

<http://www.prc.gov>, unless a waiver is obtained. See 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, <http://www.prc.gov>, or by contacting the Commission's docket section at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at (202) 789-6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

**Intervention.** Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. See 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before

January 17, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, <http://www.prc.gov>, unless a waiver is obtained for hardcopy filing. See 39 CFR 3001.9(a) and 3001.10(a).

**Further procedures.** By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. See 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate

issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. See 39 CFR 3001.21.

*It is ordered:*

1. The procedural schedule listed below is hereby adopted.
2. Pursuant to 39 U.S.C. 505, Getachew Mekonnen is designated officer of the Commission (Public Representative) to represent the interests of the general public.
3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.  
By the Commission.

**Shoshana M. Grove,**  
*Secretary.*

## PROCEDURAL SCHEDULE

November 30, 2011	Filing of Appeal.
December 15, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 15, 2011	Deadline for the Postal Service to file any responsive pleading.
January 17, 2012	Deadline for notices to intervene (see 39 CFR 3001.111(b)).
January 4, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (see 39 CFR 3001.115(a) and (b)).
January 24, 2012	Deadline for answering brief in support of the Postal Service (see 39 CFR 3001.115(c)).
February 8, 2012	Deadline for reply briefs in response to answering briefs (see 39 CFR 3001.115(d)).
February 15, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
March 23, 2012	Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(d)(5)).

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**BILLING CODE 7710-FW-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66018; File No. SR-FINRA-2011-072]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a TRACE Pilot Program

December 21, 2011.

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 December 15, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("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,<sup>3</sup> 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 extend the pilot program in FINRA Rule 6730(e)(4) to October 26, 2012. The pilot program exempts from reporting to the Trade Reporting and Compliance Engine ("TRACE") transactions in TRACE-Eligible Securities that are executed on a facility of the NYSE in accordance with NYSE Rules 1400, 1401 and 86 and reported to NYSE in accordance with NYSE's applicable trade reporting rules and disseminated publicly by NYSE.

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

FINRA proposes to amend FINRA Rule 6730(e)(4) to extend the pilot program, which is scheduled to expire on January 27, 2012, to October 26, 2012.<sup>4</sup> The pilot program exempts from

<sup>1</sup> See Securities Exchange Act Release No. 54768 (November 16, 2006), 71 FR 67673 (November 22, 2006) (Order Approving Proposed Rule Change; File No. SR-NASD-2006-110) (pilot program in FINRA Rule 6730(e)(4), subject to the execution of a data sharing agreement addressing relevant transactions, became effective on January 9, 2007); Securities

Continued

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

reporting to TRACE transactions in TRACE-Eligible Securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400, 1401 and 86 and reported to NYSE in accordance with NYSE's applicable trade reporting rules and disseminated publicly by NYSE, provided that a data sharing agreement between FINRA and NYSE related to transactions covered by the Rule remains in effect.

FINRA is proposing to extend the pilot program until October 26, 2012 to continue to exempt transactions in TRACE-Eligible Securities on an NYSE facility (and as to which all the other conditions of the exemption are met) from the TRACE reporting requirements.<sup>5</sup> The extension will provide additional time to analyze the impact of the exemption. Without the extension, members would be subject to both FINRA's and NYSE's trade reporting requirements with respect to these securities.

The proposed rule change would not expand or otherwise change the pilot. FINRA notes that the success of the pilot program remains dependent on FINRA's ability to effectively continue to conduct surveillance on corporate debt trading in the over-the-counter market. In this regard, FINRA Rule 6730(e)(4) would continue to require that the exemption be predicated on the data agreement between FINRA and NYSE to share data related to the transactions covered by the Rule remaining in effect. However, FINRA supports a regulatory construct that, in the future, consolidates all last sale transaction information to provide better price transparency and a more efficient means to engage in market surveillance of TRACE-Eligible Securities transactions. The extension proposed herein will allow the pilot program to continue to operate without interruption while FINRA and the NYSE continue to assess the effect of the exemption and issues regarding the

Exchange Act Release No. 59216 (January 8, 2009), 74 FR 2147 (January 14, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2008-065) (pilot program extended to January 7, 2011); Securities Exchange Act Release No. 63673 (January 7, 2011), 76 FR 2739 (January 14, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-002) (pilot program extended to July 8, 2011); Securities Exchange Act Release No. 64665 (June 14, 2011), 76 FR 35933 (June 20, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-025) (pilot program extended to January 27, 2012).

<sup>5</sup> The exemption in FINRA Rule 6730(e)(4) is conditioned, among other things, upon a data sharing agreement between FINRA and NYSE remaining in effect. A data sharing agreement between FINRA and NYSE related to transactions covered by Rule 6730(e)(4) remains in effect.

consolidation of market data, market surveillance and price transparency.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be January 27, 2012.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</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. FINRA believes that the extension of the exemptive provision protects investors and the public because transactions will be reported, transparency will be maintained for these transactions, and NYSE's agreement to share data with FINRA allows FINRA, at this time, to conduct surveillance in the corporate debt securities market.

## 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 the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to 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 Exchange has complied with this requirement.

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.

## 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-072 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-2011-072. This file number should be included on the subject line if email 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 the 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-FINRA-2011-072 and should be submitted on or before January 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66021; File No. SR-FINRA-2011-063]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Order Audit Trail System Rules

December 21, 2011.

#### I. Introduction

On October 28, 2011, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change 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> to amend its Order Audit Trail System (“OATS”) rules to require certain information be reported to OATS and to specify the time OATS reports must be transmitted to FINRA. Notice of the proposal was published for comment in the **Federal Register** on November 10, 2011.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

FINRA is proposing to amend (i) FINRA Rules 5320 and 7440 to require that members report to OATS, information barriers put into place by the member in reliance on Supplementary Material .02 to FINRA Rule 5320; (ii) FINRA Rule 7440 to require that members report customer instructions regarding the display of a customer’s limit order in any OATS-eligible security; and (iii) FINRA Rule

7450 to codify the specific time OATS reports must be transmitted to FINRA.

#### (1) Customer Order Protection

First, FINRA is proposing to require members to identify on OATS reports information barriers that the member has in place to permit the member to qualify for the No-Knowledge Exception in Supplementary Material .02 to FINRA Rule 5320. Under FINRA Rule 5320, a member that accepts and holds an order in an equity security from its own customer, or a customer of another broker-dealer, without immediately executing the order is prohibited from trading that security on the same side of the market for its own proprietary account at a price that would satisfy the customer order unless the member immediately thereafter executes the customer order up to the size and at a price that is the same as, or better, than the price at which the member traded for its proprietary account.

The No-Knowledge Exception in Supplementary Material .02 to FINRA Rule 5320 provides, in part, that with respect to NMS stocks, if a firm implements and uses an effective system of internal controls—such as appropriate information barriers—that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, those other trading units may trade in a proprietary capacity at prices that would satisfy the customer orders held by the separate, walled-off trading unit. Supplementary Material .02 to FINRA Rule 5320 also contains an additional No-Knowledge Exception for OTC equity securities. The proposed rule change would amend FINRA Rules 5320 and 7440 to require firms relying on the No-Knowledge Exception to identify the information barriers to FINRA in their OATS reports.

#### (2) Limit Order Display

FINRA Rule 7440(b)(14) requires OATS Reporting Members to identify “any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to Rule 604(b) of SEC Regulation NMS.” These customer requests are identified in the OATS system through a “Customer Instruction Flag” that indicates whether the customer has requested that the firm handle its limit order in a specified way. Because of the reference in FINRA Rule 7440(b)(14) to SEC Regulation NMS, members are only required to populate the Customer Instruction Flag when the order involves a security subject to SEC Regulation NMS.

On June 22, 2010, the Commission approved FINRA Rule 6460,<sup>4</sup> which became effective on May 9, 2011.<sup>5</sup> FINRA Rule 6460 generally requires OTC market makers to display a customer limit order in an OTC equity security held by the OTC market maker that is at a price that would improve the bid or offer of the OTC market maker in the security or that would represent more than a de minimis change in relation to the size associated with the OTC market maker’s bid or offer. FINRA Rule 6460(b) includes exceptions to the display requirement for OTC equity securities that mirror the exceptions in Rule 604(b) of SEC Regulation NMS.<sup>6</sup>

FINRA is proposing to require that OATS Reporting Members indicate on all OATS reports for customer limit orders, including for OTC equity securities, whether the customer has instructed the member not to display the limit order or to display a limit order of block size. As a result, OATS Reporting Members would be required to populate the Customer Instruction Flag for all limit orders, not just those involving NMS stocks.

#### (3) Order Data Transmission Requirements

FINRA Rule 7450 requires members to report order information recorded pursuant to FINRA Rule 7440. Paragraph (a) of the rule imposes the general requirement that members report applicable order information to FINRA that the member is required to record by FINRA Rule 7440. Paragraph (b) of the rule addresses the form the order data must take and the timing of order reports. Paragraph (c) concerns the use of reporting agent agreements that a member may use to allow a third party to report information to OATS on behalf of the member. The proposed rule change amends paragraph (b) of FINRA Rule 7450 to codify the specific time OATS reports must be transmitted to FINRA, which is the same time that currently is required under the *OATS Reporting Technical Specifications*.

Under the proposed rule, all order events that occur on a particular OATS Business Day must be transmitted to FINRA by 8 a.m. Eastern Time on the calendar day following the end of the OATS Business Day. For purposes of the rule, an “OATS Business Day” begins at 4:00:01 p.m. Eastern Time on one market day and ends at 4:00 p.m.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 65692 (Nov. 4, 2011), 76 FR 70195.

<sup>4</sup> See Securities Exchange Act Release No. 62359 (June 22, 2010), 75 FR 37488 (June 29, 2010).

<sup>5</sup> See Regulatory Notice 10-42 (September 2010).

<sup>6</sup> See FINRA Rule 6460(b)(2), (b)(4).