

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 this proposed rule change is to amend CBOE Rule 8.3 relating to the appointment cost for options on the CBOE Russell 2000 Volatility Index (RVX) and options on the CBOE Nasdaq 100 Volatility Index (VXN). Presently, RVX and VXN each have an appointment cost of .25. CBOE proposes to reduce the appointment cost of RVX and VXN such that they would fall within one of the six tiers according to trading volume, and be subject to the quarterly rebalancing of the tiers that CBOE conducts. It is currently anticipated that each would be placed in Tier F and have an appointment cost of .001. CBOE is proposing to lower the appointment cost in these two option classes in light of their trading volume, which CBOE does not believe justifies a weighting of .25. Also, CBOE believes it would be appropriate for these two classes to be subject to the quarterly rebalancing of the tiers.

Members then could utilize the excess membership capacity to hold an appointment and quote electronically in an appropriate number of Hybrid 2.0 option classes, which promotes competition and efficiency.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act<sup>6</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. Lowering the appointment cost for RVX and VXN options promotes competition and efficiency by allowing Market-Makers to utilize their excess membership capacity to trade other option classes.

*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*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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,<sup>7</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2008-66 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>7</sup> The Exchange satisfied this pre-filing requirement.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-66. 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 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 CBOE. 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-2008-66 and should be submitted on or before July 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon**

*Acting Secretary.*

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**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58087; File No. SR-CHX-2008-11]

**Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified By Amendment No. 1 Thereto, Relating to Equity-Linked Debt Securities**

July 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

“Act”<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 20, 2008, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. On June 25, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting accelerated approval to the proposed rule change.

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

The Exchange proposes to amend Rule 26 under Article 22 of the CHX Rules (“Rule 26”) to clarify that the trading of equity-linked debt securities (“ELDS”) is pursuant to Rule 19b-4(e) under the Act.<sup>3</sup> The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.chx.com>.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. CHX 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

CHX proposes to amend Rule 26 to clarify that the trading of ELDS is pursuant to Rule 19b-4(e) under the Act. Rule 26 currently provides for the trading of ELDS whether by listing or pursuant to unlisted trading privileges. This rule change would further clarify that the trading of ELDS is pursuant to Rule 19b-4(e) under the Act. Through this filing, the Exchange would change its rules to reflect this clarification.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, by allowing CHX to amend its rules to clarify that the listing and trading of ELDS is pursuant to Rule 19b-4(e) under the Act and to conform CHX’s rules to those of other exchanges.<sup>6</sup>

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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 either solicited or received.

### III. 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2008-11 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2008-11. 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 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-CHX-2008-11 and should be submitted on or before July 31, 2008.

### IV. Commission’s Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, 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, in general, to protect investors and the public interest.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The proposal seeks to clarify that the Exchange’s listing and trading of ELDS under Rule 26 is subject to Rule 19b-4(e) under the Act. The Commission does not believe that this clarification raises any novel regulatory issues. Therefore, the Commission believes that

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> See e.g., Chicago Board Options Exchange Rule 31.5(I); Paragraph 703.21 of the New York Stock Exchange Listed Company Manual; Nasdaq Rule 4420(g); and Philadelphia Stock Exchange Rule 803(h).

<sup>7</sup> In approving this rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

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

<sup>3</sup> 17 CFR 240.19b-4(e).

accelerating approval of this proposal is appropriate and would ensure that the Exchange's rules clearly reflect the standards for listing and trading of ELDS and conform CHX's rules to those of other exchanges without delay.<sup>9</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change, as modified (SR-CHX-2008-11), be, and it hereby is, approved on an accelerated basis.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-15639 Filed 7-9-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58095; File No. SR-FINRA-2008-028]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), and FINRA Rule 5150 (Fairness Opinions) in the Consolidated FINRA Rulebook

July 3, 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 June 13, 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 adopt NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade), 2120

(Use of Manipulative, Deceptive or Other Fraudulent Devices), and 2290 (Fairness Opinions) as FINRA rules in the consolidated FINRA rulebook without material change and to delete Incorporated NYSE Rule 401(a) (Business Conduct), Incorporated NYSE Rule 435 (Miscellaneous Prohibitions), with the exception of paragraph (5), and NYSE Rule Interpretations 401/01 and 401/02. 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

As part of the process of developing the new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>3</sup> FINRA is proposing to adopt NASD Rules 2110, 2120, and 2290 as FINRA Rules 2010, 2020, and 5150, respectively, in the Consolidated FINRA Rulebook. The rules would be adopted without change, with the exception of renumbering the rules to reflect the new organizational structure of the Consolidated FINRA Rulebook.<sup>4</sup> The proposed rule change would also delete Incorporated NYSE Rule 401(a)

<sup>3</sup> The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see *FINRA Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> This proposal does not address the Interpretive Materials ("IMs") to NASD Rule 2110, which FINRA advises will be considered in a later phase of the rulebook consolidation process. Consequently, the IMs would remain in the Transitional Rulebook. Telephone conference between Brant Brown, Associate General Counsel, FINRA, Mia Zur, Senior Special Counsel, and Linda Jeng-Braun, Attorney, Commission, on June 27, 2007.

(including two accompanying Interpretations to the rule) and certain provisions of Incorporated NYSE Rule 435 from the Transitional Rulebook.

a. FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade)

The proposed rule change would transfer NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010. Incorporated NYSE Rule 401 (including two accompanying Interpretations to the rule) would be deleted from the Transitional Rulebook.

Section 15A(b)(6) of the Act requires that FINRA design its rules to "promote just and equitable principles of trade."<sup>5</sup> The Act's mandate is reflected in NASD Rule 2110, which requires that members, in the conduct of their business, observe high standards of commercial honor and just and equitable principles of trade. This general ethical standard articulated in NASD Rule 2110 is broader and provides more flexibility than prescriptive regulations and legal requirements. NASD Rule 2110 protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. NASD Rule 2110 has proven effective through nearly 70 years of regulatory experience.

The Incorporated NYSE Rules also include general ethical rules and associated rule interpretations that correspond to NASD Rule 2110 and other provisions in the FINRA rulebook. Specifically:

- *Good Business Practice*: Using somewhat different language than NASD Rule 2110, Incorporated NYSE Rule 401(a) requires members at all times to adhere to the principles of good business practice in the conduct of their business affairs.<sup>6</sup> This overarching

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> In addition to the general good business practice requirement in Incorporated NYSE Rule 401(a), paragraph (b) of the rule requires that members maintain written policies and procedures, administered pursuant to the internal control requirements of Incorporated NYSE Rule 342.23, with respect to transmittals of funds or securities, customer changes of address, and customer changes of investment objectives. These provisions duplicate requirements under NASD Rule 3012(a)(2)(B), for which FINRA has requested comments on proposals to relocate them to the supervision rule in the Consolidated FINRA Rulebook. See *Regulatory Notice* 08-24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls) ("*Supervision Notice*").

<sup>9</sup> See *supra*, note 6.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.