

should refer to File Number SR–NYSEMKT–2012–10, and should be submitted on or before July 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67257; File No. SR–FINRA–2012–033]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Non-Substantive Technical Changes to the Supplemental Statement of Income Required To Be Filed Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

June 26, 2012.

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 June 26, 2012, 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 a rule change to make non-substantive technical changes to the Supplemental Statement of Income (“SSOI”) required to be filed pursuant to FINRA Rule 4524 (Supplemental FOCUS Information).

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 February 9, 2012, the Commission adopted FINRA Rule 4524 (Supplemental FOCUS Information), which requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS Report. FINRA has previously adopted one such schedule, the SSOI, as a supplement to the Statement of Income (Loss) page of the FOCUS Report.<sup>4</sup> FINRA is proposing to make non-substantive technical changes to the SSOI in order to provide more clarity, reduce unnecessary duplication, and reflect a renumbering change to the Securities Act of 1933 (“Securities Act”) as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>5</sup>

The proposed rule change would amend the title of line 13935 (Equities, ETFs and Closed End Funds) to clarify that the commissions reported are for listed equities, ETFs and closed end funds executed on an exchange. The proposed rule change would also amend the instructions: (1) To clarify that all revenue and expense items must be reported in accordance with U.S. generally accepted accounting principles; (2) to clarify that line 13940 (Total Commissions) will equal line 3940 (Total securities commissions) of Part II and IIA of the FOCUS Report if the firm did not have commissions from

foreign exchange transactions during the reporting period; and (3) to clarify that line 14075 (Total Interest and Dividend Expenses) will equal line 4075 (Interest expense) of the FOCUS Report only if the firm did not have dividend expense. Further, the proposed rule would add instructions for line 13939 (All Other Securities Commissions) to clarify that commissions for unlisted equities should be included.

FINRA is also proposing to delete line 11299 (Total Net Income) because it is duplicative of line 14230 (Net income (loss) after Federal income taxes and extraordinary item). The proposed rule change would also delete the word “Forms” in front of Part II, Part IIA or Part II CSE in the first paragraph of the instructions.

In an effort to provide greater clarity, FINRA is also proposing to delete: (1) The instructions that state line 13950 (Total Net Gains or Losses on Principal Trades) must equal line 3950 (Total gains or (losses)) of Part II CSE and Part II or line 3950 (Total gain (loss)) of Part IIA of the FOCUS Report as depending on the facts and circumstances, the lines may not be equal; (2) the instructions for line 13937 (Exchange Listed Equity Securities Executed OTC) as they are unwarranted because the title of line 13937 provides sufficient clarity for what needs to be reported; and (3) the instructions for line 14100 (Other Expenses) that reference the inclusion of 12b–1 service and distribution fees and other expenses not otherwise provided for in the SSOI because Line 11211 (12b–1 Fees) captures 12b–1 fees paid to other broker-dealers or institutions.

In addition, the Dodd-Frank Act renumbered Securities Act Section 4(6) to Securities Act Section 4(5).<sup>6</sup> Accordingly, FINRA is renumbering Securities Act Section 4(6) to Securities Act Section 4(5) in Item D (Federal Exemptions and Exclusions Claimed) of the Operational Page. Moreover, FINRA is proposing to clarify Item D by adding an “Other” line because Item D is designed to capture all federal exemptions and exclusions claimed for an unregistered offering.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. This would allow FINRA to provide more time to firms to prepare before the October 26, 2012, due date of the initial SSOI.

<sup>4</sup> See Securities Exchange Act Release No. 66364 (February 9, 2012), 77 FR 8938 (February 15, 2012) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2; File No. SR–FINRA–2011–064).

<sup>5</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010).

<sup>6</sup> See Dodd-Frank Act Section 944.

<sup>29</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> 17 CFR 240.19b–4(f)(6).

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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.<sup>7</sup> FINRA believes that the proposed rule change will provide greater clarity to members and the public regarding its rules, as well as ensure a more efficient reporting process for the SSOI.

### 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In accordance with Rule 19b-4(f)(6),<sup>10</sup> FINRA submitted 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, or such shorter time as the Commission may designate, as specified in Rule 19b-4(f)(6)(iii) under the Act.<sup>11</sup> The first reporting period covered by the initial SSOI commences on July 1, 2012. FINRA has stated that it wishes the Commission to waive the operative

delay so that FINRA may give as much time as possible for member firms to prepare prior to the October 26, 2012 due date of the initial SSOI. Accordingly, FINRA would like the SSOI to be in final form and fully operative as of the start of the first reporting period on July 1.

Given FINRA's desire to provide member firms with a final and completed SSOI at the outset of the initial SSOI reporting period, the Commission believes that FINRA's request is reasonable and believes that waiver of the operative delay is consistent with the protection of investors and the public interest, and therefore designates the proposal operative upon filing.<sup>12</sup>

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:

### 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-2012-033 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-2012-033. 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 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-2012-033 and should be submitted on or before July 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67258; File No. SR-NASDAQ-2012-059]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Establish "Benchmark Orders" Under NASDAQ Rule 4751(f)

June 26, 2012.

On May 1, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish various "Benchmark Orders" under NASDAQ Rule 4751(f). The

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</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.