

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

CBSX proposes to make fee modifications in order to better attract business to the Exchange. Specifically, CBSX proposes to change to \$0.0010 per share (from \$0.0025 per share) its fee for the stock component of a stock-option cross trade, and to adjust the maximum rate to \$15 per trade (from \$50 per trade). These changes are to take effect as of October 19, 2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

*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**

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>8</sup>

At any time within 60 days of the filing of the 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 Number SR-CBOE-2009-077 in 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-CBOE-2009-077. 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 available publicly. All submissions should refer to File Number SR-CBOE-2009-077 and should be submitted on or before November 18, 2009.

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

Elizabeth M. Murphy,  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60850; File No. SR-FINRA-2009-067]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rules 2060 (Use of Information Obtained in Fiduciary Capacity) and 5290 (Order Entry and Execution Practices) in the Consolidated FINRA Rulebook**

October 21, 2009.

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 October 6, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been 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 3120 (Use of Information Obtained in Fiduciary Capacity) and 3380 (Order Entry and Execution Practices) as FINRA rules in the consolidated FINRA rulebook without material change. The proposed rule change would renumber NASD Rule 3120 as FINRA Rule 2060 and NASD Rule 3380 as FINRA Rule 5290 in the consolidated FINRA rulebook.

The text of the proposed rule change is 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.

<sup>9</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.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

## 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 a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>3</sup> FINRA is proposing to adopt NASD Rules 3120 and 3380 in the Consolidated FINRA Rulebook without material change as FINRA Rules 2060 and 5290 respectively.

#### Proposed FINRA Rule 2060

FINRA is proposing to adopt NASD Rule 3120 as FINRA Rule 2060 in the Consolidated FINRA Rulebook. NASD Rule 3120 provides that a member who receives information as to the ownership of securities while acting in the capacity of paying agent, transfer agent, trustee or otherwise shall under no circumstances make use of the information for soliciting purchases, sales or exchanges except at the request and on behalf of the issuer. Rule 3120, formerly designated as Article III, Section 9 of the Rules of Fair Practice, was adopted as part of FINRA's original rulebook.<sup>4</sup> The text of the rule has not been amended since its inception.

FINRA believes that the rule serves an important purpose by prohibiting a member, while acting in the capacity of

paying agent, transfer agent, trustee or otherwise, from using certain information it obtains about the ownership of securities to solicit purchases, sales or exchanges except at the request and on behalf of the issuer.<sup>5</sup>

#### Proposed FINRA Rule 5290

FINRA is proposing to adopt NASD Rule 3380 as FINRA Rule 5290 in the Consolidated FINRA Rulebook. NASD Rule 3380 prohibits members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions.<sup>6</sup> For purposes of the rule, "monetary or in-kind amount" is defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person. The SEC approved NASD Rule 3380 in February 2006 after notice and comment with no subsequent amendments.<sup>7</sup>

FINRA is proposing to replace "may" with "shall" in the rule text, but believes no substantive changes to this rule are appropriate or necessary.<sup>8</sup> FINRA continues to believe that NASD Rule 3380 is necessary and appropriate

<sup>5</sup> With respect to the exception allowing use of information at the request and on behalf of the issuer, the descriptive analysis of the identical precursor provision drafted by the Investment Bankers Code Committee in 1934 explains that the exception is provided

[B]ecause if the issuer desires either to refund or propose an exchange to the security holder, he certainly has the right to demand from his transfer agent or trustee the list of security holders and the issuer thus being in a position to address them directly, the investment banker should be able to address them on his behalf.

*See Code of Fair Competition for Investment Bankers with a Descriptive Analysis of its Fair Practice Provisions and a History of its Preparation* (1934).

<sup>6</sup> This is commonly also referred to as "trade shredding," which is the unlawful practice of splitting customer orders for securities into multiple smaller orders (e.g., a 1,000 share order is split into ten 100 share orders) for the primary purpose of maximizing payments or rebates to the member.

<sup>7</sup> *See Securities Exchange Act Release No. 53371* (February 24, 2006), 71 FR 11008 (March 3, 2006) (Order Approving File No. SR-NASD-2005-144).

<sup>8</sup> *See Exhibit 5* ("No member or associated person [may] shall engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions").

to deter the distortive practice of trade shredding.<sup>9</sup>

As noted above, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> 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. FINRA continues to believe that, in certain circumstances, a rule prohibiting members from using information about ownership of securities to solicit purchases, sales or exchanges except at the request and on behalf of the issuer serves to protect investors and the public interest. In addition, FINRA continues to believe that a rule regarding order entry and execution practices will continue to further the goal of preventing manipulative acts and practices by prohibiting the potentially distortive practice of trade shredding.

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

FINRA does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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

Within 35 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

<sup>9</sup> FINRA also notes that the rule is consistent with the rules of other securities self-regulatory organizations regarding trade shredding. *See, e.g., NYSE Rule 123G* (Order Entry Practices) approved pursuant to Securities Exchange Act Release No. 52683 (October 26, 2005), 70 FR 66480 (November 2, 2005) (Order Approving File No. SR-NYSE-2005-62).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>3</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> *See Certificate of Incorporation and By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc.* (August 8, 1939).

organization consents, the Commission will:

(A) By order approve such 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-067 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-2009-067. 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 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-

2009-067 and should be submitted on or before November 18, 2009.

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

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60860; File No. SR-FINRA-2009-065]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Define Asset-Backed Securities, Mortgage-Backed Securities, and Other Similar Securities as TRACE-Eligible Securities and Require the Reporting of Transactions in Such Securities to TRACE

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been 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 amend the FINRA Rule 6700 Series (except for Rule 6740) and FINRA Rule 7730 to designate asset-backed securities, mortgage-backed securities and other similar securities (collectively defined hereinafter as "Asset-Backed Securities") as Trade Reporting and Compliance Engine ("TRACE") TRACE-Eligible Securities, and establish reporting, fee and other requirements relating to such securities as follows:

(1) In Rule 6710, to amend the defined term: (A) "TRACE-Eligible Security" to include Asset-Backed Securities; and make certain technical changes in Rule 6710(a); (B) "Reportable TRACE Transaction" to include specific requirements regarding certain Asset-

Backed Securities in Rule 6710(c); (C) "Agency Debt Security" to incorporate proposed defined terms in Rule 6710(l); and (D) "TRACE System Hours" to transfer the defined term from Rule 6730(a) to Rule 6710(bb);

(2) In Rule 6710, to add the defined terms, "Sponsor," "Issuing Entity," "TBA," "Agency Pass-Through Mortgage-Backed Security," "Factor," "Specified Pool Transaction," "Stipulation Transaction," "Dollar Roll," and "Remaining Principal Balance," as, respectively, new paragraphs (s) through (aa);

(3) In Rule 6730, to provide for reporting of Asset-Backed Securities transactions;

(4) In Rule 6750, to provide that information on a transaction in a TRACE-Eligible Security that is an Asset-Backed Security will not be disseminated;

(5) In Rule 6760, to require a member that is a Sponsor or an Issuing Entity of an Asset-Backed Security to provide notice as required under the Rule, and to modify the notification requirements to accept a mortgage pool number in certain circumstances;

(6) In Rule 7730, to establish transaction reporting fees for Asset-Backed Securities that are TRACE-Eligible Securities at the same rates in effect for corporate bonds; for certain Asset-Backed Securities, to identify size (volume) for determining a trade reporting fee, and to provide that for purposes of Rule 7730(b), a transaction in an Agency Pass-Through Mortgage-Backed Security is not a List or Fixed Offering Price Transaction or a Takedown Transaction; and

(7) In the Rule 6700 Series, except for Rule 6740, and Rule 7730 to incorporate certain technical, administrative and clarifying changes.

The text of the proposed rule change is 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.

#### 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.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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