopt the Form, a new standardized electronic form to be used by members subject to the continuing membership process. FINRA worked with an industry task force comprised of representatives from small and large firms to develop the Form. FINRA believes that the Form will reduce the administrative burden for applicants that must comply with the Rule and enable its staff to review the applications in more effective and efficient manner.

**III. Summary of Comments**

The Commission received four comment letters on the proposed rule change.<sup>8</sup> One commenter urged the Commission to approve the proposed rule change, stating the use of the Form will provide member firms with clarity and will streamline the process.<sup>9</sup> The remaining commenters raised the following issues:

*The Form is Overbroad and Confusing*

Three commenters expressed concern that the Form would impose new and unnecessary demands for information, adding to confusion and resulting in greater delays for most members.<sup>10</sup> One commenter expressed concern the Form would impose needless, burdensome requirements on both member firms and FINRA to sift through irrelevant information, adding unnecessarily to the time required for applicants to file, and for FINRA to review, an application pursuant to Rule 1017.<sup>11</sup> Another commenter said the amount of detail requested in the Form will have a negative effect on most members, and

<sup>7</sup> On April 18, 2012, FINRA granted an extension of time until June 6, 2012, for the Commission to act on the filing.

<sup>8</sup> See *supra* note 4.

<sup>9</sup> FSI Letter at 3. Another commenter supported the proposed rule change, but expressed concern about "problems embedded in the CMA process that puts [sic] smaller firms at a huge disadvantage." IMS Letter at 5.

<sup>10</sup> IMS Letter, LL Letter, EC Letter.

<sup>11</sup> LL Letter at 2. The commenter offered seven examples of how the Form is overbroad, confusing, and beyond the scope of a member firm's current obligations under Rule 1017. *Id.* at 3-4.

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

place an increased administrative burden on small firms.<sup>12</sup> Another commenter questioned whether the Form will require members to provide irrelevant data, given that members will have one basic application process that must serve the needs of all FINRA members, regardless of size and complexity.<sup>13</sup> The commenter expressed hope that indicating a negative response that maintains the status quo will result in an application process that is relatively short.<sup>14</sup> Additionally, the commenter stated FINRA staff should be allowed to exercise its judgment when determining the potential harm to the public and whether a closer analysis is warranted, depending on the size and complexity of operations of the firm.<sup>15</sup>

*FINRA Should Conduct a More Comprehensive Review of the CMA Process and Shorten Timeframes for Approval of Rule 1017 Applications*

One commenter stated that Rule 1017 has a disproportionate impact on small firms, and that FINRA staff “has routinely used the 1017 process to delay potential business opportunities for small firms to the detriment of the firms [sic] shareholders, employees and clients.”<sup>16</sup> The commenter asked the Commission to reject the proposed amendments, and to require FINRA to conduct a more comprehensive review of the Change of Membership process to allow for greater flexibility for small firms.<sup>17</sup>

Two commenters stated FINRA should reduce the timeframe for approval of Rule 1017 applications. One commenter suggested 60 days was appropriate.<sup>18</sup> Another commenter suggested that 30 days was adequate for a simple continuing membership application that has been accepted as substantially complete, and that 60 days should suffice for more complex applications.<sup>19</sup>

#### IV. FINRA's Response to Comments

FINRA disagreed that the Form employed a “one size fits all” approach, and that the Form would result in unnecessary burdens, delays, and confusion.<sup>20</sup> FINRA stated the Form is

designed to gather basic information necessary for all applicants, with “embedded flexibility” to allow for differences among applicants, depending on the type of application being submitted.<sup>21</sup> FINRA noted that the Form uses pre-populating fields that contain information applicants previously provided to FINRA, as well as optional information fields that applicants may use to provide additional information, and that these features were designed to minimize the time required of applicants in filling out the Form, and to reduce the administrative burden on applicants.<sup>22</sup> FINRA stated the use of optional fields is also intended to accommodate the differences in structures among applicants and to allow applicants the ability to provide relevant information depending on their circumstances.<sup>23</sup>

FINRA does not believe that the Form will increase the administrative burden on small firm applicants.<sup>24</sup> Having worked with an industry task force comprised with a majority of representatives from small firms, FINRA stated it “gained valuable insight regarding the potential impact of Form CMA on small firm applicants.”<sup>25</sup> FINRA used this information “to make changes intended to provide flexibility and reduce all applicants’ administrative burdens” when completing the Form.<sup>26</sup>

FINRA amended the proposed rule change in response to concerns raised by one commenter that FINRA should delete references to a business plan, pro forma financials, organization chart, and written supervisory procedures contained in NASD Rule 1017(b)(2) to avoid potential confusion. FINRA proposes to delete references to those items, and revised the proposed rule language to require an applicant to submit an application that includes a “Form CMA that includes a detailed description of the change in ownership, control, or business operations.”<sup>27</sup>

FINRA addressed a number of questions and comments raised by the commenters regarding the format of the Form, as well as content issues, by clarifying the scope of information that FINRA expects applicants to provide when completing the Form.<sup>28</sup> FINRA does not believe that the information requested in the Form is broader and

beyond the scope of information that FINRA currently requests during the continuing membership application process.

With regard to the commenters’ suggestions that FINRA reduce the 180-day timeframe provided in NASD Rule 1017 for approving a continuing membership application, FINRA believes these comments are beyond the scope of the proposed rule change.<sup>29</sup> However, FINRA “continues to evaluate opportunities to streamline the application process or, where appropriate, consider revisions or amendments to FINRA’s membership rules.”<sup>30</sup>

#### V. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA’s response to the comments, 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 association and, in particular, the requirements of 15A of the Act.<sup>31</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6)<sup>32</sup> of the Act, which, among other things, requires that rules of a national securities association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.<sup>33</sup>

The Commission believes that the proposed rule change is reasonable, and specifically, that the Form and corresponding changes to NASD Rules 1012 and 1017 are reasonably designed to streamline the process for compliance with the continuing membership responsibilities of FINRA members. The Commission supports FINRA’s efforts to improve the efficiency of the process and its desire to reduce the overall administrative burden shouldered by members who are subject to the continuing membership process of Rule 1017.

The Commission is not persuaded by the commenters’ assertions that the proposal places undue burdens on small firms. The Commission believes that FINRA’s efforts to address this issue are sufficient. The Commission notes that

<sup>12</sup> EC Letter (“\* \* \* the amount of detail requested in over 45 pages in an electronic application will lead to much greater delays and confusion for most members. It will also significantly increase the administrative burden on small firms.”).

<sup>13</sup> IMS Letter at 1, 3.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.*

<sup>16</sup> EC Letter.

<sup>17</sup> *Id.*

<sup>18</sup> EC Letter.

<sup>19</sup> IMS Letter at 5.

<sup>20</sup> FINRA Letter at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 3–4.

<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.*, generally, at 4–11.

<sup>29</sup> *Id.* at 11.

<sup>30</sup> *Id.*

<sup>31</sup> 15 U.S.C. 78o–3.

<sup>32</sup> 15 U.S.C. 78o–3(b)(6).

<sup>33</sup> In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

FINRA solicited input from small firms in redesigning the continuing membership application process, and the Form is structured to allow for some degree of flexibility, so that each applicant may tailor its application appropriately. Furthermore, in FINRA's response to the comments, FINRA provided detailed guidance and clarification to help alleviate concerns and confusion generated by the proposal. The Commission supports FINRA's desire to continually examine its policies and procedures to reduce administrative burdens and increase efficiency with regard to continuing membership applications whenever possible. As FINRA undergoes this self-evaluation, the Commission believes FINRA will consider the commenters' suggestion that FINRA reevaluate the necessity of a 180-day approval period for continuing membership applications. In the interim, however, the Commission believes the proposed rule change is both reasonable and consistent with the Act.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-FINRA-2012-018), as modified by Amendment No. 1, be, and hereby is, approved.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67084; File No. SR-CBOE-2012-042]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To List and Trade CBOE S&P 500 AM/PM Basis Options

May 31, 2012.

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 May 23, 2012, the Chicago Board Options Exchange, Incorporated ("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 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend certain of its rules to provide for the listing and trading of cash-settled CBOE S&P 500 AM/PM Basis ("SPBAS") options that will be P.M.-settled and have European-style exercise. The text of the rule proposal 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, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled CBOE S&P 500 AM/PM Basis ("SPBAS") options, that will be P.M.-settled and will have European-style exercise.<sup>3</sup>

###### Design of the Product

SPBAS options reflect the difference between the Special Opening Quotation ("SOQ") of the S&P 500 Index<sup>4</sup> and the closing level of the S&P 500 Index on the last trading day (which is typically the third Friday of the month) for

SPBAS options. The options will allow investors to gain exposure to or hedge the basis risk between A.M.-Settled S&P 500 Index ("SPX") options traded on CBOE and P.M.-Settled S&P 500 Index ("SPXPM") options traded on the C2 Options Exchange, Incorporated ("C2").<sup>5</sup>

At expiration, SPBAS options will settle against the following index calculation:

$$\text{SPBAS} = \text{MAX} (100 + (\text{SOQ of S\&P 500}) - (\text{Closing Value of S\&P 500}), 0)$$

In other words, SPBAS is the greater of (1) the SOQ of SPX minus the closing value of SPX plus 100 and (2) zero. This formulation ensures that the settlement value for SPBAS options can never be less than zero.

Due to the nature of SPBAS options (e.g., settlement to the difference between the SOQ of the S&P 500 Index and the closing level of the S&P 500 Index on the third Friday of each month) an intraday value will not be disseminated. Rather, prior to the open on all trading days, other than the last trading day (which is typically the third Friday of the month) CBOE will disseminate a single value of 100 for SPBAS options through the Options Price Reporting Authority ("OPRA"), the Consolidated Tape Association ("CTA") tape and/or the Market Data Index ("MDI") feed. After the close of trading on the last trading day (e.g., third Friday of the month), CBOE will disseminate the exercise settlement value (calculated as described above) for the expiring contract.

###### Options Trading

SPBAS options will be quoted in points and fractions and one point will equal \$100. The contract multiplier will be \$100. The minimum tick size for series trading below \$3 will be 0.05 (\$5.00) and above \$3 will be 0.10 (\$10.00). Exhibit 3 presents contract specifications for SPBAS options.

The Exchange is proposing to list series at \$1 or greater where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.<sup>6</sup> The Exchange believes that a

<sup>5</sup> See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2-2011-008) (order approving listing and trading of SPXPM options on C2 on a pilot basis).

<sup>6</sup> See proposed amendment to Rule 24.9.01(e) (Terms of Index Options Contracts). The Exchange also proposes to add new Interpretation and Policy .21 to Rule 5.5 (Series of Option Contracts Open for Trading), which will be an internal cross reference stating that the intervals between strike prices for SPBAS option series will be determined in accordance with Interpretation and Policy .01(e) to Rule 24.9.

Continued

<sup>34</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>3</sup> See proposed addition of SPBAS options to the list of European-style index options approved for trading on the Exchange contained in Rule 24.9(a)(3) (Terms of Index Options Contracts).

<sup>4</sup> The SOQ is calculated per normal index calculation procedures and uses the opening (first) reported sales price in the primary market of each component stock in the index on the last business day (usually a Friday) before the expiration date. If a stock in the index does not open on the day on which the exercise-settlement value is determined, the last reported sales price in the primary market is used to calculate the exercise-settlement value.