

Dated: March 11, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010-5792 Filed 3-12-10; 11:15 am]

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OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing

March 17, 2010.

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 75, Number 38, Page 9004) on February 26, 2010. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 3 p.m., March 17, 2010 in conjunction with OPIC's March 31, 2010 Board of Directors meeting has been cancelled.

Contact Person for Information:

Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via e-mail at Connie.Downs@opic.gov.

Dated: March 10, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010-5663 Filed 3-12-10; 11:15 am]

BILLING CODE 3210-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing

March 17, 2010.

OPIC's Sunshine Act notice of its Annual Public Hearing meeting was published in the **Federal Register** (Volume 75, Number 38, Pages 9004 and 9005) on February 26, 2010. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's annual public hearing scheduled for 2 p.m. on March 17, 2010 has been cancelled.

Contact Person for Information:

Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via e-mail at Connie.Downs@opic.gov.

Dated: March 10, 2010.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2010-5665 Filed 3-12-10; 11:15 am]

BILLING CODE 3210-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61677; File No. SR-FINRA-2009-054]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Extend Certain Regulation NMS Protections to Quoting and Trading in the Market for OTC Equity Securities

March 9, 2010.

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 August 7, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. The proposed rule change was subsequently amended by FINRA on March 1, 2010. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

FINRA is proposing Amendment No. 1 to SR-FINRA-2009-054, a proposed rule change to adopt new FINRA Rules 6434 (Minimum Pricing Increment for OTC Equity Securities), 6437 (Prohibition from Locking or Crossing Quotations in OTC Equity Securities), 6450 (Restrictions on Access Fees) and 6460 (Display of Customer Limit Orders). 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

Rule Filing History

On August 7, 2009, FINRA filed with the SEC SR-FINRA-2009-054, a proposed rule change to adopt new FINRA rules to extend certain Regulation NMS protections to quoting and trading in over-the-counter equity securities.³ On August 26, 2009, the Commission published for comment the proposed rule change in the **Federal Register** and received twelve comment letters.⁴ Based on comments received, FINRA is filing this Amendment No. 1 to respond to the comments received and to propose amendments, where appropriate.

Proposal

As described in the Proposing Release, FINRA proposes to adopt rules to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders. FINRA believes that these Regulation NMS principles, if applied to over-the-counter equity securities ("OTC

³ See Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) (Notice of Filing File No. SR-FINRA-2009-054) ("Proposing Release").

⁴ Letter from Ann L. Vleck, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated October 13, 2009 ("SIFMA"); Letter from Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated October 6, 2009 ("TD Ameritrade"); Letters from R. Cromwell Coulson, Chief Executive Officer, Pink OTC Markets Inc., to Elizabeth M. Murphy, Secretary, SEC, dated September 23, 2009 ("Pink1") and January 6, 2010 ("Pink2"); Letter from Janet M. Kissane, Senior Vice President, Legal & Corporate Secretary, NYSE Euronext, to Nancy M. Morris, Secretary, SEC, dated September 23, 2009 ("ArcaEdge"); Letter from William Assatly, Sr. Vice President, Trading, Mercator Associates, to Elizabeth M. Murphy, Secretary, SEC, dated September 16, 2009 ("Mercator"); Letter from Leonard J. Amoroso, General Counsel, and Michael T. Carrao, Chief Compliance Officer, Knight Capital Group, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated September 16, 2009 ("Knight"); Letter from Elaine M. Kaven, Chief Compliance Officer, StockCross Financial Services, Inc., to Florence H. Harmon, Deputy Secretary, SEC, dated September 16, 2009 ("StockCross"); Letters from Kimberly Unger, Executive Director, Security Traders Association of New York, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated September 14, 2009 ("STANY1") and September 16, 2009 ("STANY2"); Letter from Daniel Kanter, President, and Craig Carlino, Chief Compliance Officer, Monroe Securities, Inc., to Elizabeth M. Murphy, Secretary, SEC, dated September 16, 2009 ("Monroe"); and Letter from Anonymous dated September 1, 2009, (available at <http://www.sec.gov/comments/sr-finra-2009-054/finra2009054.shtml>).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Equity Securities”),⁵ would enhance market quality and investor protections in this market.

Comments to the Proposed Rule Change Restriction on Access Fees

Currently, FINRA Rule 6540(c), which applies only to the OTC Bulletin Board (“OTCBB”) montage, requires that an alternative trading system (“ATS”) ⁶ and electronic communications network (“ECN”) ⁷ reflect non-subscriber access or post-transaction fees in their posted quote. Consistent with Regulation NMS, FINRA proposed to eliminate the OTCBB access fee display requirement and to, instead, implement a cap on access fees in all OTC Equity Securities, wherever displayed, that exceed or accumulate to more than the following limits:

a. If the price of the quotation is \$1.00 or more, the fee or fees cannot exceed or accumulate to more than \$0.003 per share; or

b. If the price of the quotation is less than \$1.00, the fee or fees cannot exceed or accumulate to more than 0.3% of the quotation price per share.

Also consistent with Regulation NMS, the proposal would explicitly permit market makers to charge access fees.

While some commenters generally expressed support for the proposal to impose a cap on access fees,⁸ most commenters opposed it.⁹ Several commenters expressed concern that the proposal would lead to a reduction in the transparency of over-the-counter (“OTC”) quotations by permitting market participants to charge an access fee without displaying it in the quoted price, making it difficult for investors to compare prices offered by different broker-dealers across different marketplaces.¹⁰ Commenters also expressed concern that an access fee cap (without a corresponding display requirement) would result in a shift in market structure that harms investors by leading to an increase in transaction costs.¹¹ Some commenters also argued that the proposal would unfairly favor the ATS business model, result in an increase in the incidence of locked and

cross markets, and lead to an increase in gaming practices.¹²

Commenters noted that the proposed access fee cap of 0.3% of the quotation price per share for securities priced under \$1.00 may result in the assessment of an undisclosed access fee that is greater than the price increment, which may provide an incentive for gaming activity and “access fee trading.”¹³ One commenter presented a scenario that would result in “access fee trading” through crossing quotes across inter-dealer quotation systems.¹⁴ In the example, the inside market for a stock quoted on the OTCBB is \$.8999 × \$.90 (the relevant access fee cap under the original proposal would have been \$.0027 per share). Rather than take the offering at \$.90, the commenter states that a market maker could cross the market in the Pink Sheets by posting a bid of \$.9001. If the market maker’s bid is hit in the Pink Sheets, it will be able to buy the stock at \$.9001 and then immediately sell to the OTCBB bid at \$.8999. The commenter notes that, although the market maker sold the stock at a slight loss of \$.0002 per share, the access fee of \$.0027 per share provided an instant, virtually riskless profit.¹⁵ Accordingly, certain commenters argued that the appropriate access fee cap should never be greater than 30% of the relevant pricing increment, which would ensure that the access fee is always lower than the relevant increment.¹⁶

FINRA has considered the comments opposing the elimination of the access fee display requirement in conjunction with the establishment of an access fee cap, and continues to believe that the proposal strikes the appropriate balance between addressing the practical difficulties of incorporating access fees in published quotes and the need to curtail potentially excessive undisclosed access fees. FINRA notes that similar concerns and debate were raised in the context of the adoption of Regulation NMS, to which the Commission concluded that a uniform fee limitation of \$0.003 per share is the fairest and most appropriate resolution of the access fee issue.¹⁷ FINRA believes

that the same holds true in this context as well.

However, in light of the lower price points for securities in the OTC market, and in response to commenters’ concerns regarding potential gaming activities, FINRA believes that an adjustment to the proposed access fee cap calculation method is appropriate. FINRA is proposing a revised method of calculating the access fee for securities priced under \$1.00 to ensure that the access fee is always less than the relevant quotation increment. FINRA is proposing that the cap on access fees for securities priced under \$1.00 would be the lesser of: (a) 0.3% of the published quotation price on a per share basis, or (b) 30% of the relevant minimum pricing increment applicable to the display of the quotation. The revised proposal would provide that:

A member shall not impose, nor permit to be imposed, non-subscriber access or post-transaction fees against its published quotation in any OTC Equity Security that exceeds or accumulates to more than:

(a) \$0.003 per share, if the published quotation is priced equal to or greater than \$1.00; or

(b) the lesser of 0.3% of the published quotation price on a per share basis or 30% of the minimum pricing increment under Rule 6434 relevant to the display of the quotation on a per share basis if the published quotation is less than \$1.00.

FINRA believes that this approach would ensure that a permissible access fee would always be smaller than the pricing increment (which would address concerns regarding gaming). If the security is priced at \$1.00 or more, the access fee cap would continue to be \$0.003 per share.

Sub-Penny Restrictions

Currently there are no restrictions in place for quotations in subpenny increments in the OTC marketplace. Subpenny increments have been associated with certain market abuses, including stepping ahead of standing limit orders for an economically insignificant amount. Subpenny increments also have been associated with added difficulty for broker-dealers in meeting certain regulatory obligations by increasing the incidence of so-called “flickering” quotes. Thus, FINRA has proposed restrictions on the display of quotations and orders in sub-penny increments for OTC Equity Securities.

Specifically, FINRA proposed to prohibit members from displaying, ranking or accepting from others a bid, offer, order, or indication of interest in

⁵ “OTC Equity Security” means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. See FINRA Rule 6420(d).

⁶ See Rule 300(a) of Regulation ATS under the Act.

⁷ See Rule 600(b)(23) of the Act (defining “electronic communications network”).

⁸ See ArcaEdge and TD Ameritrade.

⁹ See Knight, Mercator, Pink1, SIFMA, STANY2 and StockCross.

¹⁰ See e.g., Knight, Pink1 and SIFMA.

¹¹ See e.g., Mercator and Pink1.

¹² See e.g., Knight, Pink1 and SIFMA.

¹³ See generally ArcaEdge, STANY2 and Pink1. As an example, Pink noted that, using the proposed formula, the access fee cap on a \$0.90 security would be \$0.0027 while the pricing increment would be \$0.0001.

¹⁴ See Knight.

¹⁵ See Knight.

¹⁶ See ArcaEdge, Pink1 and STANY2.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (order adopting rules under Regulation NMS, SEC File No. S7-10-04).

OTC Equity Securities in an increment smaller than:

- \$0.01 if the bid or offer, order, or indication of interest is priced \$1.00 or greater per share,
- \$0.0001 if the bid or offer, order, or indication of interest is priced below \$1.00 and equal to or greater than \$0.01 per share, and
- \$0.000001 if the bid or offer, order or indication of interest is priced less than \$0.01 per share.

Commenters generally favored a restriction on quoting in subpenny increments, though some argued for modifications to the increments proposed. Commenters also generally believed that the proposal should go further by prohibiting subpenny quotations in increments of more than four decimal places.¹⁸ Certain commenters also proposed specific alternative quotation increments for the OTC market.¹⁹

FINRA has considered commenters' concerns and is proposing a modification to the tiers originally proposed. Specifically, FINRA is proposing to reduce the minimum pricing increment from \$0.000001 to \$0.0001 for all securities priced under \$1.00. However, with respect to securities priced less than \$0.0001, members would be permitted to rank or accept (but not display) orders and indications of interest in an increment of \$0.000001 or greater so as not to effectively eliminate trading in such securities. For example, a member would be permitted to rank or accept an order of \$.000089, but would not be permitted to display the order at such increments. A member would not be permitted to rank or accept an order of \$.00059, because it has an increment of \$.00001 and is not priced less than \$.0001. The proposed exception to allow the ranking and acceptance of orders in smaller increments for securities priced below \$.0001 per share is in recognition of the fact that some OTC Equity Securities trade at prices below \$.0001 and having a restriction on increments below that amount would in effect eliminate trading of those securities. The proposal for securities priced \$1.00 or greater would continue to be a penny. Therefore the revised proposal would provide that:

No member shall display, rank, or accept a bid or offer, an order, or an indication of interest in any OTC Equity Security priced in an increment:

- (1) Smaller than \$0.01 if that bid or offer, order or indication of interest is

priced equal to or greater than \$1.00 per share; and

- (2) Smaller than \$0.0001 if that bid or offer, order or indication of interest is priced less than \$1.00 per share except, where an order or indication of interest is priced less than \$0.0001, a member may rank or accept (but not display) such order or indication of interest in an increment of \$0.000001 or greater.²⁰

FINRA believes that most, if not all, systems cannot accommodate the display of pricing increments smaller than four decimal places and that increasing the minimum pricing increment to \$0.0001 would further promote and solidify uniformity in the OTC market at these price levels.

Prohibition on Locking and Crossing Quotations

FINRA rules do not currently prohibit locking or crossing quotations in OTC Equity Securities. FINRA believes that locked and crossed markets can cause confusion among investors concerning the trading interest in a stock and, therefore, FINRA believes that restricting the practice of submitting locking or crossing quotations (and requiring reconciliation of locked/crossed quotes) will enhance the usefulness of quotation information for OTC Equity Securities. Thus, FINRA proposed requiring members to implement policies and procedures that reasonably avoid the display of, or engaging in a pattern or practice of displaying, locking or crossing quotations in any OTC Equity Security within the same inter-dealer quotation system.

Commenters generally supported the adoption of a rule reasonably designed to prohibit locked and crossed markets, though commenters preferred that the prohibition apply across interdealer quotation systems.²¹ One commenter expressed concern that the proposed rule takes a "fragmented" approach and should, instead, require members to canvas multiple venues for the purpose of avoiding locking/crossing the market in a similar manner as is currently required to meet best execution obligations.²²

As FINRA stated in the Proposing Release, because there currently is no mandated consolidated quotation dissemination mechanism for OTC Equity Securities (as exists for NMS stocks), the proposed rule would only restrict locking and crossing quotations

within inter-dealer quotation systems. FINRA continues to believe that, at the present time, the lock/cross rule can only reasonably be made to impose restrictions on locking and crossing quotations within, but not across, interdealer quotations systems due to the lack of a widely accessible, consolidated national best bid and offer for OTC Equity Securities. FINRA notes, however, that FINRA has proposed a rule that would require members to submit all quotation information in OTC Equity Securities to FINRA, and FINRA would, in turn, disseminate a best bid and offer as part of the Level 1 data feed entitlement.²³ If this proposed quotation consolidation facility is approved, FINRA believes that it would then be reasonable to propose that members must avoid locking and crossing across interdealer quotation systems. Thus, FINRA does not believe that any amendments to the proposed rule addressing locked and crossed quotations are warranted at this time.

Limit Order Display

FINRA proposed requiring market makers displaying a priced quotation in a security to immediately display customer limit orders received where such order: (1) improves the price of the bid or offer displayed by the market maker, or (2) improves the size of its bid or offer by more than a de minimis amount where it is the best bid or offer in the interdealer quotation system where the market maker is quoting. Regulation NMS includes several exceptions from its limit order display requirements, which generally also would apply to the proposed limit order display rule for OTC Equity Securities.

Commenters generally supported a display requirement for limit orders but requested certain clarifications and modifications. For example, commenters request that the rule permit market makers to retain discretion as to the size displayed because small orders are more likely to be executed than large ones.²⁴ Certain commenters also argued that market makers should not be required to display limit orders in thinly traded securities, but that these orders should be excepted for the same reason block orders are excepted (*i.e.*, market impact).²⁵ One commenter expressed concern that requiring automatic display prevents market makers from

²³ See Securities Exchange Act Release No. 60999 (November 13, 2009), 74 FR 61183 (November 23, 2009). (Notice of Filing File No. SR-FINRA-2009-077; Proposed Rule Change to Restructure Quotation Collection and Dissemination for OTC Equity Securities).

²⁴ See Pink1 and STANY2.

²⁵ See Mercator, Pink1 and STANY2.

²⁰ FINRA also is clarifying that such orders priced less than \$.0001 are not required to be displayed pursuant to proposed Rule 6460 (Display of Customer Limit Orders).

²¹ See *e.g.*, ArcaEdge, Pink1 and TD Ameritrade.

²² See Pink1.

¹⁸ See ArcaEdge and Pink1.

¹⁹ See ArcaEdge and Pink1.

exercising discretion to handle the order in the best possible manner, which will disadvantage retail customers.²⁶ One commenter believed that the proposal should be amended to require the display in an interdealer quotation system of all limit orders in OTC Equity Securities (unless immediately executed by the member or transmitted to another firm that would display such order in an interdealer quotation system) and should be expanded to include debt securities.²⁷ Commenters asserted that any automatic limit order display size requirement should be based on the current OTCBB tier sizes, and provide members with discretion above the size of the tier.²⁸ Commenters argued that the proposed definition of “block size” in the context of the exception to the display requirement still would require display of orders at sizes that may disadvantage the customer.²⁹ Therefore, these commenters believed that members should be required to display only a portion of the order equal to the minimum quote size.

FINRA appreciates the issues raised by commenters regarding the possible impact of limit order display on OTC Equity Securities in general and thinly traded OTC Equity Securities in particular. We confirm that the proposed limit order display rule would not require display of customer orders that would result in a violation of the tiers prescribed in FINRA Rule 6450 (Minimum Quotation Size Requirements For OTC Equity Securities).³⁰ FINRA is proposing a new exception for limit orders less than \$0.0001, consistent with the changes made to proposed FINRA Rule 6434 prohibiting the display of a bid or offer, order, or indication of interest in any OTC Equity Security priced less than \$0.0001 per share.³¹ However, FINRA does not believe that any additional modifications to the proposed rule are appropriate, including with respect to comments that market makers should retain discretion over display of the size of a customer’s limit order.

FINRA notes that, where the member believes that a customer would be best served by not displaying the full size of a limit order, the member is free to obtain the customer’s consent to refrain from displaying such customer’s order

as is permitted by a proposed exception to the limit order display provision. FINRA is not persuaded that the suggested more volatile nature of OTC Equity Securities in general (or of any subset of especially thinly traded OTC Equity Securities) should permit a member independently to determine to withhold display of the full size of a customer limit order. Finally, FINRA does not agree that the proposed definition of “block size” should be modified. As stated in the Proposing Release, the proposed definition of “block size” is consistent with the existing large order size exception under IM-2110-2 (Trading Ahead of Customer Limit Order) and we believe it is appropriate that large orders be defined consistently across both rule sets.³² Furthermore, if a member believes that full display of a limit order that does not meet the definition of “block size” would disadvantage the customer, the member may obtain that customer’s consent to refrain from display of the full size. As stated in the Proposing Release, FINRA believes that extending limit order display requirements to OTC Equity Securities will improve transparency in the OTC equity market and will advance the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation.

With respect to the recommendation that all customer limit orders in OTC Equity Securities be displayed, irrespective of whether the firm that receives the order is already quoting the security, FINRA continues to believe that the appropriate conditions for the trigger of an obligation to display a customer limit order is where a market maker is already displaying a priced quotation in an interdealer quotation system in the same security (unless an exception applies). Finally, the changes recommended by the commenter to expand the limit order display requirements to debt securities are outside the scope of the proposed changes that are part of this rule filing and therefore, FINRA is not responding to these recommendations specifically herein. FINRA will review and analyze these recommendations in the same

manner in which it would consider any requests for rulemaking, and, based on such review and analysis, will determine whether further action on these recommendations is appropriate.

As stated in the Proposing Release, because the proposed new rules provide for significant regulatory changes, FINRA plans to implement the requirements in two phases to minimize the impact on firms. Phase one would implement sub-penny quoting restrictions, an access fee cap and restrictions on locked and crossed markets. Phase two would implement customer limit order display requirements. FINRA will announce the implementation dates for the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date of Phase one will be at least 120 days but no more than 365 days from the date of Commission approval and Phase two will be at least 90 days following the implementation of Phase one, but no more than 365 days from the date of 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,³³ which requires that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

FINRA further believes that the proposed rule change is consistent with the provisions of 15A(b)(11) of the Act,³⁴ which requires, among other things, that FINRA rules must govern the form and content of quotations relating to securities sold otherwise than on a national securities exchange and require that such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

FINRA is proposing to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the

³² FINRA filed proposed rule change SR-FINRA-2009-090 to adopt NASD IM-2110-2 (Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) with significant changes in the Consolidated FINRA Rulebook as new FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders). However, FINRA is not proposing changes to the definition of “large order.” See Securities Exchange Act Release No. 61168 (December 15, 2009), 74 FR 68084 (December 22, 2009) (Notice of Filing File No. SR-FINRA-2009-090).

²⁶ See Pink1.

²⁷ See Pink2.

²⁸ See Pink1.

²⁹ See Knight and SIFMA.

³⁰ If a member is already displaying a quotation at or above the minimum quotation size, then the displayed size must be increased to reflect the full size of any customer limit order (if the limit order size represents more than a de minimis amount).

³¹ See *supra* note 20 and accompanying text.

³³ 15 U.S.C. 78o-3(b)(6).

³⁴ 15 U.S.C. 78o-3(b)(11).

display of customer limit orders. FINRA believes that the proposed restrictions on sub-penny quoting will promote greater price transparency and consistency, reduce the potential harms associated with sub-penny quoting in OTC equity securities and improve the depth and liquidity of this market.

FINRA believes that locked and crossed markets can cause confusion among investors concerning trading interest in a stock and that restricting the practice of submitting locking or crossing quotations will enhance the usefulness of quotation information in the over-the-counter market, facilitate more fair and orderly markets and support market efficiency.

Where wide disparities in access fees are permitted, the prices of quotations are less useful and accurate. Therefore, FINRA believes that a cap on access fees would improve the usefulness and accuracy of quotations and address the potential distortions caused by substantial, disparate fees. Finally, FINRA believes that applying limit order display requirements to OTC Equity Securities would improve transparency in the OTC equity market and advance the goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation.

FINRA believes that the proposed extension of the specified Regulation NMS protections to quoting and trading in OTC Equity Securities will prevent fraudulent and manipulative acts and practices in this market, promote just and equitable principles of trade, and protect investors and the public interest.

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 on the proposed rule change were solicited by the Commission in response to the publication of SR-FINRA-2009-054, which proposed new rules to: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders.³⁵ The Commission received

twelve comment letters.³⁶ The comments are summarized above.

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 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. Please include File Number SR-FINRA-2009-054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2009-054. 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 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 a.m. and 3 p.m. Copies of such 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 publicly available. All submissions should refer to File Number SR-FINRA-2009-054 and should be submitted on or before April 6, 2010.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-5648 Filed 3-15-10; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61674; File No. SR-CBOE-2010-025]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Permanent Approval of the Dividend, Merger and Short Stock Interest Strategies Fee Cap Pilot Program

March 9, 2010.

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 March 1, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange")

³⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

³⁵ See Proposing Release.

³⁶ See *supra* note 4.