

also prohibits any SRO from having a price test. As a result, the Nasdaq bid test (which was the basis for the adoption of CBOE 15.10) was superseded by Regulation SHO, thus rendering CBOE Rule 15.10 obsolete. The purpose of this filing is to delete the obsolete rule text.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5)⁷ of the Act, 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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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. Please include File Number SR-CBOE-2008-94 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-2008-94. 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 am and 3 pm. Copies of such 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-2008-94 and should be submitted on or before October 1, 2008.

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

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58461; File No. SR-FINRA-2008-033]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Adopt FINRA Rule 4560 (Short-Interest Reporting) in the Consolidated FINRA Rulebook

September 4, 2008.

I. Introduction

On June 23, 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" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt the short interest reporting requirements (NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10) as FINRA Rule 4560 in the consolidated FINRA rulebook. On July 16, 2008, FINRA submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 31, 2008.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

As part of the process of developing the new consolidated rulebook ("Consolidated FINRA Rulebook"),⁴

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 58227 (July 25, 2008), 43 FR 44793 (July 31, 2008).

⁴ 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").

⁷ 15 U.S.C. 78(f)(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

FINRA proposed to adopt the short interest reporting requirements in NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 as FINRA Rule 4560 in the Consolidated FINRA Rulebook.

NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 set forth FINRA's short interest reporting requirements.⁵ NASD Rule 3360 requires members to report short positions⁶ in OTC Equity Securities⁷ and exchange-listed securities not otherwise reported to another self-regulatory organization ("SRO"),⁸ and Incorporated NYSE Rules 421(1) and 421.10 require members to report short positions in NYSE-listed securities. Members must report total short positions in all customer and proprietary accounts as of the designated settlement dates and in the manner so prescribed.⁹ Currently, the rules require such information to be reported twice a month, which in turn, is then made publicly available on an aggregate basis twice a month.¹⁰

As of June 30, 2008, FINRA consolidated the collection of short interest data, so that firms report short interest positions in all securities to FINRA using the Regulation Filing Applications system; consequently, firms will no longer be able to report any of their short interest positions using the NYSE's Electronic Filing Platform ("EFP") or the Securities Industry Automation Corporation ("SIAC").¹¹

Given that the short interest requirements in each of the rules are substantially similar, FINRA proposed to adopt these requirements as part of

⁵ Incorporated NYSE Rules 421(2) and 421.40 require members carrying margin accounts for customers to report certain aggregate debit and free credit balances.

⁶ Short positions required to be reported under the rules are those resulting from "short sales" as the term is defined in Rule 200(a) of Regulation SHO, subject to certain limited exceptions. See NASD Rule 3360(b)(1).

⁷ The term "OTC Equity Securities" refers to any equity security that is not listed on a national securities exchange. See NASD Rule 3360(b)(3).

⁸ It is the responsibility of each member firm to ensure that it is reporting accurate short interest data, including confirming that issue symbols are active and valid as of the designated settlement date. See *Notice to Members* 06-20 (April 2006).

⁹ Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See *Notice to Members* 03-08 (February 2003).

¹⁰ A schedule of FINRA's designated settlement dates can be found on its Web site at <http://www.finra.org>. See also *Notice to Members* 07-24 (May 2007).

¹¹ See *Regulatory Notice* 08-13 (March 2008). Prior to June 30, firms reported short interest positions in NYSE-listed securities through the EFP and all other securities through FINRA's Regulation Filing Applications ("RFA") system or the SIAC.

the Consolidated FINRA Rulebook, subject only to certain non-substantive changes. Most notably, because FINRA will now be the primary collector of consolidated short interest data for its members in all securities (rather than only if such positions in exchange-listed securities are not reported to another SRO), FINRA is not retaining the text in NASD Rule 3360 that limits short interest reportable to FINRA to those positions in exchange-listed securities "not otherwise reported to another self-regulatory organization."

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.¹² In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ which requires, among other things, that FINRA rules must be designed 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. The Commission notes that it has previously approved the short interest reporting requirements of NASD Rule 3360¹⁴ and NYSE Rules 421(1) and 421.10¹⁵, and the proposed rule change moves these requirements to the Consolidated FINRA Rulebook, subject only to certain non-substantive changes. The short interest reporting requirements previously have been found to meet the statutory requirements, and the Commission believes such requirements have since proven effective in achieving the statutory mandates.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-FINRA-2008-033), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

¹² In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78(c)(f).

¹³ 15 U.S.C. 78o-3(b)(6).

¹⁴ Securities Exchange Act Release No. 56279 (Aug. 17, 2007), 72 FR 48713 (Aug. 24, 2007).

¹⁵ Securities Exchange Act Release No. 57252 (Feb. 1, 2008), 73 FR 7343 (Feb. 7, 2008).

¹⁶ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58457; File No. SR-NYSEArca-2008-91]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding the Listing of Fourteen Funds of the Commodities and Currency Trust

September 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 21, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to list and trade shares ("Shares") of fourteen (14) funds ("Funds") of the Commodities and Currency Trust ("Trust") based on several currencies, commodities and commodities indexes.

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 these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.