

Act,⁶ because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. At the outset, the Exchange believes that the proposal is not unfairly discriminatory due to the fact that registration as an Exchange Market Maker, and, in turn, as a CLP, is equally available to all Members that satisfy the requirements of Rule 11.8. The Exchange believes that the CLP Program will encourage the development of new financial products, provide a better trading environment for investors in Exchange-listed securities, and generally encourage greater competition between listing venues.

As proposed, the CLP Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for Exchange-listed securities. The Exchange is launching its listings business at a time in which there are two dominant primary listing venues, the New York Stock Exchange and Nasdaq. The Exchange believes that the proposed change would increase competition by incenting Exchange Market Makers to register as CLPs, which will enhance the quality of quoting in Exchange-listed securities and help to reduce imbalances in Exchange auctions, and will further assist the Exchange to develop an alternative to Nasdaq and the New York Stock Exchange for a company seeking to list its securities. Accordingly, the Exchange believes that the proposal will complement the Exchange's program for listing securities on the Exchange, which will, in turn, provide companies with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.⁷

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 45 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 or disapprove the 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 email to rule-comments@sec.gov. Please include File Number SR-BATS-2011-51 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-BATS-2011-51. 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 a.m. and 3 p.m. Copies of the filing will also 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 publicly available. All submissions should refer to File Number SR-BATS-2011-51 and should be submitted on or before January 19, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66049; File No. SR-FINRA-2011-035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rules 2210 (Communications With the Public), 2212 (Use of Investment Companies Rankings in Retail Communications), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), 2214 (Requirements for the Use of Investment Analysis Tools), 2215 (Communications With the Public Regarding Security Futures), and 2216 (Communications With the Public About Collateralized Mortgage Obligations (CMOs)) in the Consolidated FINRA Rulebook

December 23, 2011.

I. Introduction

On July 14, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-3 through 2210-8 as FINRA Rules 2210 and 2212 through 2216, and to delete paragraphs (a)(1), (i), (j) and (l) of Incorporated NYSE Rule 472, Incorporated NYSE Rule Supplementary Material 472.10(1), (3), (4) and (5) and 472.90, and Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. The proposed rule change was published for comment

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in the **Federal Register** on August 3, 2011.³ The Commission received nine comment letters in response to the proposed rule change.⁴ On October 31, 2011, FINRA filed Amendment No. 1 to the proposed rule change and a letter responding to comments.⁵ The proposed Amendment No. 1 was published for comment along with an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Act, to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1, in the **Federal Register** on November 7, 2011.⁶ The comment period closed on December 7, 2011 and FINRA's rebuttal period closed on December 22, 2011. The Commission received seven comment letters in response to the Notice and Proceedings Order.⁷ On December 22, 2011, FINRA filed Amendment No. 2 to the proposed rule change and a letter responding to comments.⁸ The text of Amendment No. 2 and FINRA's Rebuttal Letter are available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room. FINRA's Rebuttal Letter is also available on the Commission's Web site at <http://www.sec.gov>.

³ See Securities Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011).

⁴ Comment letters are available at www.sec.gov.

⁵ See letter from Joseph P. Savage, FINRA, to Elizabeth Murphy, Secretary, SEC, dated October 31, 2011 ("Response Letter"). The text of proposed Amendment No. 1 and FINRA's Response Letter are available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room. FINRA's Response Letter is also available on the Commission's Web site at <http://www.sec.gov>.

⁶ See Securities Exchange Act Release No. 65663 (November 1, 2011), 76 FR 68800 (November 7, 2011) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings SR-FINRA-2011-035) ("Notice and Proceedings Order"). The comment period closed on December 7, 2011 and FINRA's rebuttal period closed on December 22, 2011.

⁷ See letter from Melissa Callison, Vice President, Compliance, Charles Schwab & Co., Inc., dated December 7, 2011 ("Schwab"); letter from Alexander C. Gavis, Vice President & Associate General Counsel, Fidelity Investments, dated December 7, 2011 ("Fidelity"); letter from David T. Bellaire, General Counsel and Director of Government Affairs, Financial Services Institute, dated December 7, 2011 ("FSI"); letter from Dorothy M. Donohue, Senior Associate Counsel, Investment Company Institute, dated December 7, 2011 ("ICI"); letter from John Polanin and Claire Santaniello, Co-Chairs, Compliance and Regulatory Policy Committee of the Securities Industry and Financial Markets Association ("SIFMA"); letter from Sandra J. Burke, Principal, Vanguard, dated December 7, 2011 ("Vanguard"); and letter from Jeremiah McGair, Attorney, Wolverine Execution Services, LLC, dated December 7, 2011 ("Wolverine"). Comment letters are available at www.sec.gov.

⁸ See letter from Joseph P. Savage, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2011 ("Rebuttal Letter").

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

First, FINRA is proposing to amend proposed FINRA Rule 2210 to exclude from the definition of "institutional communication" a member's internal communications used to train or educate registered persons about the products or services of the member. In this regard, FINRA proposes to delete proposed Supplementary Material 2210.01 in its entirety. FINRA also proposes to revise proposed FINRA Rule 2210(a)(3) as set forth below. Proposed new language is in *italics*.

(3) "Institutional communication" means any written (including electronic) communication that is distributed or made available only to institutional investors, *but does not include a member's internal communications*.

Second, FINRA is proposing to amend proposed FINRA Rule 2210 to allow a member that is subject to the new member pre-use filing requirements to file a broker-prepared free writing prospectus within 10 business days of first use, rather than at least 10 business days prior to first use. In this regard, FINRA proposes to replace proposed FINRA Rule 2210(c)(1)(A) with the following:

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible Web site, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

Third, in response to comments received by the Commission, FINRA is proposing to amend proposed FINRA Rule 2210 to exclude from the filing requirements retail communications that are posted on an online interactive electronic forum. FINRA also is proposing to amend FINRA Rule 2210 to exclude from the filing requirements

press releases issued by closed-end investment companies that are listed on the New York Stock Exchange ("NYSE") pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision). In this regard, FINRA proposes to insert the following new sub-paragraphs (M) and (N) at the end of paragraph (c)(7) of proposed FINRA Rule 2210:

(M) Retail communications that are posted on an online interactive electronic forum.

(N) Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the filing as amended by Amendments 1 and 2 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 email to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-035 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-2011-035. 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 a.m. and 3 p.m. Copies of such 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-2011-035 and should be submitted on or before January 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66038; File No. SR-CBOE-2011-117]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Its Automated Improvement Mechanism

December 22, 2011.

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 December 14, 2011, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to its Automated Improvement Mechanism ("AIM"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rule 6.74A to permit an Initiating TPH to elect to have last priority in AIM's order allocation. AIM allows a TPH to submit an Agency Order along with a contra-side second order (a principal order or a solicited order for the same size as the Agency Order) into an Auction where other participants could compete with the Initiating TPH's second order to execute against the Agency Order, which guarantees that the Agency Order will receive an execution.³ Initiating TPHs must submit the Agency Order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order).⁴ Once an Auction commences, the Initiating TPH cannot cancel it.⁵ Upon receipt of an Agency Order (and the Initiating TPH's second order), the Exchange will commence the Auction by issuing an RFR detailing the side and size of the Agency Order. The RFR period will last for one (1) second.⁶ At the conclusion of an Auction, an Agency Order will be allocated at the best price(s) in accordance with the applicable matching algorithm rules for that class, subject to the allocation provisions of Rule 6.74A(b)(3).

Under this proposal, when submitting an Agency Order to initiate an Auction against a single-price submission, the Initiating TPH will have the opportunity to elect to have last priority in AIM's order allocation. If the Initiating TPH makes this election, the Initiating TPH would be allocated only the amount of contracts remaining, if any, after the

Agency Order is allocated to all other Auction participants willing to trade with the Agency Order at the single-price submission price.⁷ If it makes this election, the Initiating TPH may not be allocated any contracts, or may be allocated fewer contracts than it would otherwise receive pursuant to Rule 6.74A(b)(3)(F) (generally 40%).

As an example, suppose an Initiating TPH submits to an Auction an Agency Order for 1,000 contracts and makes the election described above:

- If at the conclusion of the Auction, other Auction participants are willing to trade with 800 of these contracts at the single-price submission price or better price(s) resulting from the Auction, then the Initiating TPH will be allocated the remaining 200 contracts (or 20%) for execution against its contra-side order at its specified single price.

- If at the conclusion of the Auction, other Auction participants are willing to trade with 600 of these contracts at the single-price submission price or better price(s) resulting from the Auction, then the Initiating TPH will be allocated the remaining 400 contracts (or 40%) for execution against its contra-side order at its specified single price.

- If at the conclusion of the Auction, other Auction participants are willing to trade with 400 of these contracts at the single-price submission price or better price(s) resulting from the Auction, then the Initiating TPH will be allocated 600 contracts for execution against its contra-side order at its specified single price.

- If at the conclusion of the Auction, other Auction participants are willing to trade with the entire Agency Order at the single-price submission price or better price(s) resulting from the Auction, then the Initiating TPH will be allocated no contracts.

Under this proposal, Agency Orders submitted to AIM will continue to be guaranteed execution at a price at least as good as the NBBO while providing the opportunity for execution at a price better than the NBBO.

The Exchange believes this proposal will incent more TPHs to initiate Auctions, because the additional flexibility encourages increased participation by TPHs willing to trade with Agency Orders at the NBBO but

⁷ The Exchange notes that Chapter V, Section 18(f)(v), The Price Improvement Period ("PIP"), of the Rules of the Boston Exchange Group, LLC includes a similar provision that permits an options participant initiating a PIP auction to designate a lower amount for which it will retain certain priority and trade allocation privileges upon the conclusion of the PIP auction than the 40% of the PIP order to which the initiating options participant is otherwise entitled pursuant to PIP's allocation order.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See CBOE Rule 6.74A.

⁴ See CBOE Rule 6.74A(a)(2).

⁵ See CBOE Rule 6.74A(b)(1)(A).

⁶ See CBOE Rule 6.74A(b)(1). Several types of events will cause an Auction to conclude. See CBOE Rule 6.74A(b)(2).