(d) an entity (other than a Third Party Fund) in which a Capital Group entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor (a) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary or to a direct or indirect wholly-owned subsidiary of its Parent, (b) to immediate family members of the Affiliated Co-Investor or a trust or other investment vehicle established for any Affiliated Co-Investor or any such immediate family member, or (c) when the investment is comprised of securities that are (i) listed on a national securities exchange registered under section 6 of the Exchange Act, (ii) NMS stocks pursuant to section 11A(a)(2) of the Exchange Act and rule 600(a) of Regulation NMS thereunder, (iii) government securities as defined in section 2(a)(16) of the Act or other securities that meet the definition of "Eligible Security" in rule 2a–7 under the Act, or (iv) listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each Series of the Partnership and at least six years thereafter, such accounts, books and other documents constituting the record forming the basis for the audited financial statements that are to be provided to the Limited Partners in the Partnership, and each annual report of the Partnership required to be sent to the Limited Partners, and agree that all such records will be subject to examination by the Commission and its staff.[6]

5. The General Partner of each Partnership will send to each Limited Partner having an Interest in the Partnership at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants with respect to those Series in which the Limited Partner had an Interest. At the end of each fiscal year, the General Partner will make or cause to be made a valuation of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of the Partnership, the General Partner will send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of that partner's federal and state income tax returns and a report of the investment activities of the Partnership during that fiscal year.

6. If a Partnership makes purchases or sales from or to an entity affiliated with the Partnership by reason of an officer, director or employee of a Capital Group entity (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

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BILLING CODE 8011–01–P

[6] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63885; File No. SR–FINRA–2010–055]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Disapproving Proposed Rule Change To Amend FINRA Rule 6140 (Other Trading Practices)

February 10, 2011.

I. Introduction

On October 29, 2010, 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" or "Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6140, Other Trading Practices. The proposed rule change was published for comment in the **Federal Register** on November 12, 2010.[3] The Commission received two comments on the proposal.[4] On December 21, 2010, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to February 10, 2011.[5] On January 24, 2011, FINRA submitted a response letter to the comments.[6] This order disapproves the proposed rule change.

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

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

FINRA Rule 6140 provides that FINRA members may, but are not obligated to, accept stop orders in NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS.[7] In addition, FINRA Rule 6140 provides that a stop order becomes a market order, or a stop limit order becomes a limit order, when a transaction takes place at or above the stop price (in the case of a buy stop order) or at or below the stop price (in the case of a sell stop order).[8] Thus, under FINRA Rule 6140, a stop order cannot be triggered by the publication of a quotation at the stop price, but only by a transaction.[9] FINRA proposes to eliminate these provisions governing the handling of stop orders in their entirety.

In support of its proposal to eliminate entirely from its rules those provisions governing the handling of stop orders, FINRA states that its members believe quotations may be a better indicator of the current price of a security than transactions, and have requested that FINRA provide members the flexibility to determine whether the trigger of a stop order will be based on transactions or quotations at the stop price. FINRA represents that its rules do not typically define the parameters of the various order types that members may accept and that FINRA believes that members should have the ability to define the triggering event for stop orders as well as to design their systems consistent with such determination. In addition,

[3] *See* Securities Exchange Act Release No. 63256 (November 5, 2010), 75 FR 69503 ("Notice").

[4] *See* Letters from Gary S. Sheller, CFP, Sheller Financial Services, dated November 24, 2010 ("Sheller Letter"); and Michael S. Nichols, PhD, Principal/Financial Advisor, Cutter Advisors Group, dated November 29, 2010 ("Cutter Letter").

[5] *See* Securities Exchange Act Release No. 63582 (December 21, 2010), 75 FR 81704 (December 28, 2010).

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Stephanie M. Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA, dated January 24, 2011 ("FINRA Response Letter").

[7] *See* FINRA Rule 6140(h) and (i).

[8] *See* FINRA Rule 6140(h).

[9] *See* FINRA Rule 6140(h) and (i).

FINRA notes that it expects that, irrespective of whether a transaction or quotation is used as the trigger for a customer stop order, each member will apply the approach consistently firm-wide to all customer orders and fully disclose its practice to its customers.

Finally, FINRA proposes to relocate the definition of "initial public offering" from Rule 6220 (Definitions) to Rule 6130 (Transactions Related to Initial Public Offerings). FINRA proposes no substantive changes to this definition.

III. Summary of Comment Letters and FINRA's Response

The Commission received two comment letters objecting to the proposed rule change. The commenters generally were concerned with the use of quotations as a trigger for stop orders.[10] One commenter believed that the triggering event for a stop order should be a transaction, and expressed concern that activating a stop order "based solely upon a bid opens the process to manipulation by those inclined to do so by flashing bids during market turbulence."[11] In response, FINRA notes that FINRA Rule 5210 already prohibits the publication of a quotation that is not bona fide, and therefore the practice of flashing quotations for the sole purpose of activating a stop order, without the intention of trading at the price and volume quoted, is impermissible.[12]

The other commenter expressed concern that investors and financial advisors would not know whether the triggering event was a quote or a trade, and believed that investors would have a legitimate complaint if their stop order was triggered by a quote and there was no evidence it ever traded at that price.[13] FINRA responds that it does not believe that it is appropriate at this time for FINRA to dictate the definitions for the order types offered by a member to its customers, and notes that numerous member firms have concluded that quotes are the more appropriate triggering event for stop orders. FINRA believes that each member should be permitted to determine whether it will use quotes or transactions to trigger stop orders, provided that the member's approach is disclosed to its customers and is consistently applied.

IV. Discussion

Under section 19(b)(2)(C) of the Act, the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to such organization.[14] The Commission shall disapprove a proposed rule change if it does not make such a finding.[15]

After careful consideration, the Commission does not find 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.[16] In particular, the Commission does not find that the proposed rule change is consistent with Section 15A(b)(6) of the Act, which requires that the rules of a national securities association be designed, among other things, "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * and, in general, to protect investors and the public interest."[17]

FINRA proposes to delete in its entirety the provisions of Rule 6140 relating to the handling of stop orders in NMS stocks by member firms. Those provisions currently require that stop orders offered by member firms be triggered (*i.e.,* become a market order or limit order) by a transaction in the security. Accordingly, this requirement should be providing customers certainty with respect to the operation of a key element of their stop orders.

By proposing to eliminate this provision, FINRA effectively would allow member firms to offer stop orders to customers that are triggered by a transaction, a quote or another mechanism altogether. While FINRA, in its "Statement of the Purpose" of the proposed rule change, notes that it "expects" each member to apply its approach to stop orders consistently and fully disclose its practice to its customers, FINRA has not clearly made this expectation enforceable by requiring consistency and customer disclosure in its rules.

The Commission acknowledges that some may believe a quotation is a better trigger mechanism for stop orders than a transaction, and there may be good reasons for allowing FINRA to provide flexibility for this in its rules. FINRA, however, has not articulated any such reasons. In addition, the Commission believes that, if FINRA rules were to permit members flexibility in the types of stop orders they offer, those rules should clearly require, at a minimum, that the member disclose to customers the type of stop order it offers. The Commission believes the regulatory framework should promote the ability of investors to understand the key attributes of order types offered by their brokers so that they can make an informed choice as to whether to use a particular type of order. This is especially true with more complex order types, such as stop loss orders, and particularly if FINRA rules permit a variety of stop loss orders to be offered.

Because of this potential investor confusion, and resulting investor harm, that could result from FINRA's proposed rule change, the Commission is concerned the proposal is not designed, among other things, to protect investors and the public interest, and promote just and equitable principles of trade, as required by Section 15A(b)(6) of the Exchange Act. The proposed rule change filed by FINRA, and its subsequent response to comments, does not adequately address these concerns. FINRA's proposal simply states that "FINRA believes that adopting the proposed rule change will provide members with the flexibility to determine whether the execution of stop orders will be triggered by transactions or quotations in the subject security without compromising investor protection."[18] Neither the proposed rule change, nor FINRA's subsequent response to comments, offers any substantive explanation as to why providing flexibility in the types of stop orders offered by members—particularly without a clearly enforceable disclosure requirement—is consistent with the provisions of Section 15A(b)(6) referenced above. The Commission notes that Rule 700(b)(3) of its Rules of Practice reiterates that "[t]he burden to demonstrate that a proposed rule change

[10] *See* Cutter Letter and Sheller Letter, *supra* note 4.

[11] *See* Sheller Letter, *supra* note 4.

[12] *See* FINRA Letter, *supra* note 6, at p. 2.

[13] *See* Cutter Letter, *supra* note 4.

[14] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[15] *See* 15 U.S.C. 78s(b)(2)(C)(ii); *see also* 17 CFR 201.700(b)(3) ("The burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder * * * is on the self-regulatory organization that proposed the rule change * * * A mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient.") The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. *See* 17 CFR 201.700(b)(3). Any failure of a self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization. *Id.*

[16] In disapproving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] *See* Notice, *supra* note 3.

is consistent with the Exchange Act * * * is on the self-regulatory organization that proposed the rule change" and that a "mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient."[19] For the reasons articulated above, the Commission does not believe that FINRA has met that burden in this case.

IV. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with Section 15A(b)(6) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2010–055) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63876; File No. SR–CBOE–2011–013]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees Schedule and Circular Regarding Trading Permit Holder Application and Other Related Fees

February 9, 2011.

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 February 1, 2011, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") 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 prepared by CBOE. 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 its Fees Schedule and circular regarding Trading Permit Holder application and other related fees ("Trading Permit Fee Circular"). The text of the proposed rule change 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'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, CBOE 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. CBOE 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

CBOE Rule 2.20 grants the Exchange the authority to, from time to time, fix the fees and charges payable by Trading Permit Holders. CBOE is proposing to amend its Fees Schedule and Trading Permit Fee Circular effective February 1, 2011 to: (i) Clarify that the tier appointment fees will be assessed, as applicable, for open outcry transactions and not electronic transactions for those Market-Maker Trading Permit Holders that do not already have a tier appointment; (ii) establish a minimum open outcry contract level for assessment of a tier appointment fee to those Market-Maker Trading Permit Holders that do not maintain a tier appointment in VIX; and (iii) clarify that written notification to terminate a tier appointment should be provided to the Market Quality Assurance & DPM Administration Department.

CBOE Rule 8.3(e) provides that the Exchange may establish one or more types of tier appointments. In accordance with CBOE Rule 8.3(e), a tier appointment is an appointment to trade one or more options classes that must be held by a Market-Maker to be eligible to act as a Market-Maker in the options class or options classes subject to that appointment. CBOE currently maintains tier appointments for Market-Maker Trading Permit Holders trading in SPX and VIX.

Section 10(A) of the current Fees Schedule provides that the SPX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX or any open outcry or electronic transaction in SPX Weeklys at any time during a calendar month. CBOE amended this provision in January 2011 to reflect the addition of SPX Weeklys and to incorporate any electronic transactions that occur in SPX Weeklys.[3] However, since the only Trading Permit Holders that are able to submit quotes electronically in SPX Weeklys are those Market-Maker Trading Permit Holders that have an appointment in SPX Weeklys, CBOE is proposing to clarify this provision by removing the language that would assess the tier appointment fee to any Market-Maker Trading Permit Holder that conducts any electronic transactions in SPX Weeklys. CBOE has never intended to assess the tier appointment fee to a Trading Permit Holder that submits an occasional order electronically in SPX Weeklys.

Similarly, Section 10(A) of the current Fees Schedule provides that the VIX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder that either (a) has a VIX Tier Appointment at any time during a calendar month; or (b) conducts any transactions in VIX at any time during a calendar month. However, since the only Market-Maker Trading Permit Holders that are able to submit quotes electronically in VIX are those Market-Maker Trading Permit Holders that have an appointment in VIX, CBOE is proposing to clarify this provision by removing the language that would assess the tier appointment fee to any Market-Maker Trading Permit Holder that conducts any electronic transactions in VIX. CBOE has never intended to assess the tier appointment fee to a Trading Permit Holder that submits an occasional order electronically in VIX. CBOE is also proposing to add language to the Fees Schedule to provide that the VIX Tier Appointment fee will be assessed to a Market-Maker Trading Permit Holder that trades at least 1,000 VIX options contracts per month in open outcry. In addition, because Market-Maker Trading

[19] 17 CFR 201.700(b)(3).

[20] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63706 (January 12, 2011), 76 FR 3184 (January 19, 2011) (SR–CBOE–2011–004).