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-CBOE–2008–82 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CBOE–2008–82. 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 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 publicly available. All submissions should refer to File Number SR-CBOE–2008–82 and should be submitted on or before September 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18894 Filed 8–14–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58327; File No. SR–CBOE–2008–09]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 2, Establishing a Voluntary Professional Designation

August 7, 2008.

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 January 18, 2008, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. The proposed rule change was published for comment in the **Federal Register** on February 1, 2008.[3] On February 15, 2008, the Commission received a comment letter on the proposal.[4] On July 8, 2008, the Exchange filed Amendment No. 2 to the proposal.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change as modified.

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

The Exchange proposes to adopt a ''Voluntary Professional'' designation. 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 III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to allow non-broker-dealer customers to voluntarily have their orders categorized as broker-dealer orders for order handling, order execution, and cancel fee calculation purposes. Specifically, these orders would be treated as broker-dealer orders for purposes of Rules 6.2A (Rapid Opening System); 6.2B (Hybrid Opening System); 6.9 (Solicited Transactions); 6.13A (Simple Auction Liaison); 6.45 (Priority of Bids and Offers—Allocation of Trades); 6.13B (Penny Price Improvement); 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System) (except that Voluntary Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy.02); 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System) (except that Voluntary Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy.02); 6.53C(c)(ii) and (d)(v) and 6.53C.06(b)–(c) (Complex Orders on the Hybrid System); 6.74 (Crossing Orders) (except that Voluntary Professional orders may be considered public

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[12] 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. 57256 (February 1, 2008), 73 FR 7338 (February 7, 2008).

[4] *See* letter from Andrea Schneider to Florence E. Harmon, Acting Secretary, Commission, dated February 15, 2008 (''Schneider Letter'').

[5] According to the Exchange, the purpose of Amendment No. 2 is to add a more complete list of Exchange rules for which the Voluntary Professional designation would apply, and to provide that the Voluntary Professional designation would not be available in Hybrid 3.0 classes. The Commission received notice of the withdrawal of Amendment No. 1 on July 2, 2008.

customer orders subject to facilitation under paragraphs (b) and (d)); 6.74A (Automated Improvement Mechanism) (except that Voluntary Professional orders may be considered customer Agency Orders or solicited orders eligible for customer-to-customer immediate crosses under Interpretation and Policy.09); 6.74B (Solicitation Auction Mechanism); 8.13 (Preferred Market-Maker Program); 8.15B (Participation Entitlement of LMMs); 8.87 (Participation Entitlement of DPMs and e-DPMs); 24.19 (Multi-Class Broad-Based Index Option Spread Orders); 43.1 (Matching Algorithm/Priority); 44.4 (Obligations of SBT Market-Makers); and 44.14 (SBT DPM Obligations). Lastly, the Voluntary Professional designation would not be available in Hybrid 3.0 classes.

Some Exchange users have requested the flexibility to voluntarily designate their orders as broker-dealer orders because it is more suitable to their trading strategies, which involve high-volume order submission and cancellation. Except as noted above, the orders of these Voluntary Professionals would participate in trades on the same terms as broker-dealer orders for purposes of the rules set forth above. Orders from Voluntary Professionals would continue to be treated as public customer orders for purposes of the linkage-related rules.

With respect to linkage-related rules, CBOE states that it would provide the same away-market protection for orders from Voluntary Professionals as for orders from public customers. In addition, orders from Voluntary Professionals that are cancelled would not be counted as public customer order cancellations in connection with the cancellation fee charged to clearing members. It is expected that member firms seeking to facilitate customer use of this new designation would mark these orders with a new origin code to be provided by the Exchange. The Exchange intends to establish, in a separate rule filing under Section 19(b) of the Act, a transaction fee applicable to Voluntary Professionals and the Exchange would not commence the Voluntary Professional program until such fee was in place.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) of the Act [6] in particular in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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 did not solicit or receive written comments with respect to the proposed rule change.

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*. Please include File Number SR–CBOE–2008–09 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–CBOE–2008–09. 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 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–2008–09 and should be submitted on or before September 5, 2008.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 and, in particular, the requirements of Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange, among other things, 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, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[7] The Commission notes that it recently approved a substantially similar proposal by the International Securities Exchange, LLC ("ISE") to create a Voluntary Professional category.[8] The grounds upon which the Commission based its approval of the ISE proposal apply equally to the CBOE proposal.

Under the proposed rule change, a public customer could elect to be designated as a Voluntary Professional. One of the consequences of electing this designation is that a customer's orders no longer would be subject to CBOE's cancellation fees. Thus, choosing to become a Voluntary Professional could represent significant savings for a public customer whose trading strategy involves placing, and then cancelling, orders frequently.

By electing to become a Voluntary Professional, a public customer would also cede priority rights normally granted to public customer orders. Importantly, however, this result is determined solely by the choice of the

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this 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).

[8] *See* Securities Exchange Act Release No. 57553 (March 25, 2008), 73 FR 16916 (March 31, 2008) (SR–ISE–2007–76).

customer, and may be rescinded at a customer's election.

The commenter questioned how the proposed rule change would benefit public customers.[9] The commenter maintained that if CBOE is willing to forgive its cancellation fees, ''then * * * there was never a problem with cancels from public customers but only [the Exchange] trying to concentrate power and punish the public customer.'' The Commission is not today considering CBOE's cancellation fee.[10] Instead, the Commission is approving a proposed rule change that would give public customers more flexibility in how they participate in CBOE's marketplace. In sum, the Commission believes that the proposed rule change would provide an additional choice to public customers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the Exchange's proposal relating to Voluntary Professionals is appropriate because it is similar to an ISE rule that recently was approved by the Commission.[11] The Commission believes that CBOE's proposal does not raise any new issues that were not considered by the Commission in connection with the ISE proposal.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–2008–09), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18895 Filed 8–14–08; 8:45 am]

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[9] *See* Schneider Letter, *supra* note 4.

[10] *See* Securities Exchange Act Release No. 44607 (July 27, 2001), 66 FR 40757 (August 3, 2001) (SR–CBOE–2001–40) (establishing the CBOE Order Routing System cancellation fee).

[11] *See supra* note 8.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58331; File No. SR–FINRA–2008–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Align the Reporting Requirements and Dissemination Protocols for OTC Equity Transactions Involving Foreign Securities With All Other OTC Equity Securities

August 8, 2008.

I. Introduction

On April 25, 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 (''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 proposal: (1) To amend NASD Rule 6620 to align the reporting requirements for over-the-counter (''OTC'') equity transactions involving foreign securities with the reporting requirements for other OTC equity transactions; and (2) to align the dissemination protocols for all last sale reports of OTC equity transactions. On June 12, 2008, FINRA submitted Amendment No. 1 to the proposed rule change. The proposal was published for comment in the **Federal Register** on June 26, 2008.[3] The Commission received five comments regarding the proposal.[4] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

Currently, NASD rules require that transactions in OTC Equity Securities (which term encompasses domestic equity securities, American Depositary Receipts (''ADRs''), and Canadian issues) that are executed between 8 a.m. and 8 p.m. Eastern Time be reported to the OTC Reporting Facility within 90 seconds of execution.[5] Thus, transactions in all ADRs and Canadian issues, including those that are not registered with the Commission and thus are not subject to the Commission's reporting requirements, are subject to 90-second reporting under NASD Rule 6620. Transactions in all other foreign equity securities are excluded from the 90-second reporting requirement and instead must be reported by 1:30 p.m. Eastern Time the day after the transaction is executed.[6]

Last sale information for transactions in domestic OTC Equity Securities reported pursuant to Rule 6620 is disseminated on a real-time basis, irrespective of whether the security is registered with the Commission. However, there is no uniformity regarding the dissemination of last sale information for transactions in ADRs and foreign securities. Last sale reports of ADRs and Canadian issues that are quoted on the OTC Bulletin Board (''OTCBB''), which has an eligibility requirement that OTCBB issuers must be reporting issuers,[7] are disseminated on a real-time basis. However, only summary information is disseminated at the end of each trading day for OTC ADRs and Canadian issues that are not quoted on the OTCBB, whether or not they are registered with the Commission. Transactions in foreign securities, other than Canadian issues and ADRs, that are quoted on the OTCBB are disseminated on a real-time basis if they are received on the day of the trade. However, as noted above, there is no current requirement to report these trades to FINRA within 90 seconds of execution, or even on the trade date. If an OTC transaction in a foreign security is not reported on the trade date, last sale information for that transaction is not disseminated.

FINRA now proposes: (1) To require all transactions in OTC Equity Securities to be reported within 90 seconds of execution; and (2) to

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57986 (June 18, 2008), 73 FR 36363 (''Notice'').

[4] *See* letters from Verdun Edgtton, Vice President and Corporate Governance Officer, The Bank of New York Mellon, to Secretary, Commission, dated July 17, 2008 (''BNYMellon Letter''); Sam Guidetti, Director of Compliance, Hill, Thompson, Magid & Co., to Florence E. Harmon, Acting Secretary, Commission, dated July 15, 2008 (''Hill Thompson Letter''); Peter Coolidge, Portfolio Manager, Deltec Special Situations Partners, L.P., to Secretary, Commission, dated July 9, 2008 (''Deltec Letter''); R. Cromwell Coulson, Chief Executive Officer, Pink OTC Markets, to Secretary, Commission, dated July 7, 2008 (''Pink OTC Markets Letter''); and Robert Arancio, President, and Kimberly Unger, Executive Director, The Security Traders Association of New York, to Secretary, Commission, dated June 27, 2008 (''STANY Letter'').

[5] *See* NASD Rule 6620(a). For purposes of the NASD Rule 6600 Series, ''OTC Equity Securities'' means equity securities for which real-time trade reporting is not otherwise required. *See* NASD Rule 6600. NASD Rule 6610(d) further defines ''OTC Equity Security'' as ''any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.''

[6] *See* NASD Rule 6620(a)(3)(C)(iii). Although not required, a member may choose to report transactions in foreign securities within 90 seconds of execution. *See* NASD Rule 6620 n.1.

[7] *See* NASD Rule 6530(b)(1).