clearing member that submits extensions of time on behalf of broker-dealers for which it clears to submit a monthly report to FINRA that indicates overall ratios of requested extensions of time to total transactions that have exceeded a percentage specified by FINRA.[16] FINRA monitors the number of Regulation T and SEC Rule 15c3–3 extension requests for each firm to determine whether to impose prohibitions on further extensions of time.[17]

FINRA proposes to add a provision to proposed FINRA Rule 4230 to clarify that for the months when no broker-dealer for which a clearing member clears exceeds the extension of time ratio criteria (*i.e.,* 2%), the clearing member must submit a report indicating such. FINRA had previously requested such submissions but believes the submissions are essential to ensure FINRA has a complete and accurate understanding of correspondent firm extension requests.

As noted above, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify and streamline the margin requirements applicable to its members, as well as those rules addressing extension of time requests under Regulation T and SEC Rule 15c3–3.

[16] *See Notice to Members* 06–62 (November 2006). FINRA would retain the reporting threshold specified in *Notice to Members* 06–62 of requiring a report for all introducing or correspondent firms that have overall ratios of requests for extensions of time to total transactions for the month that exceed 2%. In the event FINRA adjusts the reporting threshold, or the limitation threshold stated in note 16 below, it would advise members of the new parameters in a *Regulatory Notice.*

[17] *See supra* note 15. FINRA will continue to prohibit further extension of time requests for (1) introducing or correspondent firms that exceed a 3% ratio of the number of extension of time requests to total transactions for the month and (2) clearing firms that exceed a 1% ratio of extension of time requests to total transactions.

[18] 15 U.S.C. 78*o*–3(b)(6).

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory 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–2010–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–024. 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 available publicly. All submissions should refer to File Number SR–FINRA–2010–024 and should be submitted on or before June 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13662 Filed 6–7–10; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62204; File No. SR–CBOE–2010–049]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Eligible Order Types

June 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

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

[2] 17 CFR 240.19b–4.

the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 clarify the applicability of various order types on the Exchange. The text of the proposed rule change 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.

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. 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 Exchange proposes to modify Rule 6.53, *Certain Types of Orders Defined,* to clarify that one or more of the various order types may be made available on a class-by-class basis.[5] The proposed text would also clarify that certain order types may not be made available for all Exchange systems. The classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular generally at least one day in advance.

The proposed rule change provides additional clarity and consistency in our rules, which already provide in various places that the Exchange may designate the eligible order types on a class-by-class basis for various systems/processes. For example, the proposed change is consistent with Rules 6.13A, *Simple Auction Liaison (SAL),* 6.14A, *Hybrid Agency Liaison 2 (HAL2),* and 6.53C(d), *Process for Complex Order RFR Auction* ("COA"), which provide that the Exchange, among other things, shall designate the eligible order types and classes in which SAL, HAL2 or COA will be activated. As another example, Rule 6.53(o), *Attributable Order,* provides that attributable orders may not be available for all Exchange systems and the Exchange will issue a Regulatory Circular specifying the systems for which the attributable order type shall be available.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposed change would provide more clarity on the applicability of eligible order types in a manner that is consistent with other provisions in the existing CBOE rules.

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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposal.

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

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[7] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–049 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–2010–049. 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

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

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 6.53 sets out definitions for the following order types: market order; limit order; contingency order (market-if-touched order, market-on-close order, stop (stop-loss) order, stop-limit order); spread order; combination order; straddle order; not held order; one-cancels-the-other order; all-or-none order; fill-or-kill order; immediate-or-cancel order; opening rotation order; facilitation order; ratio order; attributable order; intermarket sweep order; AIM sweep order; sweep and AIM order; CBOE-only order; and reserve order.

[6] 15 U.S.C. 78f(b)(5).

[7] The Exchange has fulfilled the five day prefiling requirement.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

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 pm. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2010–049 and should be submitted on or before June 29, 2010.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13663 Filed 6–7–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62211; File No. SR–FINRA–2010–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to FINRA Rule 9554 To Eliminate Explicitly the Inability-To-Pay Defense in the Expedited Proceedings Context

June 2, 2010.

On March 31, 2010, 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 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to FINRA Rule 9554 to eliminate explicitly the inability-to-pay defense in the expedited proceedings context. The proposed rule change was published for comment in the **Federal Register** on April 26, 2010.[3] The Commission received three comments, all of which supported the proposed rule change.[4] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

FINRA proposed to amend FINRA Rule 9554 to eliminate explicitly the inability-to-pay defense in the expedited proceedings context when a member or associated person fails to pay an arbitration award to a customer.

FINRA Rule 9554 allows FINRA to bring expedited actions to address failures to pay FINRA arbitration awards.[5] Once a monetary award has been issued in a FINRA arbitration proceeding, the party that must pay the award has thirty days to do so.[6] If the party that must pay the award is a respondent, (*i.e.,* a member or an associated person, FINRA coordinates between FINRA Dispute Resolution's arbitration forum and FINRA's enforcement program to verify whether such respondent has done so. If the respondent has not paid, FINRA initiates an expedited proceeding by sending a notice explaining that the respondent will be suspended unless the respondent pays the award or requests a hearing.

A respondent that requests a hearing may raise a number of defenses to the suspension. One of the current defenses is establishing a bona fide inability-to-pay. When a respondent successfully demonstrates a bona fide inability-to-pay, it is a complete defense to the suspension. Consequently, the inability-to-pay defense currently precludes a harmed customer from obtaining payment of a valid arbitration award.

FINRA's expedited proceedings for failure to pay an arbitration award use the leverage of a potential suspension to help ensure that a member or an associated person promptly pays a valid arbitration award. However, if a respondent demonstrates a financial inability to pay the award—regardless of the reason—the leverage is removed. When FINRA's efforts to suspend a respondent who has not paid an award have been defeated, a claimant is much less likely to be paid. FINRA believes that by eliminating the inability-to-pay defense, it will increase the probability of customers having their awards paid, or, at a minimum, it should prompt meaningful settlement discussions between claimants and respondents.

The ability to work in the securities industry carries with it, among other things, an obligation to comply with the federal securities laws, FINRA rules, and orders imposed by the disciplinary and arbitration processes. Allowing members or their associated persons that fail to pay arbitration awards to remain in the securities industry presents regulatory risks and is unfair to harmed customers.

Although FINRA proposes to eliminate the inability-to-pay defense, a respondent would still have available the following four defenses:

- The member or person paid the award in full or fully complied with the settlement agreement;
- The arbitration claimant has agreed to installment payments or has otherwise settled the matter;
- The member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied; and
- The member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending or the award or payment owed under the settlement agreement has been discharged by the bankruptcy court.[7]

Regarding the last defense, FINRA believes that a federal bankruptcy court is the best forum for adjudicating a financial condition defense. Bankruptcy judges are experts in evaluating whether a debtor's obligations should be legally discharged. The bankruptcy process and associated filings are designed to consider fully and evaluate the financial condition of bankruptcy debtors.[8] In addition, bankruptcy filings, which are subject to federal perjury charges, provide greater penalties for hiding assets.[9] FINRA's lack of subpoena power over banks and other third parties raises practical concerns regarding its ability to confirm accurately the assets of the firm or person asserting the defense.[10]

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61938 (Apr. 19, 2010), 75 FR 21686 (Apr. 26, 2010).

[4] *See* letters from Michael T. Nommensen, dated May 14, 2010; William A Jacobson, Esq., Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic, and Lennie Sliwinski, Cornell Law School class of 2011, dated May 15, 2010; and Scott R. Shewan, President, Public Investors Arbitration Bar Association ("PIABA"), dated May 17, 2010.

[5] Expedited actions allow FINRA to address certain types of misconduct quicker than would be possible using the ordinary disciplinary process. In general, expedited actions are designed to encourage respondents to comply with the law or take corrective action rather than sanction them for past misconduct. Moreover, as discussed in detail below, the Act uses a different standard of review for expedited actions than it does for disciplinary cases.

[6] FINRA Rule 10330(h).

[7] In its order approving changes to the predecessor to Rule 9554, the SEC noted that the issues raised in cases in which at least one of the aforementioned defenses is raised are narrow and generally limited to determining whether the respondent has proven any of these four defenses or an inability-to-pay the award. *See* Securities Exchange Act Release No. 40026 (May 26, 1998), 63 FR 30789 (June 5, 1998).

[8] *See* 4 *Collier on Bankruptcy,* ¶¶ 521.01, 521.09 (15th ed. 2009).

[9] *See* 18 U.S.C. 151–58 (2010). Bankruptcy fraud is punishable by a fine, or by up to five years in prison, or both. *Id.*

[10] The ability to legally discharge debts, the more thorough and accurate verification of a bankruptcy

Continued