

instruments such as ADRs and ETFs is not considered an OTC transaction subject to real-time trade reporting and dissemination under FINRA rules, it is not assessed regulatory transaction fees under Section 3 or the TAF.

FINRA notes, however, that purchases and sales of the securities that are to be transferred for the purpose of creating or redeeming instruments such as ADRs and ETFs and subsequent purchases and sales of the instruments in the secondary market are OTC transactions and must be reported to FINRA in accordance with the trade reporting rules.¹⁶ Additionally, purchases and sales of the underlying securities in order to track the performance of an instrument such as an ADR or ETF, without actually creating the instrument, are trade reportable. Such transactions are subject to regulatory transaction fees under Section 3 and the TAF.¹⁷

FINRA is proposing that the proposed rule change will be effective 90 days following the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁸ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify the interpretation and application of the current exception from the trade reporting requirements for transactions that are part of a distribution and will enhance market transparency by helping to ensure that transactions that are not part of an "unregistered secondary distribution," such as large block trades, are properly reported. Additionally, FINRA believes that the proposed rule change will

¹⁶ FINRA reminds members that with respect to ADR swap transactions (sometimes called "cross-book" transactions), because the ADRs and the ordinary shares are separate securities and are executed in separate transactions, both the ADR and the foreign ordinary share transactions must be reported separately to FINRA for public dissemination, as required by FINRA rules. See *Notice to Members* 07-25 (May 2007).

¹⁷ FINRA notes that secondary market transactions in instruments such as ADRs and ETFs must be reported in accordance with the rules and guidance that govern the reporting of OTC transactions. For example, members are required by rule to include the date and time of execution in all trade reports submitted to FINRA; the date and time of execution are the date and time when the parties have agreed to all essential terms of the transaction, including trade price and number of shares.

¹⁸ 15 U.S.C. 78o-3(b)(6).

clarify members' obligations with respect to the reporting of transfers of equity securities to create or redeem instruments such as ADRs and ETFs under FINRA trade reporting rules.

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

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

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-027 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2011-027. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2011-027 and should be submitted on or before July 18, 2011.

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

Cathy H. Ahn,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64717; File No. SR-FINRA-2011-029]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exemptions from the Order Audit Trail System Recording and Reporting Requirements

June 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 14, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 amend FINRA Rule 7470 to extend for four years FINRA’s ability to exempt certain members from the recording and reporting requirements of the Order Audit Trail System (“OATS”) Rules (“OATS Rules”) for manual orders received by the member.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, permitted FINRA to grant exemptive relief from the OATS reporting requirements for manual orders.⁴ In 2006, FINRA’s exemptive authority was expanded to include the authority to exempt manual orders received by members from the OATS recording

requirements.⁵ At a minimum, under FINRA Rule 7470, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) The member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in any security subject to the OATS Rules; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.⁶ An exemption granted by FINRA pursuant to Rule 7470 is for a maximum of two years; however, a member that continues to meet the criteria may request subsequent exemptions at or prior to the expiration of a grant of exemptive relief.⁷ Finally, Rule 7470 includes a sunset provision of five years from the original effective date of the rule, which was July 10, 2006. Consequently, Rule 7470 is set to expire as of July 10, 2011.

FINRA adopted this exemptive authority so that it would have the ability to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where temporary relief from the rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship.⁸ FINRA believes that these concerns continue to be present for many firms and, consequently, proposes to extend the period for FINRA to grant exemptive relief for an additional four years. In addition, as part of the its recent proposal to create a consolidated audit trail across self-regulatory organizations, the SEC is evaluating, among other things, the impact of consolidated audit trail requirements on

smaller member firms.⁹ FINRA believes it is appropriate to allow firms that have received an exemption from OATS to continue to rely on their current exemption (or request an additional two-year exemption) until the scope and application of the SEC’s consolidated audit trail is determined.

FINRA is not proposing any substantive changes to the criteria necessary for firms to qualify for an exemption because FINRA believes that the criteria continue to ensure that only those firms with limited revenue, no recent final disciplinary actions, and limited business models will be eligible for exemptions.¹⁰

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be July 9, 2011.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide a continued way to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption.

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

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

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect

³ See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. See FINRA Regulatory Notice 08-57 (October 2008).

⁶ See FINRA Rule 7470(a).

⁷ See FINRA Rule 7470(b).

⁸ See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

⁹ See Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

¹⁰ FINRA notes that although many of the members relying on current exemptions pursuant to Rule 7470 also qualify for the exception from the definition of “Reporting Member” in Rule 7410(o), some firms relying on exemptions route orders to multiple clearing firms or otherwise fail to meet the exception in Rule 7410(o).

¹¹ 15 U.S.C. 78o-3(b)(6).

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

FINRA has requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii).¹⁴ FINRA believes that the proposed rule change should become operative on July 9, 2011, to avoid any lapse in the application of the rule. The Commission agrees that it is consistent with the protection of investors and the public interest to allow FINRA's limited exemptive authority to grant relief to members that meet certain criteria from the OATS recording and reporting requirements to continue without a lapse. Therefore, the Commission hereby grants a waiver of the 30-day operative delay.¹⁵

At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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:

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). Among other things, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that FINRA has satisfied the pre-filing notice requirement.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-029 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2011-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2011-029 and should be submitted on or before July 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Cathy H. Ahn,

Deputy Secretary.

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¹⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64715; File No. SR-NASDAQ-2011-084]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rule 4763

June 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 15, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ Rule 4763 to modify the Exchange's procedures for early termination of the short sale price test restrictions of Rule 201 of Regulation SHO. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

On February 26, 2010, the Commission adopted amendments to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.