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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 024

Amendment No. (req. for Amendments *)

Proposed Rule Change by Chicago Board Options Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
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Exhibit 3 Sent As Paper Document
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Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Proposal to amend Rule 9.24, Telephone Solicitation, to revise and add provisions that are substantially similar to Federal Trade Commission rules that prohibit deceptive and other abusive telemarketing acts or practices.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Laura Last Name * Dickman
Title * Attorney/Assistant Secretary
E-mail * dickman@cboe.com
Telephone * (312) 786-7572 Fax (312) 786-7919

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 03/02/2012

By Laura Dickman

(Name *)

Attorney/Assistant Secretary

(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Laura Dickman dickman@cboe.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) The Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) proposes to amend Rule 9.24, Telephone Solicitation.¹ The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) CBOE’s President, pursuant to delegated authority, approved the proposed rule change on February 14, 2012.

(b) Please refer questions and comments on the proposed rule change to Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Laura Dickman, (312) 786-7572, Chicago Board Options Exchange, Incorporated, 400 South LaSalle, Chicago, Illinois 60605.

¹ The proposed rule change is substantially similar in all material respects to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 3230 (Telemarketing), which the Commission recently approved. See Securities Exchange Act Release No. 34-66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (SR-FINRA-2011-059) (approval order of proposed rule change to adopt telemarketing rule). The proposed rule change amends the name of Rule 9.24 from Telephone Solicitation to Telemarketing.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to amend Rule 9.24, Telephone Solicitation,² to revise and add provisions that are substantially similar to Federal Trade Commission ("FTC") rules that prohibit deceptive and other abusive telemarketing acts or practices.³ Rule 9.24 requires Trading Permit Holders to, among other things, maintain do-not-call lists, limit the hours of telephone solicitations, and not use deceptive and abusive acts and practices in connection with telemarketing. The Securities and Exchange Commission (the "Commission") directed CBOE to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 ("Prevention Act").⁴ The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules⁵ to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the

² The Exchange adopted Rule 9.24, effective December 13, 2005, in response to the recommendations of an industry task force, comprised of representatives from various industry regulatory and self-regulatory organizations, formed to review broker-dealer telemarketing practices and compliance with the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. 227, as well as with Federal Communications Commission ("FCC") rules and regulations that implemented the TCPA. See Securities Exchange Act Release No. 34-36588 (December 13, 1995), 60 FR 65703 (December 20, 21995) (SR-CBOE-1995-063) (order approving adoption of Rule 9.24).

³ The proposed rule change also amends Appendix A to the CBOE Stock Exchange, LLC ("CBSX") Rules to explicitly incorporate proposed Rule 9.24 CBSX Rules. CBSX is a stock trading facility of CBOE

⁴ 15 U.S.C. 6101 – 6108.

⁵ 16 CFR 310.1 – .9. The FTC adopted these rules under the Prevention Act in 1995. See Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995).

protection of investors or the maintenance of orderly markets, or that existing federal securities laws or Commission rules already provide for such protection.⁶

In 1997, the Commission determined that telemarketing rules promulgated and expected to be promulgated by self-regulatory organizations, together with the other rules of the self-regulatory organizations, the federal securities laws and the Commission's rules thereunder, satisfied the requirements of the Prevention Act because, at the time, the applicable provisions of those laws and rules were substantially similar to the FTC's telemarketing rules.⁷ CBOE amended Rule 9.24 at that time in response to the Commission's determination.⁸ Since 1997, the FTC has amended its telemarketing rules in light of changing telemarketing practices and technology.⁹

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.¹⁰ In May 2011, Commission staff directed CBOE to

⁶ 15 U.S.C. 6102.

⁷ See *Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required*, Securities Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). The Commission also determined that some provisions of the FTC's telemarketing rules related to areas already extensively regulated by existing securities laws or activities not applicable to securities transactions See id.

⁸ See Securities Exchange Act Release No. 34-39010 (September 3, 1997), 62 FR 47712 (September 10, 1997) (SR-CBOE-1997-039) (order granting accelerated approval of amendments to Rule 9.24).

⁹ See, e.g., Federal Trade Commission, *Telemarketing Sales Rule*, 73 FR 51164 (August 29, 2008) (amendments to the *Telemarketing Sales Rule* relating to prerecorded messages and call abandonments); and Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) (amendments to the *Telemarketing Sales Rule* establishing requirements for sellers and telemarketers to participate in the national do-not-call registry).

¹⁰ See supra note 6.

conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.¹¹

Commission staff had concerns "that the [self-regulatory organization] rules overall have not kept pace with the FTC's rules, and thus may no longer meet the standards of the [Prevention] Act."¹²

The proposed rule change, as directed by the Commission staff, amends and adopts provisions in Rule 9.24 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.¹³

¹¹ See Letter from Robert W. Cook, Director, Division of Trading and Markets, Securities and Exchange Commission, to William J. Brodsky, Chairman and Chief Executive Officer of CBOE Holdings, Inc. (May 12, 2011).

¹² Id.

¹³ The proposed rule change is also substantially similar to FINRA Rule 3230. See supra note 1.

Telemarketing Restrictions

The proposed rule change amends the telemarketing restrictions in Rule 9.24(a) to provide that no Trading Permit Holder or associated person¹⁴ may make an outbound telephone call¹⁵ to:

- (1) any person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's locations;
 - (2) any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the Trading Permit Holder¹⁶;
- or

¹⁴ An "associated person" is any partner, officer, director, or branch manager of a Trading Permit Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Trading Permit Holder, or any employee of a Trading Permit Holder. See Rule 1.1(qq).

¹⁵ An "outbound telephone call" is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A "telemarketer" is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. A "customer" is any person who is or may be required to pay for goods or services through telemarketing. A "donor" means any person solicited to make a charitable contribution. A "person" is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. "Telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. A "charitable contribution" means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. See proposed Rule 9.24(n)(3), (11), (16), (17), (20), and (21); see also FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), (cc), and (dd).

- (3) any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.¹⁷ The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.¹⁸

Caller Disclosures

The proposed rule change amends Rule 9.24(b) to delete the phrase "for the purpose of telemarketing," which concept is included in the proposed definition of "outbound telephone call."¹⁹ The proposed rule change also provides that the telephone number that a caller provides to a person as the number at which the caller may be contacted may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.²⁰

¹⁶ This restriction was previously included under Rule 9.24(d). See the discussion below under Item 3(a), Trading Permit Holder's Firm-Specific Do-Not-Call List.

¹⁷ See 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); see also FINRA Rule 3230(a). The proposed rule change also deletes language in Rule 9.24(a) regarding the purpose of an outbound telephone call and the definition of telemarketing, which are now included in the proposed definitions of those terms. See proposed Rule 9.24(n)(16) and (21) and supra note 15. In addition, the proposed rule change amends Rule 9.24(a) to delete an exception to the telemarketing restriction that permits outbound telephone calls to a person with the person's prior consent and moves that exception to proposed Rule 9.24(c). See the discussion below under Item 3(a), Exceptions.

¹⁸ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43855.

¹⁹ See proposed Rule 9.24(n)(16) and supra note 15.

²⁰ See proposed Rule 9.24(b); see also FINRA Rule 3230(d)(4). The proposed rule change is substantially similar to the FCC's regulations regarding call disclosures. See 47 CFR 64.1200(d)(4).

Exceptions

The proposed rule change amends Rule 9.24(c) to provide that the prohibition in paragraph (a)(1)²¹ does not apply to outbound telephone calls by a Trading Permit Holder or an associated person if:

- (1) the Trading Permit Holder has received that person's express prior written consent;
- (2) the Trading Permit Holder has an established business relationship²² with the person; or

²¹ The proposed rule change amends Rule 9.24(c) to provide that the exception in that paragraph will apply only to the prohibition in proposed paragraph (a)(1) and will no longer apply to the requirement in paragraph (b) regarding caller disclosures. The Exchange believes that even if a Trading Permit Holder satisfies the exception in paragraph (c), the Trading Permit Holder should still make the caller disclosures required by paragraph (b) to the called person to ensure that the called person receives sufficient information regarding the purpose of the call.

²² An "established business relationship" is a relationship between a Trading Permit Holder and a person if (a) the person has made a financial transaction or has a security position, a money balance, or account activity with the Trading Permit Holder or at a clearing firm that provides clearing services to the Trading Permit Holder within the 18 months immediately preceding the date of an outbound telephone call; (b) the Trading Permit Holder is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the Trading Permit Holder to inquire about a product or service offered by the Trading Permit Holder within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a Trading Permit Holder does not extend to the Trading Permit Holder's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a Trading Permit Holder's affiliate does not extend to the Trading Permit Holder unless the person would reasonably expect the Trading Permit Holder to be included. The term "account activity" includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the Trading Permit Holder. The term "broker-dealer of record" refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. See proposed Rule 9.24(n)(1), (4), and (12); see also 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

- (3) the person is a broker or dealer.

This amendment deletes the exception related to existing customers and replaces it with the exception for proposed defined term “established business relationships,” the definition of which is substantially similar to the FTC’s definition of that term.²³

Trading Permit Holder’s Firm-Specific Do-Not-Call List

The proposed rule change amends Rule 9.24(d) to provide that each Trading Permit Holder must make and maintain a centralized list of persons who have informed the Trading Permit Holder or any of its associated persons that they do not wish to receive outbound telephone calls.²⁴ The proposed rule change replaces the term “solicitations” with the proposed term “outbound telephone calls,” the definition of which is substantially similar to the FTC’s definition of that term.²⁵ The proposed rule change also deletes the prohibition on making outbound telephone calls to persons on the Trading Permit Holder’s firm-specific do-not-call list and moves this prohibition to proposed Rule 9.24(a)(2), as described above.

Proposed Rule 9.24(d)(2) adopts procedures that Trading Permit Holders must institute to comply with Rule 9.24(a) and (b) prior to engaging in telemarketing. These procedures must meet the following minimum standards:

- (1) Trading Permit Holders must have a written policy for maintaining their firm-specific do-not-call lists.

²³ See id.; see also FINRA Rule 3230(a).

²⁴ The proposed rule change also rennumbers this provision as paragraph (d)(1).

²⁵ See 16 CFR 310.4(b)(1)(iii)(A) and supra note 15; see also FINRA Rule 3230(a)(2). Additionally, this proposed rule change replaces a reference to the term “member” with “Trading Permit Holder,” which conforms to the term currently used in CBOE’s Rules.

- (2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the Trading Permit Holder's firm-specific do-not-call list.
- (3) If a Trading Permit Holder receives a request from a person not to receive calls from that Trading Permit Holder, the Trading Permit Holder must record the request and place the person's name, if provided, and telephone number on its firm-specific do-not-call list at the time the request is made.²⁶
- (4) Trading Permit Holders or associated persons making an outbound telephone call must make the caller disclosures set forth in Rule 9.24(b).
- (5) In the absence of a specific request by the person to the contrary, a person's do-not-call request will apply to the Trading Permit Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.
- (6) A Trading Permit Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on Trading Permit Holders, as they are already subject to identical provisions under FCC telemarketing regulations.²⁷

²⁶ Trading Permit Holders must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the Trading Permit Holder on whose behalf the outbound telephone call is made, the Trading Permit Holder on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

²⁷ See 47 CFR 64.1200(d); see also FINRA Rule 3230(d).

Do-Not-Call Safe Harbors

Proposed Rule 9.24(e) provides for certain exceptions to the telemarketing restriction set forth in proposed Rule 9.24(a)(3), which prohibits outbound telephone calls to persons on the FTC's national do-not-call registry. First, proposed Rule 9.24(e)(1) provides that a Trading Permit Holder or associated person making outbound telephone calls will not be liable for violating proposed Rule 9.24(a)(3) if:

- (1) the Trading Permit Holder has an established business relationship with the called person; however, a person's request to be placed on the Trading Permit Holder's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call registry provision for that Trading Permit Holder even if the person continues to do business with the Trading Permit Holder;
- (2) the Trading Permit Holder has obtained the person's prior express written consent, which must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act²⁸) between the person and the Trading Permit Holder that states that the person agrees to be contacted by the Trading Permit Holder and includes the telephone number to which the calls may be placed; or
- (3) the Trading Permit Holder or associated person making the call has a personal relationship²⁹ with the called person.

²⁸ 15 U.S.C. 7001 *et seq.*

²⁹ The term "personal relationship" means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed Rule 9.24(n)(18); *see also* FINRA Rule 3230(m)(18).

The proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.³⁰ The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.³¹

Second, proposed Rule 9.24(e)(2) provides that a Trading Permit Holder or associated person making outbound telephone calls will not be liable for violating proposed Rule 9.24(a)(3) if the Trading Permit Holder or associated person demonstrates that the violation is the result of an error and that as part of the Trading Permit Holder's routine business practice:

- (1) the Trading Permit Holder has established and implemented written procedures to comply with Rule 9.24(a) and (b);
- (2) the Trading Permit Holder has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the preceding clause;
- (3) the Trading Permit Holder has maintained and recorded a list of telephone numbers that it may not contact in compliance with Rule 9.24(d); and
- (4) the Trading Permit Holder uses a process to prevent outbound telephone calls to any telephone number on the Trading Permit Holder's firm-specific do-not-call list or the national do-not-call registry, employing a version of the national do-not-call registry obtained from the FTC no more than 31 days prior to the date any call is made, and maintains records documenting this process.

³⁰ See 16 CFR 310.4(b)(1)(iii)(B); see also FINRA Rule 3230(b).

³¹ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43854.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on a firm-specific do-not-call list or on the FTC's national do-not-call registry.³² The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.³³

Wireless Communications

Proposed Rule 9.24(f) clarifies that the provisions set forth in Rule 9.24 are applicable to Trading Permit Holders and associated persons making outbound telephone calls to wireless telephone numbers.³⁴

Outsourcing Telemarketing

Proposed Rule 9.24(g) states that if a Trading Permit Holder uses another entity to perform telemarketing services on its behalf, the Trading Permit Holder remains responsible for ensuring compliance with Rule 9.24. The proposed rule change also provides that an entity or person to which a Trading Permit Holder outsources its telemarketing services must be appropriately registered or licensed, where required.³⁵

Billing Information

The proposed rule change reletters Rule 9.24(e) as Rule 9.24(h) and provides that, for any telemarketing transaction, no Trading Permit Holder or associated person may submit billing information³⁶ for payment without the express informed consent of the

³² See 16 CFR 310.4(b)(3); see also FINRA Rule 3230(c).

³³ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43855.

³⁴ See also FINRA Rule 3230(e).

³⁵ See also FINRA Rule 3230(f).

³⁶ The term "billing information" means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a

customer. Proposed Rule 9.24(h) requires that each Trading Permit Holder or associated person must obtain the express informed consent of the person to be charged and to be charged using the identified account.

If the telemarketing transaction involves preacquired account information³⁷ and a free-to-pay conversion³⁸ feature, the Trading Permit Holder or associated person must:

- (1) obtain from the customer, at a minimum, the last four digits of the account number to be charged;
- (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number; and
- (3) make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the Trading Permit Holder or associated person must:

- (1) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and
- (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number.

brokerage, checking, or savings account number, or a mortgage loan account number. See proposed Rule 9.24(n)(3).

³⁷ The term “preacquired account information” means any information that enables a Trading Permit Holder or associated person to cause a charge to be placed against a customer’s or donor’s account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. See proposed Rule 9.24(n)(19).

³⁸ The term “free-to-pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. See proposed Rule 9.24(n)(13).

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.³⁹ The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.⁴⁰

Caller Identification Information

Proposed Rule 9.24(i) provides that Trading Permit Holders that engage in telemarketing must transmit caller identification information⁴¹ and are explicitly prohibited from blocking caller identification information. The telephone number provided must permit any person to make a do-not-call request during normal business hours. These provisions are similar to the caller identification provision in the FTC rules.⁴² Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on Trading Permit Holders, as they are already subject to identical provisions under FCC telemarketing regulations.⁴³

Unencrypted Consumer Account Numbers

Proposed Rule 9.24(j) prohibits a Trading Permit Holder or associated person from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.⁴⁴ The FTC provided a discussion of the

³⁹ See 16 CFR 310.4(a)(7); see also FINRA Rule 3230(i).

⁴⁰ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4616.

⁴¹ Caller identification information includes the telephone number and, when made available by the Trading Permit Holder's telephone carrier, the name of the Trading Permit Holder.

⁴² See 16 CFR 310.4(a)(8); see also FINRA Rule 3230(g).

⁴³ See 47 CFR 64.1601(e).

⁴⁴ See 16 CFR 310.4(a)(6); see also FINRA Rule 3230(h).

provision when it was adopted pursuant to the Prevention Act.⁴⁵ Additionally, the proposed rule change defines “unencrypted” as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.⁴⁶

Abandoned Calls

Proposed Rule 9.24(k) prohibits a Trading Permit Holder or associated person from abandoning⁴⁷ any outbound telephone call. The abandoned calls prohibition is subject to a “safe harbor” under proposed Rule 9.24(k)(2) that requires a Trading Permit Holder or associated person:

- (1) to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;
- (2) for each outbound telephone call placed, to allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;
- (3) whenever a Trading Permit Holder or associated person is not available to speak with the person answering the outbound telephone call within two seconds after the person’s completed greeting, promptly to play a prerecorded message stating the name and telephone number of the Trading Permit Holder or associated person on whose behalf the call was placed; and

⁴⁵ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4615.

⁴⁶ See *id.* at 4616.

⁴⁷ An outbound telephone call is “abandoned” if the called person answers it and the call is not connected to a Trading Permit Holder or associated person within two seconds of the called person’s completed greeting.

- (4) to maintain records documenting compliance with the “safe harbor.”

The proposed rule change is substantially similar to the FTC’s provisions regarding abandoned calls.⁴⁸ The FTC provided a discussion of the provisions when they are adopted pursuant to the Prevention Act.⁴⁹

Prerecorded Messages

Proposed Rule 9.24(l) prohibits a Trading Permit Holder or associated person from initiating any outbound telephone call that delivers a prerecorded message without a person’s express written agreement⁵⁰ to receive such calls. The proposed rule change also requires that all prerecorded outbound telephone calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the “safe harbor” for abandoned calls under proposed Rule 9.24(k)(2). The proposed rule change is substantially similar to the FTC’s provisions regarding prerecorded messages.⁵¹ The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.⁵²

⁴⁸ See 16 CFR 310.4(b)(1)(iv) and (b)(4); see also FINRA Rule 3230(j).

⁴⁹ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4641.

⁵⁰ The express written agreement must: (a) have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the Trading Permit Holder to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the Trading Permit Holder; and (d) include the person’s telephone number and signature (which may be obtained electronically under the E-Sign Act).

⁵¹ See 16 CFR 310.4(b)(1)(v); see also FINRA Rule 3230(k).

⁵² See Federal Trade Commission, *Telemarketing Sales Rule*, 73 FR 51164 (August 29, 2008) at 51165.

Credit Card Laundering

Proposed Rule 9.24(m) prohibits credit card laundering, the practice of depositing into the credit card system⁵³ a sales draft that is not the result of a credit card transaction between the cardholder⁵⁴ and the Trading Permit Holder. Except as expressly permitted, the proposed rule change prohibits a Trading Permit Holder or associated person from:

- (1) presenting to or depositing into the credit card system for payment, a credit card sales draft⁵⁵ generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Trading Permit Holder;
- (2) employing, soliciting, or otherwise causing a merchant,⁵⁶ or an employee, representative or agent of the merchant to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing

⁵³ The term “credit card system” means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term “credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. See proposed Rule 9.24(n)(7), (8), and (10).

⁵⁴ The term “cardholder” means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. See proposed Rule 9.24(n)(6).

⁵⁵ The term “credit card sales draft” means any record or evidence of a credit card transaction. See proposed Rule 9.24(n)(9).

⁵⁶ The term “merchant” means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term “acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. See proposed Rule 9.24(n)(2) and (14).

transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Trading Permit Holder; or

- (3) obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement⁵⁷ or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provision regarding credit card laundering.⁵⁸ The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.⁵⁹

Definitions

Proposed Rule 9.24(n) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: "acquirer," "billing information," "caller identification service," "cardholder," "charitable contribution," "credit," "credit card," "credit card sales draft," "credit card system," "customer," "donor," "established business relationship," "free-to-pay conversion," "merchant," "merchant agreement," "outbound telephone call," "person," "preacquired account information," "telemarketer," and "telemarketing."⁶⁰ The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.⁶¹

⁵⁷ The term "merchant agreement" means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. See proposed Rule 9.24(n)(15).

⁵⁸ See 16 CFR 310.3(c); see also FINRA Rule 3230(l).

⁵⁹ See Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43852.

⁶⁰ See proposed Rule 9.24(n)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), (20), and (21); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), (cc), and (dd); see also FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19),

State and Federal Laws

The proposed rule change amends Rule 9.24, Interpretation and Policy .01⁶² to remind Trading Permit Holders and associated persons that engage in telemarketing that they also are subject to the requirements of relevant state and federal laws and rules, including the Prevention Act, the TCPA,⁶³ and the rules of the FCC relating to telemarketing practices and the rights of telephone consumers.⁶⁴

Applicability to CBSX

The proposed rule change also amends Appendix A, Applicability of Rules of the Exchange, to the CBSX Rules to add Rule 9.24 to the list of CBOE Rules that apply to CBSX. The Introduction to the CBSX Rules provides that the trading of non-option securities on CBSX are subject to the Rules in Chapters 1 through 29 (including Rule 9.24) of the Exchange Rules to the same extent such Rules apply to the trading of the products to which those Rules apply, in some cases supplemented or replaced by the Rules in Chapters 50 through 54, except for Rules that have been replaced by rules in Chapters 50 through 54 and except where the context otherwise requires. Through this provision, the telemarketing restrictions in Rule 9.24 have always applied to CBSX

and (20). The proposed rule change also adopts definitions of “account activity,” “broker-dealer of record,” and “personal relationship” that are substantially similar FINRA’s definitions of these terms. See proposed Rule 9.24(n)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); see also 47 CFR 64.1200(f)(14) (FCC’s definition of “personal relationship”).

⁶¹ See Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43843; and Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4587.

⁶² See also FINRA Rule 3230, Supplementary Material .01, *Compliance with Other Requirements*.

⁶³ See 47 U.S.C. 227.

⁶⁴ See 47 CFR 64.1200.

Trading Permit Holders. The proposed rule change merely makes the applicability of Rule 9.24 to CBSX Trading Permit Holders explicit in Appendix A.

Announcement in Regulatory Circular

The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date. The implementation date will be no later than 180 days following the effective date.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶⁶ requirements 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change will prevent fraudulent and manipulative acts and protect investors and the public interest by continuing to prohibit Trading Permit Holders from engaging in deceptive and other abusive telemarketing acts or practices. Additionally, the proposed rule change removes impediments to and perfects the mechanism for a free and open market and a national market system, because it provides

⁶⁵ 15 U.S.C. 78f(b).

⁶⁶ 15 U.S.C. 78f(b)(5).

consistency among telemarketing rules of national securities exchanges and FINRA, therefore making it easier for investors to comply with these rules.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

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

Item 5. 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 proposed rule change.

Item 6. Extension of Time Period for Commission Action

CBOE does not consent to an extension of the time period for Commission action on the proposed rule change specified in Section 19(b)(2) of the Act⁶⁷.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act⁶⁸ and Rule 19b-4(f)(6)⁶⁹ thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the

⁶⁷ 15 U.S.C. 78s(b)(2).

⁶⁸ 15 U.S.C. 78s(b)(3)(A).

⁶⁹ 17 CFR 240.19b-4(f)(6).

proposed rule change, at least five business days prior to the date of filing of the proposed rule change. The proposed rule change is substantially similar in all material respects to FTC rules and FINRA Rule 3230, which the Commission recently approved.⁷⁰

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend 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. The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will prohibit deceptive and other abusive telemarketing acts or practices, as well as allow the Exchange to comply with the Commission’s directive and implement uniform telemarketing rules across self-regulatory organizations, creating consistency among these rules for investors, as soon as possible.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules or By-Laws of Another Self-Regulatory Organization or of the Commission

As discussed above, the proposed rule change is substantially similar to FINRA Rule 3230, and this rule filing is substantially similar to FINRA’s rule filing proposing to

⁷⁰ See supra note 1.

adopt that rule, which the Commission recently approved.⁷¹ Therefore, the conduct required of Trading Permit Holders to comply with Rule 9.24 is the same as the conduct required of FINRA members to comply with FINRA Rule 3230.

Item 9. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

⁷¹ See supra note 1.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CBOE-2012-024]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Telemarketing Rules

[Insert date]

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 [insert date], 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, 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 Rule 9.24, Telephone Solicitation, to revise and add provisions that are substantially similar to Federal Trade Commission (“FTC”) rules that prohibit deceptive and other abusive telemarketing acts or practices.³ The text of the proposed rule change is available on the Exchange’s Web site

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed rule change is substantially similar in all material respects to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 3230 (Telemarketing), which the Commission recently approved. See Securities Exchange Act Release No. 34-66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (SR-FINRA-2011-059) (approval order of proposed rule change to adopt telemarketing rule). The proposed rule change amends the name of Rule 9.24 from Telephone Solicitation to Telemarketing.

(<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 9.24, Telephone Solicitation,⁴ to revise and add provisions that are substantially similar to FTC rules that prohibit deceptive and other abusive telemarketing acts or practices.⁵ Rule 9.24 requires Trading Permit Holders to, among other things, maintain do-not-call lists, limit the hours of telephone solicitations, and not use deceptive and abusive acts and practices in connection with telemarketing. The Commission directed CBOE to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994

⁴ The Exchange adopted Rule 9.24, effective December 13, 2005, in response to the recommendations of an industry task force, comprised of representatives from various industry regulatory and self-regulatory organizations, formed to review broker-dealer telemarketing practices and compliance with the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. 227, as well as with Federal Communications Commission ("FCC") rules and regulations that implemented the TCPA. See Securities Exchange Act Release No. 34-36588 (December 13, 1995), 60 FR 65703 (December 20, 1995) (SR-CBOE-1995-063) (order approving adoption of Rule 9.24).

⁵ The proposed rule change also amends Appendix A to the CBOE Stock Exchange, LLC ("CBSX") Rules to explicitly incorporate proposed Rule 9.24 CBSX Rules. CBSX is a stock trading facility of CBOE

("Prevention Act").⁶ The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules⁷ to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or Commission rules already provide for such protection.⁸

In 1997, the Commission determined that telemarketing rules promulgated and expected to be promulgated by self-regulatory organizations, together with the other rules of the self-regulatory organizations, the federal securities laws and the Commission's rules thereunder, satisfied the requirements of the Prevention Act because, at the time, the applicable provisions of those laws and rules were substantially similar to the FTC's telemarketing rules.⁹ CBOE amended Rule 9.24 at that time in response to the Commission's determination.¹⁰ Since 1997, the FTC has amended its telemarketing rules in light of changing telemarketing practices and technology.¹¹

⁶ 15 U.S.C. 6101 – 6108.

⁷ 16 CFR 310.1 – .9. The FTC adopted these rules under the Prevention Act in 1995. See Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995).

⁸ 15 U.S.C. 6102.

⁹ See *Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required*, Securities Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). The Commission also determined that some provisions of the FTC's telemarketing rules related to areas already extensively regulated by existing securities laws or activities not applicable to securities transactions See id.

¹⁰ See Securities Exchange Act Release No. 34-39010 (September 3, 1997), 62 FR 47712 (September 10, 1997) (SR-CBOE-1997-039) (order granting accelerated approval of amendments to Rule 9.24).

¹¹ See, e.g., Federal Trade Commission, *Telemarketing Sales Rule*, 73 FR 51164

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.¹² In May 2011, Commission staff directed CBOE to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.¹³ Commission staff had concerns "that the [self-regulatory organization] rules overall have not kept pace with the FTC's rules, and thus may no longer meet the standards of the [Prevention] Act."¹⁴

The proposed rule change, as directed by the Commission staff, amends and adopts provisions in Rule 9.24 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.¹⁵

Telemarketing Restrictions

The proposed rule change amends the telemarketing restrictions in Rule 9.24(a) to provide that no Trading Permit Holder or associated person¹⁶ may make an outbound

(August 29, 2008) (amendments to the *Telemarketing Sales Rule* relating to prerecorded messages and call abandonments); and Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) (amendments to the *Telemarketing Sales Rule* establishing requirements for sellers and telemarketers to participate in the national do-not-call registry).

¹² See supra note 8.

¹³ See Letter from Robert W. Cook, Director, Division of Trading and Markets, Securities and Exchange Commission, to William J. Brodsky, Chairman and Chief Executive Officer of CBOE Holdings, Inc. (May 12, 2011).

¹⁴ Id.

¹⁵ The proposed rule change is also substantially similar to FINRA Rule 3230. See supra note 3.

¹⁶ An "associated person" is any partner, officer, director, or branch manager of a

telephone call¹⁷ to:

- (1) any person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's locations;
- (2) any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the Trading Permit Holder¹⁸; or
- (3) any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding

Trading Permit Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Trading Permit Holder, or any employee of a Trading Permit Holder. See Rule 1.1(qq).

¹⁷ An "outbound telephone call" is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A "telemarketer" is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. A "customer" is any person who is or may be required to pay for goods or services through telemarketing. A "donor" means any person solicited to make a charitable contribution. A "person" is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. "Telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. A "charitable contribution" means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. See proposed Rule 9.24(n)(3), (11), (16), (17), (20), and (21); see also FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), (cc), and (dd).

¹⁸ This restriction was previously included under Rule 9.24(d). See the discussion below under Item 3(a), Trading Permit Holder's Firm-Specific Do-Not-Call List.

abusive telemarketing acts or practices.¹⁹ The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.²⁰

Caller Disclosures

The proposed rule change amends Rule 9.24(b) to delete the phrase “for the purpose of telemarketing,” which concept is included in the proposed definition of “outbound telephone call.”²¹ The proposed rule change also provides that the telephone number that a caller provides to a person as the number at which the caller may be contacted may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.²²

Exceptions

The proposed rule change amends Rule 9.24(c) to provide that the prohibition in paragraph (a)(1)²³ does not apply to outbound telephone calls by a Trading Permit Holder

¹⁹ See 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); see also FINRA Rule 3230(a). The proposed rule change also deletes language in Rule 9.24(a) regarding the purpose of an outbound telephone call and the definition of telemarketing, which are now included in the proposed definitions of those terms. See proposed Rule 9.24(n)(16) and (21) and supra note 17. In addition, the proposed rule change amends Rule 9.24(a) to delete an exception to the telemarketing restriction that permits outbound telephone calls to a person with the person’s prior consent and moves that exception to proposed Rule 9.24(c). See the discussion below under Item 3(a), Exceptions.

²⁰ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43855.

²¹ See proposed Rule 9.24(n)(16) and supra note 17.

²² See proposed Rule 9.24(b); see also FINRA Rule 3230(d)(4). The proposed rule change is substantially similar to the FCC’s regulations regarding call disclosures. See 47 CFR 64.1200(d)(4).

²³ The proposed rule change amends Rule 9.24(c) to provide that the exception in that paragraph will apply only to the prohibition in proposed paragraph (a)(1) and will no longer apply to the requirement in paragraph (b) regarding caller disclosures. The Exchange believes that even if a Trading Permit Holder satisfies the exception in paragraph (c), the Trading Permit Holder should still make the caller disclosures required by paragraph (b) to the called person to ensure that the called person receives sufficient

or an associated person if:

- (1) the Trading Permit Holder has received that person's express prior written consent;
- (2) the Trading Permit Holder has an established business relationship²⁴ with the person; or
- (3) the person is a broker or dealer.

This amendment deletes the exception related to existing customers and replaces it with the exception for proposed defined term "established business relationships," the definition of which is substantially similar to the FTC's definition of that term.²⁵

Trading Permit Holder's Firm-Specific Do-Not-Call List

The proposed rule change amends Rule 9.24(d) to provide that each Trading

information regarding the purpose of the call.

²⁴ An "established business relationship" is a relationship between a Trading Permit Holder and a person if (a) the person has made a financial transaction or has a security position, a money balance, or account activity with the Trading Permit Holder or at a clearing firm that provides clearing services to the Trading Permit Holder within the 18 months immediately preceding the date of an outbound telephone call; (b) the Trading Permit Holder is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the Trading Permit Holder to inquire about a product or service offered by the Trading Permit Holder within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a Trading Permit Holder does not extend to the Trading Permit Holder's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a Trading Permit Holder's affiliate does not extend to the Trading Permit Holder unless the person would reasonably expect the Trading Permit Holder to be included. The term "account activity" includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the Trading Permit Holder. The term "broker-dealer of record" refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. See proposed Rule 9.24(n)(1), (4), and (12); see also 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

²⁵ See id.; see also FINRA Rule 3230(a).

Permit Holder must make and maintain a centralized list of persons who have informed the Trading Permit Holder or any of its associated persons that they do not wish to receive outbound telephone calls.²⁶ The proposed rule change replaces the term “solicitations” with the proposed term “outbound telephone calls,” the definition of which is substantially similar to the FTC’s definition of that term.²⁷ The proposed rule change also deletes the prohibition on making outbound telephone calls to persons on the Trading Permit Holder’s firm-specific do-not-call list and moves this prohibition to proposed Rule 9.24(a)(2), as described above.

Proposed Rule 9.24(d)(2) adopts procedures that Trading Permit Holders must institute to comply with Rule 9.24(a) and (b) prior to engaging in telemarketing. These procedures must meet the following minimum standards:

- (1) Trading Permit Holders must have a written policy for maintaining their firm-specific do-not-call lists.
- (2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the Trading Permit Holder’s firm-specific do-not-call list.
- (3) If a Trading Permit Holder receives a request from a person not to receive calls from that Trading Permit Holder, the Trading Permit Holder must record the

²⁶ The proposed rule change also renumbers this provision as paragraph (d)(1).

²⁷ See 16 CFR 310.4(b)(1)(iii)(A) and supra note 17; see also FINRA Rule 3230(a)(2). Additionally, this proposed rule change replaces a reference to the term “member” with “Trading Permit Holder,” which conforms to the term currently used in CBOE’s Rules.

request and place the person's name, if provided, and telephone number on its firm-specific do-not-call list at the time the request is made.²⁸

(4) Trading Permit Holders or associated persons making an outbound telephone call must make the caller disclosures set forth in Rule 9.24(b).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request will apply to the Trading Permit Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) A Trading Permit Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on Trading Permit Holders, as they are already subject to identical provisions under FCC telemarketing regulations.²⁹

Do-Not-Call Safe Harbors

Proposed Rule 9.24(e) provides for certain exceptions to the telemarketing restriction set forth in proposed Rule 9.24(a)(3), which prohibits outbound telephone calls to persons on the FTC's national do-not-call registry. First, proposed Rule 9.24(e)(1) provides that a Trading Permit Holder or associated person making outbound telephone

²⁸ Trading Permit Holders must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the Trading Permit Holder on whose behalf the outbound telephone call is made, the Trading Permit Holder on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

²⁹ See 47 CFR 64.1200(d); see also FINRA Rule 3230(d).

calls will not be liable for violating proposed Rule 9.24(a)(3) if:

- (1) the Trading Permit Holder has an established business relationship with the called person; however, a person's request to be placed on the Trading Permit Holder's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call registry provision for that Trading Permit Holder even if the person continues to do business with the Trading Permit Holder;
- (2) the Trading Permit Holder has obtained the person's prior express written consent, which must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act³⁰) between the person and the Trading Permit Holder that states that the person agrees to be contacted by the Trading Permit Holder and includes the telephone number to which the calls may be placed; or
- (3) the Trading Permit Holder or associated person making the call has a personal relationship³¹ with the called person.

The proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.³² The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.³³

³⁰ 15 U.S.C. 7001 *et seq.*

³¹ The term "personal relationship" means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed Rule 9.24(n)(18); *see also* FINRA Rule 3230(m)(18).

³² *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

³³ *See* Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR

Second, proposed Rule 9.24(e)(2) provides that a Trading Permit Holder or associated person making outbound telephone calls will not be liable for violating proposed Rule 9.24(a)(3) if the Trading Permit Holder or associated person demonstrates that the violation is the result of an error and that as part of the Trading Permit Holder's routine business practice:

- (1) the Trading Permit Holder has established and implemented written procedures to comply with Rule 9.24(a) and (b);
- (2) the Trading Permit Holder has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the preceding clause;
- (3) the Trading Permit Holder has maintained and recorded a list of telephone numbers that it may not contact in compliance with Rule 9.24(d); and
- (4) the Trading Permit Holder uses a process to prevent outbound telephone calls to any telephone number on the Trading Permit Holder's firm-specific do-not-call list or the national do-not-call registry, employing a version of the national do-not-call registry obtained from the FTC no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on a firm-specific do-not-call list or on the FTC's national do-not-call registry.³⁴ The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.³⁵

43842 (August 23, 1995) at 43854.

³⁴ See 16 CFR 310.4(b)(3); see also FINRA Rule 3230(c).

³⁵ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January

Wireless Communications

Proposed Rule 9.24(f) clarifies that the provisions set forth in Rule 9.24 are applicable to Trading Permit Holders and associated persons making outbound telephone calls to wireless telephone numbers.³⁶

Outsourcing Telemarketing

Proposed Rule 9.24(g) states that if a Trading Permit Holder uses another entity to perform telemarketing services on its behalf, the Trading Permit Holder remains responsible for ensuring compliance with Rule 9.24. The proposed rule change also provides that an entity or person to which a Trading Permit Holder outsources its telemarketing services must be appropriately registered or licensed, where required.³⁷

Billing Information

The proposed rule change reletters Rule 9.24(e) as Rule 9.24(h) and provides that, for any telemarketing transaction, no Trading Permit Holder or associated person may submit billing information³⁸ for payment without the express informed consent of the customer. Proposed Rule 9.24(h) requires that each Trading Permit Holder or associated person must obtain the express informed consent of the person to be charged and to be charged using the identified account.

If the telemarketing transaction involves preacquired account information³⁹ and a

29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43855.

³⁶ See also FINRA Rule 3230(e).

³⁷ See also FINRA Rule 3230(f).

³⁸ The term “billing information” means any data that enables any person to access a customer’s or donor’s account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. See proposed Rule 9.24(n)(3).

³⁹ The term “preacquired account information” means any information that enables a

free-to-pay conversion⁴⁰ feature, the Trading Permit Holder or associated person must:

- (1) obtain from the customer, at a minimum, the last four digits of the account number to be charged;
- (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number; and
- (3) make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the Trading Permit Holder or associated person must:

- (1) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and
- (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.⁴¹ The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.⁴²

Trading Permit Holder or associated person to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. See proposed Rule 9.24(n)(19).

⁴⁰ The term "free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. See proposed Rule 9.24(n)(13).

⁴¹ See 16 CFR 310.4(a)(7); see also FINRA Rule 3230(i).

⁴² See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4616.

Caller Identification Information

Proposed Rule 9.24(i) provides that Trading Permit Holders that engage in telemarketing must transmit caller identification information⁴³ and are explicitly prohibited from blocking caller identification information. The telephone number provided must permit any person to make a do-not-call request during normal business hours. These provisions are similar to the caller identification provision in the FTC rules.⁴⁴ Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on Trading Permit Holders, as they are already subject to identical provisions under FCC telemarketing regulations.⁴⁵

Unencrypted Consumer Account Numbers

Proposed Rule 9.24(j) prohibits a Trading Permit Holder or associated person from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.⁴⁶ The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.⁴⁷ Additionally, the proposed rule change defines "unencrypted" as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar

⁴³ Caller identification information includes the telephone number and, when made available by the Trading Permit Holder's telephone carrier, the name of the Trading Permit Holder.

⁴⁴ See 16 CFR 310.4(a)(8); see also FINRA Rule 3230(g).

⁴⁵ See 47 CFR 64.1601(e).

⁴⁶ See 16 CFR 310.4(a)(6); see also FINRA Rule 3230(h).

⁴⁷ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4615.

to the view taken by the FTC.⁴⁸

Abandoned Calls

Proposed Rule 9.24(k) prohibits a Trading Permit Holder or associated person from abandoning⁴⁹ any outbound telephone call. The abandoned calls prohibition is subject to a “safe harbor” under proposed Rule 9.24(k)(2) that requires a Trading Permit Holder or associated person:

- (1) to employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;
- (2) for each outbound telephone call placed, to allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;
- (3) whenever a Trading Permit Holder or associated person is not available to speak with the person answering the outbound telephone call within two seconds after the person’s completed greeting, promptly to play a prerecorded message stating the name and telephone number of the Trading Permit Holder or associated person on whose behalf the call was placed; and
- (4) to maintain records documenting compliance with the “safe harbor.”

The proposed rule change is substantially similar to the FTC’s provisions regarding abandoned calls.⁵⁰ The FTC provided a discussion of the provisions when they are

⁴⁸ See *id.* at 4616.

⁴⁹ An outbound telephone call is “abandoned” if the called person answers it and the call is not connected to a Trading Permit Holder or associated person within two seconds of the called person’s completed greeting.

⁵⁰ See 16 CFR 310.4(b)(1)(iv) and (b)(4); see also FINRA Rule 3230(j).

adopted pursuant to the Prevention Act.⁵¹

Prerecorded Messages

Proposed Rule 9.24(l) prohibits a Trading Permit Holder or associated person from initiating any outbound telephone call that delivers a prerecorded message without a person's express written agreement⁵² to receive such calls. The proposed rule change also requires that all prerecorded outbound telephone calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the "safe harbor" for abandoned calls under proposed Rule 9.24(k)(2). The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.⁵³ The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.⁵⁴

Credit Card Laundering

Proposed Rule 9.24(m) prohibits credit card laundering, the practice of depositing into the credit card system⁵⁵ a sales draft that is not the result of a credit card transaction

⁵¹ See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4641.

⁵² The express written agreement must: (a) have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the Trading Permit Holder to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the Trading Permit Holder; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

⁵³ See 16 CFR 310.4(b)(1)(v); see also FINRA Rule 3230(k).

⁵⁴ See Federal Trade Commission, *Telemarketing Sales Rule*, 73 FR 51164 (August 29, 2008) at 51165.

⁵⁵ The term "credit card system" means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term "credit card" means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

between the cardholder⁵⁶ and the Trading Permit Holder. Except as expressly permitted, the proposed rule change prohibits a Trading Permit Holder or associated person from:

- (1) presenting to or depositing into the credit card system for payment, a credit card sales draft⁵⁷ generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Trading Permit Holder;
- (2) employing, soliciting, or otherwise causing a merchant,⁵⁸ or an employee, representative or agent of the merchant to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Trading Permit Holder; or
- (3) obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement⁵⁹ or the applicable credit card system.

The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. See proposed Rule 9.24(n)(7), (8), and (10).

⁵⁶ The term “cardholder” means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. See proposed Rule 9.24(n)(6).

⁵⁷ The term “credit card sales draft” means any record or evidence of a credit card transaction. See proposed Rule 9.24(n)(9).

⁵⁸ The term “merchant” means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term “acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. See proposed Rule 9.24(n)(2) and (14).

⁵⁹ The term “merchant agreement” means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit

The proposed rule change is substantially similar to the FTC's provision regarding credit card laundering.⁶⁰ The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.⁶¹

Definitions

Proposed Rule 9.24(n) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: "acquirer," "billing information," "caller identification service," "cardholder," "charitable contribution," "credit," "credit card," "credit card sales draft," "credit card system," "customer," "donor," "established business relationship," "free-to-pay conversion," "merchant," "merchant agreement," "outbound telephone call," "person," "preacquired account information," "telemarketer," and "telemarketing."⁶² The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.⁶³

card payments, for the purchase of goods or services or a charitable contribution. See proposed Rule 9.24(n)(15).

⁶⁰ See 16 CFR 310.3(c); see also FINRA Rule 3230(l).

⁶¹ See Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43852.

⁶² See proposed Rule 9.24(n)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), (20), and (21); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), (cc), and (dd); see also FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of "account activity," "broker-dealer of record," and "personal relationship" that are substantially similar FINRA's definitions of these terms. See proposed Rule 9.24(n)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); see also 47 CFR 64.1200(f)(14) (FCC's definition of "personal relationship").

⁶³ See Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (August 23, 1995) at 43843; and Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (January 29, 2003) at 4587.

State and Federal Laws

The proposed rule change amends Rule 9.24, Interpretation and Policy .01⁶⁴ to remind Trading Permit Holders and associated persons that engage in telemarketing that they also are subject to the requirements of relevant state and federal laws and rules, including the Prevention Act, the TCPA,⁶⁵ and the rules of the FCC relating to telemarketing practices and the rights of telephone consumers.⁶⁶

Applicability to CBSX

The proposed rule change also amends Appendix A, Applicability of Rules of the Exchange, to the CBSX Rules to add Rule 9.24 to the list of CBOE Rules that apply to CBSX. The Introduction to the CBSX Rules provides that the trading of non-option securities on CBSX are subject to the Rules in Chapters 1 through 29 (including Rule 9.24) of the Exchange Rules to the same extent such Rules apply to the trading of the products to which those Rules apply, in some cases supplemented or replaced by the Rules in Chapters 50 through 54, except for Rules that have been replaced by rules in Chapters 50 through 54 and except where the context otherwise requires. Through this provision, the telemarketing restrictions in Rule 9.24 have always applied to CBSX Trading Permit Holders. The proposed rule change merely makes the applicability of Rule 9.24 to CBSX Trading Permit Holders explicit in Appendix A.

Announcement in Regulatory Circular

The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective

⁶⁴ See also FINRA Rule 3230, Supplementary Material .01, *Compliance with Other Requirements*.

⁶⁵ See 47 U.S.C. 227.

⁶⁶ See 47 CFR 64.1200.

date. The implementation date will be no later than 180 days following the effective date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶⁸ requirements 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change will prevent fraudulent and manipulative acts and protect investors and the public interest by continuing to prohibit Trading Permit Holders from engaging in deceptive and other abusive telemarketing acts or practices. Additionally, the proposed rule change removes impediments to and perfects the mechanism for a free and open market and a national market system, because it provides consistency among telemarketing rules of national securities exchanges and FINRA, therefore making it easier for investors to comply with these rules. The proposed rule change to include Rule 9.24 in the list of Exchange Rules that apply to CBSX also protects investors by eliminating any potential confusion among investors as to whether Rule 9.24 applies CBSX Trading Permit Holders.

⁶⁷ 15 U.S.C. 78f(b).

⁶⁸ 15 U.S.C. 78f(b)(5).

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 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

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

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

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate,

it has become effective pursuant to Section 19(b)(3)(A)⁶⁹ of the Act and Rule 19b-4(f)(6)⁷⁰ thereunder.

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

⁶⁹ 15 U.S.C. 78s(b)(3)(A).

⁷⁰ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2012-024 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-CBOE-2012-024. 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, D.C. 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-CBOE-2012-024 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷¹

Secretary

⁷¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

**Chicago Board Options Exchange, Incorporated
Rules**

* * * * *

Rule 9.24—[Telephone Solicitation]Telemarketing

RULE 9.24. (a) Telemarketing Restrictions. No Trading Permit Holder or associated person shall make an outbound telephone call to:

(1) any person's residence [for the purpose of soliciting the purchase of securities or related services ("telemarketing" or "cold-calling")]at any time other than between 8 a.m. and 9 p.m. local time at the called person's location[, without that person's prior consent.];

(2) any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the Trading Permit Holder; or

(3) any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(b) Caller Disclosures. No Trading Permit Holder or associated person shall make an outbound telephone call to any person [for the purpose of telemarketing] without disclosing truthfully, promptly and in a clear and conspicuous manner to the called person the following information:

(1) the identify of the caller and the TPH organization;

(2) the telephone number or address at which the caller may be contacted; and

(3) that the purpose of the call is to solicit the purchase of securities or related services.

The telephone number provided may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.

(c) Exceptions. The prohibition[s] of paragraph[s] (a)(1) [and (b)] does not apply to outbound telephone calls by a Trading Permit Holder or an associated person [(whether acting alone or at the direction of another associated person) who controls or has been assigned to a Trading Permit Holder's existing customer account for the purpose of maintaining and servicing that account, provided that the call is to]if:

(1) [an existing customer who, within the preceding twelve months, has made a securities transaction in or has deposited funds or securities into an account, that was under the control of or assigned to that associated person at the time of the transaction or deposit]the Trading Permit Holder has received that person's express prior consent;

(2) [an existing customer whose account has earned interest or dividend income during the preceding twelve months, and who previously has made a securities transaction in or has deposited funds or securities into an account, that was under the control of or assigned to the associated person at the time of the transaction or deposit]the Trading Permit Holder has an established business relationship with the person; or

(3) the person called is a broker or dealer.

[For the purposes of paragraph (c), the term "existing customer" means a customer for whom the broker or dealer, or a clearing broker or dealer on its behalf, carries an account. The scope of this Rule is limited to the telemarketing calls described in this Rule. The terms of this Rule do not impose, expressly or by implication, any additional requirements on Trading Permit Holders with respect to the relationship between a Trading Permit Holder and a customer or between an associated person and a customer.]

(d) Trading Permit Holder's Firm-Specific Do-Not-Call List. (1) Each [member]Trading Permit Holder shall make and maintain a centralized list of persons who have informed the Trading Permit Holder or any of its associated persons that they do not wish to receive outbound telephone calls[solicitations, and will refrain from cold-calling the persons on the list].

(2) Prior to engaging in telemarketing, a Trading Permit Holder must institute procedures to comply with paragraphs (a) and (b). Such procedures must meet the following minimum standards:

(A) Written policy. Trading Permit Holders must have a written policy for maintaining the do-not-call list described under paragraph (d)(1).

(B) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(C) Recording, disclosure of do-not-call requests. If a Trading Permit Holder receives a request from a person not to receive calls from that Trading Permit Holder, the Trading Permit Holder must record the request and place the person's name, if provided, and telephone number on the Trading Permit Holder's firm-specific do-not-call list at the time the request is made. Trading Permit Holders must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the Trading Permit Holder on whose behalf the outbound telephone call is made, the Trading Permit Holder on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

(D) Identification of telemarketers. A Trading Permit Holder or associated person making an outbound telephone call must make the caller disclosures set forth in paragraph (b).

(E) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the Trading Permit Holder making the call, and shall not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(F) Maintenance of do-not-call lists. A Trading Permit Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

(e) Do-Not-Call Safe Harbors.

(1) A Trading Permit Holder or associated person making outbound telephone calls will not be liable for violating paragraph (a)(3) if:

(A) the Trading Permit Holder has an established business relationship with the called person. A person's request to be placed on the Trading Permit Holder's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call registry provision for that Trading Permit Holder even if the person continues to do business with the Trading Permit Holder;

(B) the Trading Permit Holder has obtained the person's prior express written consent. Such consent must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act) between the person and the Trading Permit Holder, which states that the person agrees to be contacted by the Trading Permit Holder and includes the telephone number to which the calls may be placed; or

(C) the Trading Permit Holder or associated person making the call has a personal relationship with the called person.

(2) A Trading Permit Holder or associated person making outbound telephone calls will not be liable for violating paragraph (a)(3) if the Trading Permit Holder or associated person demonstrates that the violation is the result of an error and that as part of the Trading Permit Holder's routine business practice:

(A) the Trading Permit Holder has established and implemented written procedures to comply with paragraphs (a) and (b);

(B) the Trading Permit Holder has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to paragraph (e)(2)(A);

(C) the Trading Permit Holder has maintained and recorded a list of telephone numbers that it may not contact in compliance with paragraph (d); and

(D) the Trading Permit Holder uses a process to prevent outbound telephone calls to any telephone number on the Trading Permit Holder's firm-specific do-not-call list or the national do-not-call registry, employing a version of the national do-not-call registry obtained from the Federal Trade Commission no more than 31 days prior to the date any call is made, and maintains records documenting this process.

(f) *Wireless Communications.* The provisions set forth in this Rule are applicable to Trading Permit Holders and associated persons making outbound telephone calls to wireless telephone numbers.

(g) *Outsourcing Telemarketing.* If a Trading Permit Holder uses another appropriately registered or licensed entity or person to perform telemarketing services on its behalf, the Trading Permit Holder remains responsible for ensuring compliance with all provisions contained in this Rule.

([e]h) *Billing Information.* For any telemarketing transaction, no Trading Permit Holder or associated person shall cause billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer. Each Trading Permit Holder or associated person [engaged in telemarketing shall have a customer's express written authorization in order to obtain or submit for payment a check, draft, or other form of negotiable instrument drawn on a customer's checking, savings, share, or similar account. Written authorization may include the customer's signature on the negotiable instrument. The authorization must be retained for at least three years. This provision does not require maintenance of copies of negotiable instruments signed by customers.]must obtain the express informed consent of the person to be charged and to be charged using the identified account.

In any telemarketing transaction involving preacquired account information, the following requirements must be met to evidence express informed consent:

(1) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the Trading Permit Holder or associated person must:

(A) obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(B) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (h)(1)(A); and

(C) make and maintain an audio recording of the entire telemarketing transaction.

(2) In any other telemarketing transaction involving preacquired account information not described in paragraph (h)(1), the Trading Permit Holder or associated person must:

(A) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(B) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (h)(2)(A).

(i) *Caller Identification Information.*

(1) Any Trading Permit Holder that engages in telemarketing must transmit or cause to be transmitted the telephone number and, when made available by the Trading Permit Holder's telephone carrier, the name of the Trading Permit Holder to any caller identification service in use by a recipient of an outbound telephone call.

(2) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(3) Any Trading Permit Holder that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(j) *Unencrypted Consumer Account Numbers.* No Trading Permit Holder or associated person shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term "unencrypted" means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph will not apply to the disclosure or receipt of a customer's billing information to process pursuant to a telemarketing transaction.

(k) Abandoned Calls.

(1) No Trading Permit Holder or associated person shall “abandon” any outbound telephone call. An outbound telephone call is “abandoned” if a called person answers it and the call is not connected to a Trading Permit Holder or associated person within two seconds of the called person’s completed greeting.

(2) A Trading Permit Holder or associated person shall not be liable for violating paragraph (k)(1) if:

(A) the Trading Permit Holder or associated person employs technology that ensures abandonment of no more than three percent of all outbound telephone calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(B) the Trading Permit Holder or associated person, for each outbound telephone call placed, allows the telephone to ring for at least 15 seconds or 4 rings before disconnecting an unanswered call;

(C) whenever a Trading Permit Holder or associated person is not available to speak with the person answering the outbound telephone call within two seconds after the person’s completed greeting, the Trading Permit Holder or associated person promptly plays a prerecorded message that states the name and telephone number of the Trading Permit Holder or associated person on whose behalf the call was placed; and

(D) the Trading Permit Holder or associated person retains records establishing compliance with paragraph (k)(2).

(l) Prerecorded Messages.

(1) No Trading Permit Holder or associated person shall initiate any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in paragraph (k)(2)(C), unless:

(A) the Trading Permit Holder has obtained from the called person an express agreement, in writing, that:

(i) the Trading Permit Holder obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the Trading Permit Holder to place prerecorded calls to such person;

(ii) the Trading Permit Holder obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) evidences the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the Trading Permit Holder; and

(iv) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);

(B) the Trading Permit Holder allows the telephone to ring for a least 15 seconds or four rings before disconnecting an unanswered call and, within two seconds after the completed greeting of the called person, plays a prerecorded message that promptly provides the disclosures in paragraph (b), followed immediately by a disclosure of one or both of the following:

(i) in the case of a call that could be answered in person, that the called person can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a firm-specific do-not-call request pursuant to the Trading Permit Holder's procedures instituted under paragraph (d)(2)(C) at any time during the message. The mechanism must automatically add the number called to the Trading Permit Holder's firm-specific do-not-call list; once invoked, immediately disconnect the call; and be available for use at any time during the message; and

(ii) in the case of a call that could be answered by an answering machine or voicemail service, that the call recipient can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the Trading Permit Holder's procedures instituted under paragraph (d)(2)(C). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that automatically adds the number called to the Trading Permit Holder's firm-specific do-not-call list; immediately thereafter disconnects the call; and is accessible at any time throughout the duration of the telemarketing campaign; and

(C) the Trading Permit Holder complies with all other requirements of this Rule and other applicable federal and state laws.

(2) Any call that complies with all applicable requirements of paragraph (l) shall not be deemed to violate paragraph (k).

(m) Credit Card Laundering. Except as expressly permitted by the applicable credit card system, no Trading Permit Holder or associated person shall:

(1) present to or deposit into the credit card system for payment a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Trading Permit Holder;

(2) employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(n) Definitions. For purposes of this Rule:

(1) The term “account activity” includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the Trading Permit Holder.

(2) The term “acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(3) The term “billing information” means any data that enables any person to access a customer’s or donor’s account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. A “donor” means any person solicited to make a charitable contribution. A “charitable contribution” means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

(4) The term “broker-dealer of record” refers to the broker or dealer identified on a customer’s account application for accounts held directly at a mutual fund or variable insurance product issuer.

(5) The term “caller identification service” means a service that allows a telephone subscriber to have the telephone number and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber’s telephone.

(6) The term “cardholder” means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(7) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) The term “credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(9) The term “credit card sales draft” means any record or evidence of a credit card transaction.

(10) The term “credit card system” means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(11) The term “customer” means any person who is or may be required to pay for goods or services through telemarketing.

(12) The term “established business relationship” means a relationship between a Trading Permit Holder and a person if:

(A) the person has made a financial transaction or has a security position, a money balance, or account activity with the Trading Permit Holder or at a clearing firm that provides clearing services to such Trading Permit Holder within the 18 months immediately preceding the date of an outbound telephone call;

(B) the Trading Permit Holder is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or

(C) the person has contacted the Trading Permit Holder to inquire about a product or service offered by the Trading Permit Holder within the three months immediately preceding the date of an outbound telephone call.

A person’s established business relationship with a Trading Permit Holder does not extend to the Trading Permit Holder’s affiliated entities unless the person would reasonably expect them to be included. Similarly, a person’s established business relationship with a Trading Permit Holder’s affiliate does not extend to the Trading Permit Holder unless the person would reasonably expect the Trading Permit Holder to be included.

(13) The term “free-to-pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product

or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(14) The term “merchant” means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(15) The term “merchant agreement” means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(16) The term “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor.

(17) The term “person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(18) The term “personal relationship” means any family member, friend, or acquaintance of the person making an outbound telephone call.

(19) The term “preacquired account information” means any information that enables a Trading Permit Holder or associated person to cause a charge to be placed against a customer’s or donor’s account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(20) The term “telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(21) The term “telemarketing” means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer’s call.

... Interpretations and Policies:

.01 Trading Permit Holders and associated persons that engage in telemarketing also are subject to the requirements of relevant state and federal laws and rules, including but not limited to the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telephone Consumer Protection Act, and the rules of the Federal Communications Commission ("FCC") relating to telemarketing practices and the rights of telephone consumers.

.02 It is considered conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 4.1 for any Trading Permit Holder or associated person to: (1) call a person repeatedly or continuously in a manner likely to annoy or be offensive; or (2) use threats, intimidation, or profane or obscene language in calling any person.

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CBOE Stock Exchange (CBSX) Rules

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Appendix A—Applicability of Rules of the Exchange

Existing
Rule

Supplemented By

9.24 Telemarketing

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