

3. Approval of July 12, 2007 Minutes (Open Portion).

*Further matters to be considered:* (Closed to the Public 10:15 a.m.)

1. Report from Audit Committee.
2. Proposed FY 2009 Budget.
3. Finance Project—Sub-Saharan Africa.
4. Finance Project—Sub-Saharan Africa.
5. Finance Project—Sub-Saharan Africa.
6. Finance Project—Jordan, Lebanon, Egypt, West Bank and Certain OPIC-Eligible MENA Countries.
7. Finance Project—Mexico.
8. Finance Project—Pakistan.
9. Approval of July 12, 2007 Minutes (Closed Portion).
10. Pending Major Projects.
11. Reports.

*For Further Information Contact:* Information on the meeting may be obtained from Connie M. Downs at (202) 336-8438.

Dated: September 6, 2007.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56327; File No. SR-FINRA-2007-006]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Historic TRACE Data

August 28, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 9, 2007, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to: (1) Adopt a FINRA policy providing for public access to historic TRACE data (“Historic TRACE Data”); and (2) amend NASD Rule 7030 to: (i) Define Historic TRACE Data in proposed NASD Rule 7030(c)(3)(D); (ii) establish fees for Historic TRACE Data in proposed NASD Rule 7030(d); (iii) make conforming changes to the fee chart in NASD Rule 7030 and the definitions of “Non-Professional,” “Tax-Exempt Organization,” and “Real-Time” in, respectively, paragraphs (A), (B), and (C) of NASD Rule 7030(c)(3); and (iv) renumber current NASD Rule 7030(c)(4) as NASD Rule 7030(e).<sup>3</sup> The text of the proposed rule change is available at FINRA, on FINRA’s Web site at <http://www.finra.org>, and in the Commission’s Public Reference Room.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

FINRA is proposing to adopt a FINRA policy providing for public access to Historic TRACE Data and to amend NASD Rule 7030 to establish fees to offset the costs of developing and maintaining the new Historic TRACE Data database and providing such data to vendors, members, and other users. The proposed amendments to NASD Rule 7030 would: (i) Define Historic TRACE Data in proposed NASD Rule 7030(c)(3)(D); (ii) establish fees for Historic TRACE Data in proposed NASD Rule 7030(d); (iii) make conforming changes to the fee chart in NASD Rule 7030 and the definitions of “Non-Professional,” “Tax-Exempt Organization,” and “Real-Time” in,

respectively, paragraphs (A), (B), and (C) of NASD Rule 7030(c)(3); and (iv) renumber current NASD Rule 7030(c)(4) as NASD Rule 7030(e).

#### Historic TRACE Data

TRACE data is the first complete database of transaction-level pricing information ever compiled on the over-the-counter (“OTC”) U.S. corporate bond market and, as such, may be of widespread interest to corporate bond market participants, other financial intermediaries, market observers, academicians, and financial regulators. To date, FINRA has made available publicly aggregated statistics from both disseminated and non-disseminated TRACE transaction information, but has done so in a manner to protect transaction-level non-disseminated data from being ascertained. Since TRACE began, many people have expressed interest in reviewing historic TRACE transaction-level data. FINRA believes it is important to provide access to this data, particularly for research purposes.<sup>4</sup> The transaction data that will be provided include all transactions reported to TRACE since July 1, 2002, except Rule 144A transactions defined below.<sup>5</sup>

Historic TRACE Data will generally consist of basic transaction information such as the price, the date and time of execution, and the yield. It will include information on transactions not previously available,<sup>6</sup> and contain

<sup>4</sup> Before submitting the proposal, FINRA (then known as NASD) sought member input about whether FINRA should release standard TRACE transaction-level data to the public; if access should be limited in any way; if the data should be redacted as to certain types of information; and if FINRA should provide access to any portion of the transaction-level historic data that previously had only been reported, but not disseminated. See NASD Notice to Members 06-32 (June 2006). The sole commenter was The Bond Market Association (“TBMA”) (now known as the Securities Industry Financial Markets Association or “SIFMA”). See comment letter from Mary C.M. Kuan, Vice President and Assistant General Counsel, TBMA, to Barbara Z. Sweeney, Office of the Corporate Secretary, NASD, dated August 14, 2006. TBMA supported obtaining access to the transaction-level historic data, provided that member participant identifiers (“MPIDs”) were deleted from the data and the data was sufficiently aged to eliminate any possible use of such data to identify current trading, positioning, or strategies of other market participants.

<sup>5</sup> In TRACE, Rule 144A transactions refers to transactions in TRACE-eligible securities “issued pursuant to Section 4(2) of the Securities Act of 1933 (“Securities Act”) and purchased and sold pursuant to Rule 144A of the Securities Act of 1933.” NASD Rule 6210(a).

<sup>6</sup> When TRACE began, daily transaction-level dissemination of information occurred in phases to gauge the relationship between transparent transaction information and its impact on liquidity. As a result, all public transactions in TRACE-

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

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

<sup>3</sup> NASD Rule 7030 contains all TRACE fees; previously, such fees were set forth in NASD Rule 7010(k).

additional information per transaction than is disseminated in real-time TRACE market data, such as actual trade volumes, rather than capped volume amounts that are disseminated as part of the real-time TRACE data. Historic TRACE Data will be updated quarterly and provided using quarterly files or reports. As referenced above, in response to concerns,<sup>7</sup> currently FINRA intends to release only aged data in the Historic TRACE Data; transaction data will not be included in Historic TRACE Data quarterly files unless it has aged at least 18 months. Generally, FINRA will refer to the date the transaction was executed to determine whether the data should be released.

It should be noted that FINRA may change the elements of Historic TRACE Data to respond to user needs, improve the usefulness of the data, and foster the extensive use of such data in research on the OTC corporate bond markets.<sup>8</sup> Prior to its availability, the elements of Historic TRACE Data will be published by FINRA in a FINRA Notice or other equivalent publication. If any of the data elements change during a quarter, shortly before Historic TRACE Data becomes available, FINRA will publish a list providing more specific information about the types of information that will be included.

FINRA will provide access to Historic TRACE Data to persons such as members, other financial intermediaries, data vendors, and Tax-Exempt Organizations via existing data transmission facilities and vendors, and, on an ad hoc basis, to individuals upon request.

#### Fees

FINRA proposes to amend FINRA Rule 7030 to adopt Historic TRACE Data fees in new paragraph (d) to offset the costs of developing and maintaining the new Historic TRACE Data database and providing such data to vendors, members, and other users. The proposed rule change includes reduced fees for qualifying Tax-Exempt Organizations to increase access to Historic TRACE Data. In addition, FINRA proposes to amend other provisions of NASD Rule 7030 to define Historic TRACE Data, make conforming changes to definitions and

other provisions, and renumber subparagraph (c)(4) of NASD Rule 7030 as new subparagraph (e).

#### Definition

TRACE fees are set forth in NASD Rule 7030. FINRA proposes to define Historic TRACE Data for purposes of NASD Rule 7030 to mean historic transaction-level data with elements to be determined by FINRA in its discretion.

#### Professionals

Historic TRACE Data that are updated and provided on a quarterly basis to Professionals, including vendors, via existing data transmission facilities, will be subject to the following fees under proposed NASD Rule 7030(d)(1)(A): (1) An initial fee of \$2,000, which includes development and set-up costs, and 2002 Historic TRACE Data; (2) a fee of \$2,000 per calendar year of data, for 2003 Historic TRACE Data and each subsequent year of such data; and (3) a Bulk Re-Distribution Fee of \$1 per CUSIP per calendar year (or part thereof) of Historic TRACE Data per each recipient of re-distributed data, with a maximum fee of \$1,000 per calendar year (or part thereof) of data per each recipient of re-distributed data. The 2002 Historic TRACE Data received as part of the Data Set-Up Fee, and all the subsequent years of TRACE Historic Data that may be purchased under the Data Fee would be enabled for internal use and internal and/or external desktop display distribution. Re-distribution, however, would be permitted only if the subscriber paid the third fee, the Bulk Re-Distribution Fee.

#### Tax-Exempt Organizations

The reduced fee schedule for qualifying Tax-Exempt Organizations under proposed NASD Rule 7030(d)(1)(B) is: (1) A single, Data Set-Up Fee of \$1,000, which includes development and set-up costs, and 2002 Historic TRACE Data; and (2) a Data and Bulk Re-Distribution fee of \$500 per calendar year of data, for 2003 Historic TRACE Data and each subsequent year of such data. The 2002 Historic TRACE Data received as part of the Data Set-Up Fee, and all the subsequent years of TRACE Historic Data that may be purchased under the Data and Bulk Re-Distribution Fee would be enabled for internal use and internal and/or external desktop display distribution. In addition, the right to re-distribute the data in bulk is included in the Data and Bulk Re-Distribution Fee. However, to qualify for the Tax-Exempt Organization fees, an organization must be a Tax-Exempt Organization as defined in

NASD Rule 7030(c)(3)(B), and, if it re-distributes Historic TRACE Data, must do so at no charge and limit re-distribution to Non-Professionals, as defined in NASD Rule 7030(c)(3)(A), or other Tax-Exempt Organizations that agree to be subject to the same data re-distribution protocols.

#### Non-Professionals

Occasionally, FINRA may receive single, *ad hoc* requests from natural persons for Historic TRACE Data for purely personal, non-commercial use. FINRA will provide Historic TRACE Data to such natural persons who are Non-Professionals as defined in NASD Rule 7030(c)(3)(A) if the person represents he or she is a Non-Professional, which includes representations that he or she will receive and use the Historic TRACE Data solely for his or her personal, non-commercial use and is not engaged in, and has no intention to engage in, any re-distribution of all or any portion of such data. FINRA may impose a fee under NASD Rule 7030(e) to respond to such *ad hoc* requests. If FINRA charges a fee, it would do so to cover the administrative and operational costs of responding to such a request.

#### Other Changes to NASD Rule 7030

FINRA proposes to make additional, minor conforming changes to NASD Rule 7030. First, FINRA proposes to amend the definitions of "Non-Professional," "Tax-Exempt Organization," and "Real-Time" in, respectively, paragraphs (A), (B), and (C) of NASD Rule 7030(c)(3). Currently, the terms are defined solely for purposes of NASD Rule 7030(c). The proposed changes would define the terms to apply to NASD Rule 7030 generally.

Also, FINRA proposes additional minor, conforming changes to "Tax-Exempt Organization" in NASD Rule 7030(c)(3)(B). Currently, the definition includes the condition: "and obtains and uses Real-Time TRACE transaction data solely for redistribution to Non-Professionals, as defined for purposes of NASD Rule 7030(c), at no charge." FINRA proposes to retain the requirement, which is used to qualify a Tax-Exempt Organization for a reduced fee (and any similar condition or qualification regarding redistribution of data, such as the new requirement in proposed NASD Rule 7030(d)(1)(B)(i) and (ii)), but to delete the condition from the defined term, Tax-Exempt Organization, in NASD Rule 7030(c)(3)(B) and insert it (or any similar condition or qualification) in the specific fee provision to which the condition (or any similar condition or

eligible securities were not subject to dissemination until February 7, 2005.

<sup>7</sup> See note 4, *supra*.

<sup>8</sup> For example, data users, such as member firms or researchers, may determine that a particular data field reported but not provided in Historic TRACE Data is necessary or would be particularly helpful to analyze certain trends in the corporate bond market. Or, FINRA may amend NASD Rule 6230, the TRACE reporting requirements, and need or desire to make corresponding adjustments in Historic TRACE Data.

qualification) applies. The same condition—limiting the Tax-Exempt Organization to re-distributing data solely to Non-Professionals at no charge—is restated in the NASD Rule 7030 fee chart, in the Market Data Fee, “Vendor Real-Time Data Feed—\$400/month for Real-Time TRACE transaction data for qualifying Tax-Exempt Organizations.”

Finally, FINRA proposes to renumber current NASD Rule 7030(c)(4) as NASD Rule 7030(e) so that the provision will apply to NASD Rule 7030 generally.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Act,<sup>10</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that proposal to establish a policy to provide public access to Historic TRACE Data is consistent with Section 15A(b)(6) because such a policy will permit FINRA to provide freely Historic TRACE Data to anyone interested in analyzing and developing a greater understanding of the OTC U.S. corporate bond market, which is a market of tremendous breadth and size with impact on the U.S. and world economy, and the results of such understanding will protect investors and further the public interest, and with Section 15A(b)(5) because the proposed fees for developing and maintaining Historic TRACE Data are reasonable and equitably allocated among all users of Historic TRACE Data to facilitate widespread access to and many uses of such data.

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

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

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

The proposed rule change was published for comment in NASD *Notice to Members* 06-32 (June 2006). One comment was received in response to the *Notice*. As discussed previously, the commenter generally favored the proposal to provide access to transaction-level Historic TRACE Data, but suggested that data should not be provided until it aged at least 18 months. The commenter desired that the data be sufficiently “aged” to address industry concerns that persons might be able to identify current trading, positioning, or strategies of competitors or other market participants if more current transaction-level data were released. In addition, the commenter suggested that members’ MPIDs should not be included. FINRA has considered the comments and has incorporated such suggestions as described above.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

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

### *Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

Number SR-FINRA-2007-006 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2007-006. 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 inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FINRA-2007-006 and should be submitted on or before October 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).