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–2012–044. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between 10:00 a.m. and 3:00 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 available publicly. All submissions should refer to File Number SR–BATS–2012–044 and should be submitted on or before December 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28525 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68265; File No. SR–CBOE–2012–109]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Related to CBSX To Address Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

November 19, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 16, 2012, 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 and II below, which Items have been prepared by the self-regulatory organization. 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

The Exchange is proposing to amend its rules to (i) address the authority of CBOE Stock Exchange, LLC ("CBSX," CBOE's stock execution facility) to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of a CBSX error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of CBSX's routing service. The text of the rule proposal 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, 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 those statements may be examined at the places specified in Item IV below.

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 the proposed rule change is to adopt new Rule 52.3A to address the authority of CBSX to cancel orders (or release routing-related orders) when a technical or systems issue occurs and to adopt new Rule 52.10A to describe the operation of a CBSX Error Account(s) ("CBSX Error Account(s)") and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of CBSX's routing service.

By way of background, CBSX operates a system of trading that allows automatic executions to occur electronically. As part of this infrastructure, CBSX also automatically routes orders to other trading centers under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with CBSX.[4] Mechanically, when CBSX receives an order from a Trading Permit Holder ("TPH") that is held in CBSX system and determines to route an order to another trading center, CBSX provides the routing broker with a corresponding order and instructions to route the order to another trading center(s). The routing broker then sends the corresponding order to the other trading center.[5]

[4] *See, e.g.,* Rule 52.10, *Order Routing to Other Trading Centers.*

[5] Generally, the routing brokers route the orders directly to other trading centers. However, it is possible that a routing broker may route orders to another trading center through a third-party broker-dealer. In those cases, the third-party broker-dealer would route the orders to the other trading center in its name, and any executions would be submitted for clearance and settlement in the name of the routing broker so that any resulting positions are delivered to the routing broker upon settlement. As described above, normally the routing broker would then coordinate with CBSX to arrange for any resulting securities positions to be delivered to the TPH that submitted the corresponding order to CBSX. If error positions (as defined in proposed Rule 52.10A) result in connection with the routing broker's use of a third-party broker-dealer for outbound routing, and those positions are delivered to the routing broker through the clearance and settlement process, those positions would be permitted to be resolved in accordance with proposed Rule 52.10A. If the third-party broker-dealer received error positions and the positions were not delivered to the routing broker through the clearance and settlement process, then the third-party broker-dealer would resolve those position

Continued

In the normal course, the routing broker reports an execution or cancellation of the routed order back to CBSX. Routed orders that are executed at another trading center are submitted for clearance and settlement in the name of the routing broker. The routing broker then coordinates with CBSX to arrange for any resulting securities positions to be delivered to the TPH that submitted the original order to CBSX (*i.e.,* upon receipt of a filled execution report for the routed order, the CBSX system pairs the execution against the TPH's original order being held in the CBSX system and reports the pairing for clearance and settlement purposes by submitting a non-tape, clearing only transaction).

From time to time, CBSX encounters situations in which it becomes necessary to cancel orders (or release routing-related orders) and resolve error positions that result from errors of CBSX, routing brokers, or another trading center.[6]

Proposed Rule 52.3A (Order Cancellation/Release)

The Exchange proposes to adopt new Rule 52.3A to address the authority of CBSX to cancel orders when a technical or systems issue occurs. Specifically, paragraph (a) of the proposed rule would expressly authorize CBSX to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at CBSX,[7] the routing broker, or another trading center to which a CBSX order has been routed. Paragraph (a) would also provide that a routing broker may only cancel orders being routed to another trading center based on CBSX's standing or specific instructions or as otherwise provided in the Exchange Rules.[8] Paragraph (a) would also provide that CBSX shall provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.

Paragraph (b) of the proposed rule provides that CBSX may also determine to release orders being held on CBSX awaiting another trading center execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issues occurs at CBSX, a routing broker, or another trading center to which an order has been routed (the process for ''releasing'' orders is illustrated in more detail below). Paragraph (c) of the proposed rule would provide that, for purposes of Rule 52.10A, technical or system issues would include, without limitation, instances where CBSX has not received confirmation of an execution (or cancellation) on another trading center from a routing broker within a response time interval designated by CBSX, which interval may not be less than three (3) seconds.[9]

The examples set forth below describe some of the circumstances in which CBSX may decide to cancel (or release) orders.

Example 1: If a routing broker or another trading center experiences a technical or systems issue that results in CBSX or routing broker not receiving responses to immediate-or-cancel (''IOC'') orders sent to the other trading center, and that issue is not resolved in a timely manner, then CBSX may seek to cancel the routed orders affected by the issue.[10] For instance, if a routing broker experiences a connectivity issue affecting the manner in which it sends and receives order messages to or from another trading center, it may be unable to receive timely execution or cancellation reports from the other trading center, and CBSX may consequently seek to cancel the affected routed orders (*e.g.,* by calling the routing broker and instructing the routing broker to attempt to cancel the orders) or perhaps the routing broker may initiate the cancellation of the affected routed orders pursuant to a standing or specific instruction from CBSX. In these circumstances, CBSX would also attempt to release the initial orders submitted by TPHs.[11]

Example 2: If CBSX does not receive confirmation of an execution (or cancellation) of an IOC order sent to another trading center from a routing broker within a designated response time interval of three (3) seconds, then an automated system feature will release the initial order being held by CBSX.[12] CBSX would also attempt to cancel the routed order in these circumstances.[13]

itself, and the positions would not be permitted to be resolved as set forth in proposed Rule 52.10A.

[6] The examples described in this filing are not intended to be exclusive. Proposed Rule 52.3A would provide general authority for CBSX to cancel orders (or release routing-related orders) in order to maintain fair and orderly markets when technical or systems issues are occurring, and proposed Rule 52.10A also would set forth the manner in which error positions (which may occur in the provision of CBSX's routing service) may be handled by CBSX. The proposed rule change is not limited to addressing order cancellation (release) or error positions resulting only from the specific examples described in this filing.

[7] To confirm, the authority to cancel orders to maintain fair and orderly markets under proposed Rule 52.3A would apply to any technical or systems issue at CBSX and would include orders at CBSX (*i.e.,* the authority to cancel orders would apply to any orders that are subject to CBSX's routing service and any orders that are not subject to CBSX's routing service). By comparison, the routing service error account provisions under proposed Rule 52.10A (discussed below) would apply only to original and corresponding orders that are subject to CBSX's routing service.

[8] As discussed above, CBSX uses non-affiliated routing brokers to provide the routing services. These routing brokers are also not facilities of CBSX. As provider of the routing services, CBSX determines the logic that determines when, how and where orders are routed away to other trading centers. *See* Rule 52.10.01(b). Under paragraph (a) to proposed Rule 52.10A, the decision to take action with respect to orders affected by a technical or systems issue shall be made by CBSX. Depending on where those orders are located, a routing broker would be permitted to initiate a cancellation of an order(s) pursuant to CBSX's standing or specific instructions or as otherwise provided in the Exchange Rules (*e.g.,* CBSX's standing instructions might provide, among other things, that the routing broker could initiate the cancellation of orders if the routing broker is experiencing technical or systems issues routing orders to an away trading center).

[9] Such a situation may not cause CBSX to declare self-help against the other trading center pursuant to Rule 611 of Regulation NMS. If CBSX determines to cancel or release orders, as applicable, under proposed Rule 52.3A(a) but does not declare self-help against that other trading center, CBSX would continue to be subject to the trade-through requirements in Rule 611 with respect to that trading center.

[10] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), CBSX should receive an immediate response back from the routing broker reporting any executions or cancellations from the other trading center, and would then pass the resulting fill or cancellation onto the TPH. If, after submitting an order for which a corresponding order has been routed to another trading center, a TPH sends an instruction to cancel the original order, the cancellation is held by CBSX until a response is received from the routing broker on the corresponding order. For instance, if the other trading center executes the corresponding order, the execution would be passed onto the TPH and the cancellation instruction on the TPH's original order would be disregarded.

[11] Once an initial order is released, any cancellation that a TPH submitted to CBSX on the initial order during such a situation would be honored. If a TPH did not submit a cancellation to CBSX, however, that initial order would remain ''live'' and thus be eligible for execution or posting on CBSX, and CBSX would not treat any execution of the initial order or any subsequent routed order related to that initial order as an error (unless, of course, the order was itself subject to another technical or systems issue or any other trading center processing exceeded the applicable response time interval).

[12] *See* existing paragraph (a) to Rule 52.7, *Sweeping and Trading Through Away Markets,* which provides, in relevant part, that ''[i]n the event that CBSX does not receive any response at all to an outbound Intermarket Sweep Order, and assuming that no system errors have been detected, CBSX will issue a cancellation at the expiration of the expiration delay timer on the Intermarket Sweep Order. This action will release the corresponding order that had been suspended on the CBSX Book pending the response to the Intermarket Sweep Order, and the released order will re-aggress the CBSX Book (including the generation of Intermarket Sweep Orders to other away markets, if necessary).''

In conjunction with this rule change, CBSX is proposing to amend Rule 52.7 to provide that, ''[in] the event that CBSX does not receive any response at all to an outbound Intermarket Sweep Order, at the expiration of the response time interval, CBSX will release the corresponding order that had been suspended on the CBSX Book pending the response to the Intermarket Sweep Order in accordance with Rule 52.3A, and the released order will re-aggress the CBSX Book (including the generation of Intermarket Sweep Orders to other away markets, if necessary).'' *See* proposed changes to Rule 52.7(a).

As noted in Example 2 above, if the corresponding initial order is released, CBSX would also attempt to cancel the routed order (*e.g.,* by calling the routing broker and instructing the routing broker to attempt to cancel the orders).

[13] It is possible that attempts to cancel the routed orders may not succeed. If CBSX receives an

Example 3: If CBSX experiences a systems issue, CBSX may take steps to cancel and/or release all outstanding orders affected by the issue (which orders may include orders that may or may not be subject to routing services). CBSX would also attempt to cancel any routed orders related to the TPHs' initial orders, if applicable, in these circumstances.[14]

Proposed Rule 52.10A (Routing Service Error Accounts)

Proposed Rule 52.10A would provide that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating unmatched trade positions that may occur in connection with the another trading center routing service provided under Rule 52.10 (''error positions'').[15] In addition, CBSX may also maintain, in the name of CBSX, one or more CBSX Error Accounts for the purpose of liquidating error positions in the circumstances described below.

Paragraph (a) of the proposed rule would provide that errors to which the rule would apply include any action or omission by CBSX, a routing broker, or another trading center to which a CBSX order has been routed, either of which result in an unmatched trade position due to the execution of an order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a ''routing error''). Such routing errors would include, without limitation, positions resulting from determinations by CBSX to cancel or release an order pursuant to proposed Rule 52.3A (as described above).

Paragraph (b) of the proposed rule would provide that, generally, each routing broker will utilize its own error account to liquidate error positions. However, in certain circumstances, CBSX may utilize a CBSX Error Account. In particular, in instances where the routing broker is unable to utilize its own error account (*e.g.,* due to a technical, systems or other issue that prevents the routing broker from doing so) or where the an [sic] error is due to a technical or systems issue at CBSX, CBSX may (but would not be required to) determine it is appropriate to utilize a CBSX Error Account. In making such a determination to utilize a CBSX Error Account, CBSX would consider whether is [sic] has sufficient time, information and capabilities considering the market circumstances to determine that an error is due to such circumstances and whether CBSX can address the error.

CBSX believes it is reasonable and appropriate to address routing errors through the error account of a routing broker in the manner proposed because, among other reasons, it is the executing broker associated with these transactions. CBSX also believes that having the flexibility to determine to utilize a CBSX Error Account in the limited circumstances described above allows for administrative convenience and contributes to CBSX's ability to maintain a fair and orderly market.[16] From a TPH perspective, there would be no impact resulting from the decision to use a CBSX Error Account or the routing broker's error account to liquidate the error position in these circumstances.

By definition, an error position in a CBSX Error Account would only include unmatched trades due to a routing error. In that regard, paragraph (c) of the proposed rule would provide that CBSX shall not accept any positions in a CBSX Error Account from an account of a Trading Permit Holder or permit any Trading Permit Holder to transfer any positions from the Trading Permit Holder's account to a CBSX Error Account.[17]

To the extent a routing broker utilizes its own account to liquidate error positions, paragraph (d) of the proposed rule provides that the routing broker shall liquidate the error positions as soon as practicable. The routing broker could determine to liquidate the position itself or have a third party broker-dealer liquidate the position on the routing broker's behalf. Paragraph (d) also provides that the routing broker establish and enforce policies and procedures reasonably designed to (i) adequately restrict the flow confidential and proprietary information associated with the liquidation of the error position in accordance with Rule 52.10,[18] and (ii) prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions. In addition, paragraph (d) provides that the routing broker shall make and keep records associated with the liquidation of such routing broker error positions and shall maintain such records in accordance with Rule 17a–4 under the Act.[19]

Paragraph (e) of the proposed rule would provide that, to the extent a CBSX Error Account is utilized to liquidate error positions, CBSX shall liquidate the error positions as soon as practicable. In liquidating error positions in a CBSX Error Account, CBSX shall provide complete time and price discretion for the trading to liquidate error positions in a CBSX Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.[20] Such a third-party broker-dealer may include a routing broker not affiliated with CBSX. Paragraph (e) would also provide that CBSX shall establish and enforce policies and procedures reasonably designed to adequately restrict the flow of confidential and proprietary information between CBSX and the third-party broker-dealer associated

execution report on the order that had been routed to another trading center, then the unmatched execution would be considered an ''error position'' under proposed Rule 52.10A.

[14] It is possible that attempts to cancel the routed orders may not succeed. If CBSX receives an execution report on the order that had been routed to another trading center, then the unmatched execution would be considered an ''error position'' under proposed Rule 52.10A.

[15] CBSX notes that, in connection with providing routing services, routing brokers currently may utilize their own error accounts to liquidate error positions. CBSX believes it is reasonable and not inappropriate to address routing errors through the error account of a routing broker because, among other reasons, it is the executing broker associated with these transactions.

[16] The Exchange notes that any profit/loss from liquidating the error positions would belong to CBSX (when a CBSX Error Account is utilized) or the routing broker (when the routing broker's error account is utilized). However, all or any portion of such profits/losses may be subject to certain contractual obligations pursuant to the routing service agreement between CBSX and the routing broker (*e.g.,* used to offset certain contractual obligations).

[17] CBSX may address error positions under the proposed rule that are caused by the errors noted above, but CBSX may not accept from a TPH positions that are delivered to the TPH through the clearance and settlement process, even if those positions may have been the result of an error. This would not apply, however, to situations like the one described below in which CBSX incurred a position to settle a TPH purchase, as the TPH did not yet have a position in its account as a result of the purchase at the time of CBSX's action, *i.e.,* CBSX's action was necessary for the purchase to settle into the TPH's account. Moreover, to the extent a TPH receives positions in connection with an error or other technical or systems issue, the TPH may seek to rely on other Exchange Rules such as Rule 50.6, *Liability and Legal Proceedings,* if it experiences a loss. For example, Rule 50.6, which cross-references Rule 6.7, *Exchange Liability,* provides TPHs with the ability to file claims for negligent acts or omissions of CBSX employees or for the failure of its systems or facilities.

[18] Rule 52.10.01(c) provides that CBSX will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between CBSX and the routing broker (referred to in the rule as the ''Technology Provider''), and, to the extent the routing broker reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the routing broker to legitimate business purposes necessary for the licensing of routing technology.

[19] 17 CFR 240.17a–4.

[20] This provision is not intended to preclude CBSX from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, CBSX might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

with the liquidation of the error positions. Finally, paragraph (e) would provide that CBSX shall make and keep records to document all determinations to treat positions as error positions under the rule (whether or not a CBSX Error Account is utilized to liquidate such error positions), as well as records associated with the liquidation of CBSX Error Account error positions through a third-party broker-dealer, and shall maintain such records in accordance with Rule 17a–1 under the Act.[21]

Examples of such error positions due to a routing error may include, without limitation, the following:

Example 4: Error positions may result from routed orders that CBSX or a routing broker attempts to cancel but that are executed before the other trading center receives the cancellation message or that are executed because the other trading center is unable to process the cancellation message. Using the situation described in Example 1 above, assume CBSX seeks to release the initial orders being held by CBSX because it is not receiving timely execution or cancellation reports from another trading center. In such a situation, although CBSX would attempt to direct the routing broker to cancel the routed orders, the routing broker may still receive executions from the other trading center after connectivity is restored, which would not then be allocated to TPHs because of the earlier decision to release the affected initial orders. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions (or if the error position is due to a system or technical issue on CBSX), CBSX may determine to post the positions into a CBSX Error Account and resolve the positions in the manner described above.

Example 5: Error positions may result from an order processing issue at another trading center. For instance, if another trading center experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order for clearance and settlement. In such a situation, CBSX would not then allocate the execution to the TPH because of the earlier cancellation message from the other trading center. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, CBSX may determine to post the positions into a CBSX Error Account and resolve the positions in the manner described above.

Example 6: Error positions may result if a routing broker receives an execution report from another trading center but does not receive clearing instructions for the execution from the other trading center. For instance, assume that a TPH sends CBSX an order to buy 100 shares of ABC stock, which causes the routing broker to send an order to another trading center that is subsequently executed, cleared and closed out by that other trading center, and the execution is ultimately communicated back to the TPH. On the next trading day (T+1), if the other trading center does not providing clearing instructions for that execution, CBSX/routing broker would still be responsible for settling that TPH's purchase and therefore would be left with open positions.[22] Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, CBSX may determine to post the positions into a CBSX Error Account and resolve the positions in the manner described above.

Example 7: Error positions may result from a technical or systems issue that causes orders to be executed in the name of a routing broker in connection with its routing services function that are not related to any corresponding initial orders of TPHs. As a result, CBSX would not be able to assign any positions resulting from such an issue to TPHs. Instead, the routing broker would post the positions into its account and resolve the positions in the manner described above. Alternatively, if the routing broker is unable to resolve the positions, CBSX may determine to post the positions into a CBSX Error Account and resolve the positions in the manner described above.[23]

In each of the circumstances described above, CBSX and its routing broker may not learn about an error position until T+1. For instance, CBSX and its routing broker may not learn about an error position until either (i) during the clearing process when a routing destination has submitted to DTCC a transaction for clearance and settlement for which CBSX/routing broker never received an execution confirmation, or (ii) when another trading center does not recognize a transaction submitted by a routing broker to DTCC for clearance and settlement. Moreover, the affected TPHs' trade may not be nullified absent express authority under Exchange Rules.[24] As such, CBSX believes that use of a routing broker error account (or a CBSX Error Account, as applicable), to liquidate the error positions that may occur in these circumstances is reasonable and appropriate in these circumstances.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[25] in general and furthers the objectives of Section 6(b)(5) of the Act[26] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. CBSX believes that this proposed rule change is in keeping with those principles since CBSX's ability to cancel and release orders during a technical or systems issue and to maintain a CBSX Error Account facilitates the smooth and efficient operation of the market. Specifically, CBSX believes that allowing CBSX to cancel and release orders during a technical or systems issue (and permitting its routing brokers to cancel orders pursuant to standing or specific instructions or as otherwise permitted under Exchange Rules) would allow CBSX to maintain fair and orderly markets. Moreover, CBSX believes that allowing a routing broker to assume error positions in its own account(s) to liquidate those positions (and allowing CBSX to assume error positions in a CBSX Error Account to liquidate those positions in instances where a routing broker is unable to do so or where the routing error is due to a technical or systems issue at CBSX) subject to the conditions set forth in proposed Rule 52.10A would be the least disruptive means to address these errors. Overall, the proposed new rule is designed to ensure full trade certainty to market participants and to avoid disrupting the clearance and settlement process. The proposed new rule is also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among TPHs. The proposed new rule is also consistent with Section 6 of the Act insofar as it would require CBSX (and its routing brokers, as applicable) to establish controls to restrict the flow of any confidential information associated with the liquidation of error positions.

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.

[21] 17 CFR 240.17a–1.

[22] To the extent that a loss is incurred in covering the position, the routing broker (on behalf of CBSX or itself) may submit a reimbursement claim to that other trading center.

[23] To the extent such positions are not related to the routing broker's function as a CBSX routing broker (*i.e.,* originating with CBSX), CBSX would not post such positions to a CBSX Error Account. The routing broker would resolve the error positions itself.

[24] *See, e.g.,* Rule 52.4, *Clearly Erroneous Policy.*

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

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

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–CBOE–2012–109 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–CBOE–2012–109. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE., Washington, DC 20549–1090. 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 available publicly. All submissions should refer to File Number SR–CBOE–2012–109 and should be submitted on or before December 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28595 Filed 11–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68255; File No. SR–FINRA–2012–049]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Limited Waiver of the TRACE Professional Real-Time Data Display Fee on a Pilot Basis

November 19, 2012.

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 November 7, 2012, 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. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. 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 FINRA Rule 7730(c) to establish a pilot program to provide a limited waiver of the Professional Real-Time Data Display Fee of $60 to access Real-Time Trade Reporting and Compliance Engine (''TRACE'') transaction data in connection with certain free trials of data products. In addition, FINRA proposes technical amendments to Rule 7730(c) and related statements in the fee chart to use a single term, ''display application,'' to describe uniformly a software program that interrogates and displays TRACE data and allows a person to access TRACE data.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to FINRA Rule 7730(c)(1)(A), FINRA charges a Professional $60 per month, per display application per Data Set[5] (''display

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[27] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Data Set is each of the FINRA databases, which currently include the Real-Time TRACE transaction data disseminated by FINRA for corporate bonds and Agency Debt Securities (as defined in Rule 6710(l)). Effective November 12, 2012, FINRA will add the Data Set for Asset-Backed Securities, when dissemination of Agency-Pass Through Mortgage-Backed Securities traded To Be Announced begins. *See* Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (SEC Approval Order regarding dissemination of Agency-Pass Through Mortgage-Backed Securities traded To Be Announced (TBA)), *Regulatory Notice* 12–26 (May 2012) and *Regulatory Notice* 12–48 (November 2012).