

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove 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, as modified by Amendment No. 1 thereto, 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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2016-03 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-BATS-2016-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 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-BATS-2016-03, and should be submitted on or before March 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Brent J. Fields,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77098; File No. SR-FINRA-2015-059]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend the Derivatives and Other Off-Balance Sheet Items Schedule Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)**

February 9, 2016.

**I. Introduction**

On December 23, 2015, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the instructions to the Derivatives and Other Off-Balance Sheet Items Schedule ("OBS") pursuant to FINRA Rule 4524 (Supplemental FOCUS Information) to expand the application of the OBS to certain non-carrying/non-clearing firms that have a certain amount of off-balance sheet obligations. The proposed rule change was published for comment in the

**Federal Register** on January 7, 2016.<sup>3</sup> The Commission did not receive written comments in response to the proposed rule change. This order approves the proposed rule change.

**II. Description of Proposed Rule Change**

FINRA Rule 4524 requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS Report.<sup>4</sup> In February 2013, the SEC approved FINRA's adoption, pursuant to FINRA Rule 4524, of the OBS as a supplement to the FOCUS report.<sup>5</sup> The OBS captures important information that is not otherwise reported on firms' balance sheets and requires all firms that carry customer accounts or self-clear or clear transactions for others (referred to, collectively, as "carrying or clearing firms") to file with FINRA the OBS within 22 business days of the end of each calendar quarter, unless a carrying or clearing firm meets the de minimis exception set forth in the instructions to the OBS.<sup>6</sup>

Pursuant to FINRA Rule 4524, FINRA proposed to amend the instructions to the OBS to expand its application beyond carrying or clearing firms to include firms that neither carry customer accounts nor clear transactions (referred to, collectively, as "non-clearing firms") that have,

<sup>3</sup> See Exchange Act Release No. 76813 (Dec. 31, 2015), 81 FR 844 (Jan. 7, 2016).

<sup>4</sup> See Securities Exchange Act Release No. 66364 (Feb. 9, 2012), 77 FR 8938 (Feb. 15, 2012) (Order Approving File No. SR-FINRA-2011-064). FINRA Rule 4524 also provides that FINRA will specify the content of additional schedules or reports, their format, and the timing and the frequency of such supplemental filings in a *Regulatory Notice* (or similar communication), the content of which FINRA will file with the Commission pursuant to Section 19(b) of the Exchange Act.

<sup>5</sup> See Securities Exchange Act Release No. 68832 (Feb. 5, 2013), 78 FR 9754 (Feb. 11, 2013) (Order Approving File No. SR-FINRA-2012-050). Carrying or clearing firms were required to file with FINRA their initial OBS on or before July 31, 2013, to disclose off-balance sheet information as of June 30, 2013. See *Regulatory Notice* 13-10 (March 2013) (Supplemental FOCUS Information).

<sup>6</sup> The de minimis exception relieves a carrying or clearing firm from filing the OBS for the reporting period if the aggregate of all gross amounts of off-balance sheet items is less than 10 percent of the firm's excess net capital on the last day of the reporting period. For purposes of the OBS, as well as the proposed amendments to the OBS, the term "excess net capital" means net capital reduced by the greater of the minimum dollar net capital requirement or two percent of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Exchange Act Rule 15c3-3. See Securities Exchange Act Release No. 68832 (Feb. 5, 2013), 78 FR 9754, 9755 (Feb. 11, 2013) (Order Approving File No. SR-FINRA-2012-050).

<sup>37</sup> 17 CFR 200.30-3(a)(12).

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

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

pursuant to Exchange Act Rule 15c3-1,<sup>7</sup> a minimum dollar net capital requirement equal to or greater than \$100,000, and at least \$10 million in reportable items pursuant to the OBS. The proposed rule change does not otherwise change the OBS or its instructions, including the de minimis exception. Accordingly, consistent with the current OBS, any firm (*i.e.*, either a carrying or clearing firm or a non-clearing firm) that meets the de minimis exception need not file the OBS for the reporting period.<sup>8</sup> Further, under the proposed rule change, as well as under the current OBS, any firm that is required to file the OBS must do so as of the last day of a reporting period within 22 business days of the end of each calendar quarter.

When FINRA proposed the OBS, FINRA noted the need, in the aftermath of the financial crisis, to obtain more comprehensive and consistent information regarding carrying or clearing firms' off-balance sheet assets, liabilities and other commitments.<sup>9</sup> By requiring carrying or clearing firms to report their gross exposures in financing transactions (*e.g.*, reverse repos, repos and other transactions that are otherwise netted under generally accepted accounting principles, reverse repos and repos to maturity and collateral swap transactions), interests in and exposure to variable interest entities, non-regular way settlement transactions (including to-be-announced or TBA<sup>10</sup> securities and delayed delivery/settlement transactions), underwriting and other financing commitments, and gross notional amounts in centrally cleared and non-centrally cleared derivative transactions

on the OBS, FINRA states that it has been able to more effectively monitor on an ongoing basis the potential impact that such off-balance sheet activities may have on carrying or clearing firms' net capital, leverage and liquidity, and their ability to fulfill their customer protection obligations.

Since the OBS became effective, however, FINRA has observed considerable principal trading activities of some non-clearing firms. In particular, through its efforts to establish margin requirements for the TBA market<sup>11</sup> and subsequent examinations of firms' margining practices related to all securities transactions with extended settlement dates, FINRA has become aware of non-clearing firms with both material TBA transactions as well as other types of securities transactions with extended settlement dates. In the case of TBA transactions, non-clearing firms may have entered into a Master Securities Forward Transaction Agreement ("MSFTA")<sup>12</sup> with their clients and are principal to the TBA transactions. In the case of other transactions with extended settlement dates cleared through a clearing firm, non-clearing firms are principal to the trades and financially responsible to the clearing firms for any losses that may result from clients' failures to complete the transactions on the date of settlement. Therefore, these transactions may present significant financial exposure for non-clearing firms, and FINRA is concerned about firms appropriately monitoring their financial exposure and applying capital charges for these transactions as required for compliance with Exchange Act Rule 15c3-1.<sup>13</sup> Further, such transactions are not reported on non-clearing firms' balance sheets, making it difficult to monitor their compliance with capital requirements.

As a result of these concerns, and to ensure that all firms with significant derivative and off-balance sheet positions report these positions to FINRA on a consistent and regular basis, FINRA proposed to expand the reporting requirements of the OBS to

non-clearing firms that have a minimum dollar net capital requirement equal to or greater than \$100,000, and at least \$10 million in reportable items pursuant to the OBS. The current de minimis exception would remain available to any firm that conducts limited off-balance sheet activity.<sup>14</sup>

FINRA stated that it will announce the proposed rule change's implementation date (*i.e.*, the first quarterly reporting period for newly affected firms<sup>15</sup>) in a *Regulatory Notice* to be published no later than 60 days following Commission approval of the rule change, and that the implementation date will be no later than 210 days following Commission approval of the rule change.

### III. Discussion and Commission Findings

After careful consideration of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>16</sup> In particular, the Commission finds that the proposal is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,<sup>17</sup> which requires, among other things, that rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission believes that the proposed rule change is consistent with the Exchange Act because expanding the reporting requirements of the OBS to the proposed non-clearing firms should permit FINRA to assess effectively on an ongoing basis the potential impact off-balance sheet activities may have on these firms' net capital, leverage and liquidity, and ability to fulfill obligations to other members and counterparties. In addition, impacted non-clearing firms, as well as their correspondent clearing firms, may benefit from increased awareness of their open trade exposures, which may

<sup>7</sup> See 17 CFR 240.15c3-1 (Net Capital Requirements for Brokers or Dealers). Exchange Act Rule 15c3-1(a)(2)(iii) requires a "dealer" (as defined in Exchange Act Rule 15c3-1(a)(2)(iii)) to maintain net capital of not less than \$100,000.

<sup>8</sup> However, a firm that claims the de minimis exception must affirmatively indicate through the eFOCUS system that no filing is required for the reporting period. See *Regulatory Notice* 13-10 (March 2013) (Supplemental FOCUS Information).

<sup>9</sup> See Securities Exchange Act Release No. 68270 (Nov. 20, 2012), 77 FR 70860 (Nov. 27, 2012) (Notice of Filing File No. SR-FINRA-2012-050).

<sup>10</sup> FINRA Rule 6710(u) defines "TBA" to mean a transaction in an Agency Pass-Through Mortgage-Backed Security ("MBS") or a Small Business Administration ("SBA")-Backed Asset-Backed Security ("ABS") where the parties agree that the seller will deliver to the buyer a pool or pools of a specified face amount and meeting certain other criteria but the specific pool or pools to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions for good delivery and TBA transactions not for good delivery. Agency Pass-Through MBS and SBA-Backed ABS are defined under FINRA Rule 6710(v) and FINRA Rule 6710(bb), respectively. The term "Time of Execution" is defined under FINRA Rule 6710(d).

<sup>11</sup> See Securities Exchange Act Release No. 76148 (Oct. 14, 2015), 80 FR 63603 (Oct. 20, 2015) (Notice of Filing File No. SR-FINRA-2015-036).

<sup>12</sup> The Securities Industry and Financial Markets Association ("SIFMA") developed, and subsequently updated, in coordination with the Treasury Market Practices Group ("TMPC"), the MSFTA as a standard industry template for forward and other delayed delivery transactions involving mortgage-backed and asset-backed securities. See, *e.g.*, *SIFMA Guidance Notes to the Master Securities Forward Transaction Agreement* (December 2012), available at: <http://www.sifma.org/services/standard-forms-and-documentation/mra,-gmra,-msla-and-msftas/>.

<sup>13</sup> See 17 CFR 240.15c3-1.

<sup>14</sup> See *supra* note 5.

<sup>15</sup> Carrying or clearing firms that are currently subject to the OBS's reporting requirements would not be impacted by the proposed rule change and shall continue to file on a quarterly basis, as required, without interruption.

<sup>16</sup> 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).

<sup>17</sup> See 15 U.S.C. 78o-3(b)(6).

reduce their potential for losses, encourage better counterparty risk management and promote firms' financial stability.

The Commission does not believe that the proposed rule change will result in burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission believes FINRA has carefully crafted the proposed rule change to achieve its intended and necessary regulatory purpose while minimizing the burden on firms. Although the proposed rule change expands the number of firms required to file the OBS, the expansion is limited to non-clearing firms that have a minimum dollar net capital requirement equal to or greater than \$100,000, and at least \$10 million in reportable items pursuant to the OBS. In addition, the current de minimis exception continues to remain available to any firm that conducts off-balance sheet activity that is limited relative to its excess net capital.

**IV. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>18</sup> that the proposed rule change (SR-FINRA-2015-059) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Brent J. Fields,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77093; File No. SR-CBOE-2016-008]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule**

February 9, 2016.

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 February 4, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange 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**

The Exchange proposes to amend its Fees Schedule.<sup>3</sup>

**CBOE Proprietary Products Sliding Scale**

The CBOE Proprietary Products Sliding Scale table provides that Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Clearing Trading Permit Holder Affiliates in Underlying Symbol List A<sup>4</sup> are reduced provided a Clearing Trading Permit Holder ("Clearing TPH") (including its Non-Trading Permit Holder affiliates) reaches certain average daily volume ("ADV") thresholds in all underlying symbols excluding Underlying Symbol List A and mini-options on the Exchange in a month. The Exchange proposes to implement changes to the CBOE Proprietary Products Sliding Scale ("Proprietary Sliding Scale"). First, the Exchange proposes to amend the current qualifying ADV thresholds. Specifically, the threshold 20,000 ADV to 79,999 ADV would be changed to 25,000 ADV to 69,999 ADV, and the threshold 80,000 ADV and above would be changed to 70,000 ADV and above. The Exchange also proposes to increase the rates set forth in Tiers B1 through B3, as well as in Tiers A1 and A2. Specifically, the Exchange proposes to increase the rate in Tier B3 to \$0.22 from \$0.20, in Tier B2 to \$0.12 from \$0.10, in Tier B1 to \$0.05 from \$0.02, in Tier A2 to \$0.18 from \$0.16 and in Tier A1 to \$0.02 from \$0.01. The proposed changes are further detailed below.

Current			Proposed		
Tier	Proprietary product volume thresholds	Transaction fee per contract	Tier	Proprietary product volume thresholds	Transaction fee per contract
≥20,000 ADV ≤79,999 ADV in multi list products			≥25,000 ADV ≤69,999 ADV in multi list products		
B3	0.00%–6.50%	\$0.20	B3	0.00%–6.50%	\$0.22
B2	6.51%–8.50%	0.10	B2	6.51%–8.50%	0.12
B1	Above 8.50%	0.02	B1	Above 8.50%	\$0.05

<sup>18</sup> See 15 U.S.C. 78s(b)(2).

<sup>19</sup> See 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>3</sup> The Exchange initially filed the proposed fee changes on January 4, 2016 (SR-CBOE-2016-001). On January 27, 2016, the Exchange withdrew that filing and replaced it with SR-CBOE-2016-006. On February 4, 2016, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> As of December 31, 2015, Underlying Symbol List A includes the following products: OEX, XEO, RUT, RLV, RLG, RUI, SPX (including SPXw), SPXpm, SRO, VIX, VXST, VOLATILITY INDEXES and binary options.