

need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with trading STOs and Related non-STOs at more granular strike price intervals. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-2012-78) be, and it hereby is, approved.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67751; File No. SR-FINRA-2012-024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to FINRA Rule 4210 (Margin Requirements)

August 29, 2012.

I. Introduction

On May 23, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rule 4210 (Margin Requirements). The proposed rule was published for comment in the *Federal Register* on June 6, 2012.³ The Commission received one comment on

the proposed rule change.⁴ On July 13, 2012, FINRA extended the time period for Commission action until September 4, 2012.⁵ FINRA filed Amendment No. 1 to the proposed rule change and responded to the comment letter on August 13, 2012.⁶ The Commission is publishing this notice and order to solicit comment on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

FINRA has proposed to amend FINRA Rule 4210 (Margin Requirements) to: (1) Revise the definitions and margin treatment of option spread strategies; (2) clarify the maintenance margin requirement for non-margin eligible equity securities; (3) clarify the maintenance margin requirements for non-equity securities; (4) eliminate the current exemption from the free-riding prohibition for designated accounts; (5) conform the definition of "exempt account"; and (6) eliminate the requirement to stress test portfolio margin accounts in the aggregate. In addition, the proposed rule change would amend FINRA Rule 4210 to make non-substantive technical and stylistic changes.

Option Spread Strategies

Basic option spreads can be paired in such ways that they offset each other in terms of risk. The total risk of the combined spreads is less than the sum of the risk of both spread positions if viewed as stand-alone strategies. FINRA Rule 4210(f)(2) currently recognizes several specific option spread strategies.⁷ These strategies consist of either a "long" and a "short" option contract or two "long" and two "short" option contracts. The "long" and "short" option contracts have the same underlying security or instrument and the "long" option contracts must expire

on or after the expiration of the "short" option contracts.

While the strategies recognized under FINRA Rule 4210 are the most common types of option spread strategies used by investors, there are other combinations of calls and/or puts that are similar in terms of their risk profile. Accordingly, FINRA proposed a broader definition of a spread in FINRA Rule 4210(f)(2)(A)(xxxii) to mean a "long" and "short" position in different call option series, different put option series, or a combination of call and put option series, that collectively have a limited risk/reward profile, and meet the following conditions: (1) All options must have the same underlying security or instrument; (2) all "long" and "short" option contracts must be either all American-style or all European-style;⁸ (3) all "long" and "short" option contracts must be either all listed or all over-the-counter ("OTC");⁹ (4) the aggregate underlying contract value of "long" versus "short" contracts within option type(s) must be equal; and (5) the "short" option(s) must expire on or before the expiration date of the "long" option(s).

The proposed revised margin requirements set forth in FINRA Rule 4210(f)(2)(H) would require that the "long" option contracts within such spreads must be paid for in full. The margin required for the "short" option contracts within such spreads would be the lesser of: (1) The margin required pursuant to FINRA Rule 4210(f)(2)(E); or (2) the maximum potential loss. The maximum potential loss would be determined by computing the intrinsic value of the options at price points for the underlying security or instrument that are set to correspond to every exercise price present in the spread. The intrinsic values are netted at each price point, and the maximum potential loss is the greatest loss, if any. The proceeds of the "short" options may be applied towards the cost of the "long" options and/or any margin requirement. FINRA Rule 4210(f)(2)(H)(iv) would also make clear that OTC option contracts that comprise a spread must be issued and

⁴ Letter to Elizabeth M. Murphy, Secretary, Commission from David Aman, Esq., Cleary Gottlieb Steen & Hamilton LLP, dated June 27, 2012 ("Aman Letter").

⁵ See <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p135885.pdf>.

⁶ Amendment No. 1 and response to Aman Letter, dated Aug. 13, 2012 ("Amendment No. 1"). The text of Amendment No. 1 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. See section III. below (describing Amendment No. 1).

⁷ See FINRA Rule 4210(f)(2)(A) that currently recognizes the following spread strategies: box spread, butterfly spread, calendar (or time) spread, "long" calendar butterfly spread, "long" calendar condor spread, "long" condor spread, "short" calendar iron butterfly spread, "short" calendar iron condor spread, "short" iron butterfly spread and "short" iron condor spread.

⁸ American-style options can be exercised or assigned at any time during the life of the contract. European-style options can only be exercised or assigned at the time of expiration.

⁹ See FINRA Rule 4210(f)(2)(A)(xxvi) (renumbered as 4210(f)(2)(A)(xxvii)) that defines a listed option as an option contract that is traded on a national securities exchange and is issued and guaranteed by a registered clearing agency. See also FINRA Rule 4210(f)(2)(A)(xxxii) (renumbered as 4210(f)(2)(A)(xxviii)) that defines an OTC option as an over-the-counter option contract that is not traded on a national securities exchange and is issued and guaranteed by the carrying broker-dealer.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 67088 (May 31, 2012), 77 FR 33527 ("Notice").

guaranteed by the same carrying broker-dealer and the carrying broker-dealer must also be a FINRA member. If the OTC option contracts are not issued and guaranteed by the same carrying broker-dealer, or if the carrying broker-dealer is not a FINRA member, then the "short" option contracts must be margined separately pursuant to FINRA Rule 4210(f)(2)(E)(iii) or (E)(iv). In addition, FINRA proposes to amend FINRA Rule 4210(f)(2)(N) to similarly conform the margin requirements for spreads that are permitted in a cash account.

FINRA proposed to eliminate the definitions for the option spread strategies currently recognized within the rule, along with the specific margin requirements associated with each spread, with the exception of a "long" box spread consisting of European-style options.¹⁰ FINRA Rule 4210(f)(2)(H)(v)g.¹¹ currently allows a margin requirement equal to 50% of the aggregate difference in the exercise prices. This is the only spread strategy that allows loan value, and FINRA believes that retaining this provision is appropriate.

Non-Margin Eligible Equity Securities

FINRA proposed to clarify the maintenance margin requirement for non-margin eligible equity securities. FINRA Rule 4210(c)(1) prescribes a maintenance margin requirement of 25% of the current market value of all securities (except for security futures contracts) held "long" in an account. FINRA believes that non-margin eligible equity securities should be subject to more stringent margin requirements in light of the nature of such securities. Accordingly, FINRA proposed to amend FINRA Rule 4210(c)(1) regarding securities held "long" to clarify that the maintenance margin requirement of 25% of the current market value would apply only to margin securities as defined in Regulation T.¹² Consequently, non-margin eligible equity securities would be excluded from such margin treatment and the

maintenance margin requirement for non-margin eligible equity securities would be 100% of the current market value.¹³ This maintenance margin requirement of 100% for non-margin eligible equity securities is consistent with the requirement outlined in *Regulatory Notice* 11–16. However, FINRA noted that two provisions of *Regulatory Notice* 11–16 would be superseded. Firms may no longer extend maintenance loan value on non-margin eligible equity securities either to satisfy maintenance margin deficiencies or when used to collateralize non-purpose loans, except as otherwise provided by FINRA in writing. To this end, FINRA would allow a firm to extend credit on a non-margin eligible security¹⁴ only to the extent: (1) The security is collateralizing a non-purpose loan debit; and (2) such security can be liquidated in a period not exceeding 20 business days, based on a rolling 20 business day median trading volume. The maintenance loan value for the non-margin eligible security would be calculated based on the applicable maintenance margin requirements for a margin eligible security. If the security fails to meet the trading volume requirement, then the security would no longer be entitled to maintenance loan value, and a 100% maintenance margin requirement would be applied together with a deduction to net capital pursuant to Rule 15c3–1 and, if applicable, FINRA Rule 4110(a). Notwithstanding the foregoing, FINRA would allow that in the case of offshore mutual funds, a firm may extend maintenance loan value, based on a 25% maintenance margin requirement, to collateralize a non-purpose loan, provided that the fund has an affiliation with a U.S.-based fund registered with the SEC under the Investment Company Act of 1940, and the fund shares can be liquidated or redeemed daily.

Similar to the treatment above, FINRA also proposed to amend Rule 4210(f)(8)(B)(iii) to clarify that the special maintenance margin requirement for day traders, based on the cost of all day trades made during the day, would be 25% for margin eligible equity securities, and 100% for non-margin eligible equity securities.¹⁵

¹³ See *Regulatory Notice* 11–16 (April 2011) and *Regulatory Notice* 11–30 (June 2011) (*Regulatory Notice* 11–30 delayed the effective date of *Regulatory Notice* 11–16 until October 3, 2011).

¹⁴ The exception to permit firms to extend maintenance loan value would apply to both equity and non-equity non-margin eligible securities.

¹⁵ The special maintenance margin requirement for non-margin eligible equity securities for day traders is consistent with the margin requirements outlined in *Regulatory Notice* 11–16.

In addition, FINRA proposed to adopt new paragraph (g)(7)(E) of FINRA Rule 4210 regarding the margin requirements for non-margin eligible equity securities held in a portfolio margin account. Consistent with the margin treatment above, the provision would clarify that non-margin eligible equity securities held "long" in a portfolio margin account would have a maintenance margin requirement equal to 100% of the current market value at all times.¹⁶ Paragraph (g)(7)(E) would also provide that non-margin eligible equity securities held "short" in a portfolio margin account would have a maintenance margin requirement equal to 50% of the current market value at all times.¹⁷ FINRA believes that setting this specific requirement is necessary to help ensure that customers do not attempt to circumvent the initial margin requirements of Regulation T and place all short sales in a portfolio margin account to obtain lower margin requirements.¹⁸

FINRA also proposed to amend paragraph (g)(7)(D) of FINRA Rule 4210 to clarify that although non-margin eligible equity securities are not eligible for portfolio margin treatment, they may be carried in a portfolio margin account, provided that the member uses strategy-based margin requirements unless such securities are subject to other provisions of paragraph (g). For example, non-margin eligible equity securities may be carried in a portfolio margin account, but the amendment would clarify that they would be subject to the margin treatment set forth in FINRA Rule 4210(g)(7)(E), rather than FINRA Rule 4210(c).

*Non-Equity Securities*¹⁹

In the Notice, FINRA proposed to further amend FINRA Rule 4210 to clarify the appropriate maintenance margin requirement for non-equity securities in a margin account. Paragraph (c)(4) stipulates a maintenance margin requirement for each bond held "short" in a margin account. Paragraph (e)(2)(C) stipulates the maintenance margin requirements on any positions in specified non-equity

¹⁶ The maintenance margin requirement for non-margin eligible equity securities held "long" in a portfolio margin account is consistent with the margin requirements outlined in *Regulatory Notice* 11–16.

¹⁷ The maintenance margin requirement for "short" non-margin eligible equity securities held in a portfolio margin account would supersede the maintenance margin requirement for such securities specified in *Regulatory Notice* 11–16.

¹⁸ See Rule 4210(g)(7).

¹⁹ See section III. below (describing Amendment No. 1).

¹⁰ See FINRA Rule 4210(f)(2)(A)(vi). A box spread means an aggregation of positions in a "long" call and "short" put with the same exercise price ("buy side") coupled with a "long" put and "short" call with the same exercise price ("sell side") structured as: (1) A "long" box spread in which the sell side exercise price exceeds the buy side exercise price; or (2) a "short" box spread in which the buy side exercise price exceeds the sell side exercise price, all of which have the same contract size, underlying component or index and time of expiration, and are based on the same aggregate current underlying value.

¹¹ FINRA Rule 4210(f)(2)(H)(v)g. would be renumbered as FINRA Rule 4210(f)(2)(H)(v).

¹² See Federal Reserve Regulation T ("Regulation T") section 200.2 for the definition of margin security.

securities²⁰ that are inconsistent with the requirements in paragraph (c)(4). FINRA received several inquiries as to the appropriate maintenance margin requirement for any “short” non-equity security. Accordingly, in the Notice, FINRA proposed to amend FINRA Rule 4210 to clarify that the margin requirements in paragraph (c)(4) would apply to non-margin eligible, non-equity securities held “short”²¹ while the margin requirements in paragraph (e)(2)(C) would apply to the specified margin-eligible non-equity securities held “short” or “long.”²² FINRA also proposed to add a reference to “short” or “long” to each of paragraphs (e)(2)(B), (F) and (G) to further clarify that such provisions apply to securities held short or long.

“Free-Riding”

“Free-riding” is the purchase of a security and the selling of the same security in the cash account, using the proceeds of the sale to satisfy the purchase. Such activity is prohibited under section 220.8(a)(1)(ii) of Regulation T. FINRA Rule 4210(f)(9) addresses free-riding in the cash account and currently exempts broker-dealers and “designated accounts.”²³ While the term “designated account” generally includes banks, savings associations, insurance companies, investment companies, states or political subdivisions, and ERISA pension or profit sharing plans, FINRA believes that it is appropriate to treat such accounts as any other customer regarding this activity. Accordingly, FINRA proposed to eliminate this exemption for designated accounts consistent with Regulation T.

“Exempt Account”

Certain non-equity securities such as exempted securities, mortgage related securities, highly rated foreign sovereign debt securities, and investment grade debt securities may be subject to reduced maintenance margin requirements (or require no margin be deposited) for an “exempt account,” as

²⁰ Paragraph (e)(2)(C) provides the maintenance margin requirements for (1) investment grade debt securities and (2) all other listed non-equity securities and all other margin eligible non-equity securities as defined in FINRA Rule 4210(a)(16).

²¹ Non-margin eligible non-equity securities held “long” would be excluded from such margin treatment, and the maintenance margin requirement for such securities would be 100% of the current market value.

²² See also FINRA Rule 4210(e)(2)(A), which establishes the maintenance margin requirements for long or short positions on obligations issued or guaranteed by the United States or obligations that are highly rated foreign sovereign debt securities.

²³ See FINRA Rule 4210(a)(4) for the definition of “designated account.”

defined in FINRA Rule 4210(a)(13).²⁴ FINRA Rule 4210(f)(2)(E)(iv) regarding reduced maintenance margin requirements for OTC put and call options on certain U.S. Government and U.S. Government Agency debt securities retained an earlier definition of “exempt account” that was not updated in 2003 when the New York Stock Exchange and National Association of Securities Dealers amended the definition of “exempt account” by raising the dollar threshold in paragraph (a)(13) for all other purposes in their respective margin rules.²⁵ The definition of “exempt account” currently referenced in paragraph (f)(2)(E)(iv) was retained as a result of comment letters received by the SEC in 2003, expressing concern that customers who no longer qualified as “exempt accounts” in the amended paragraph (a)(13) definition would be subject to higher maintenance margin requirements for the securities addressed in paragraph (f)(2)(E)(iv). Therefore, such definition was maintained only for the provision in paragraph (f)(2)(E)(iv) to allow existing customers to continue to avail themselves of the reduced margin requirements. However, the SEC noted that exempt accounts that met the requirements for exempt account status would be “grandfathered” on the existing credit transactions but that the new requirements (the current paragraph (a)(13) “exempt account” requirements) would apply to any new credit transactions or roll-overs of existing transactions.²⁶ In light of the application of the 2003 exempt account definition to new and roll-over transactions and the significant passage of time, FINRA believes that maintaining these separate definitions is no longer necessary and proposes to delete the definition of “exempt account” contained in paragraph (f)(2)(E)(iv) and require an exempt account to satisfy the definition of “exempt account” in paragraph (a)(13) to qualify for the reduced margin on such options.

Portfolio Margin

FINRA proposed to eliminate the monitoring requirement contained in

²⁴ See FINRA Rule 4210(e)(2)(F), (G) and (H).

²⁵ See Securities Exchange Act Release No. 48407 (August 25, 2003), 68 FR 52259 (September 2, 2003) (Order Approving File No. SR-NASD-00-08) (“NASD Order”); Securities Exchange Act Release No. 48365 (August 19, 2003), 68 FR 51314 (August 26, 2003) (Order Approving File No. SR-NYSE-98-14); and Securities Exchange Act Release No. 48133 (July 7, 2003), 68 FR 41672 (July 14, 2003) (Notice of Filing of File No. SR-NYSE-98-14) (“NYSE Notice of Filing”).

²⁶ See note 20, page 52261 of the NASD Order and page 41676 of NYSE Notice of Filing.

FINRA Rule 4210(g)(1)(D) that stress testing of accounts must be done in the aggregate for portfolio margin accounts. The rule would continue to require firms to stress test portfolio margin accounts on an individual account basis. FINRA has been reviewing the portfolio margin program and believes that the stress testing on an individual account basis is sufficient from a risk perspective.

Technical Changes

Finally, the proposed rule change would amend FINRA Rule 4210 to make non-substantive technical and stylistic changes to encourage consistency throughout the rule and enhance readability.

FINRA stated that it would 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 would be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Summary of Comment Received, FINRA’s Response and Description of Amendment No. 1

As stated above, the Commission received one comment letter in response to the proposed rule change generally supporting the proposal, particularly the modernization of the treatment of option spread strategies.²⁷ The commenter stated, however, that the consequences of the proposed changes to the margin requirements for “non-margin eligible, non-equity securities” have not been fully considered and recommended that FINRA investigate the extent to which FINRA members presently extend credit against these securities and withdraw or modify this element of the proposed amendments. The commenter stated that the securities that would become unmarginable would include any non-investment grade debt securities that are not registered under Section 5 of the Securities Act of 1933. The commenter explained that since the high-yield debt market is to a great extent an institutional market, where it is usual for debt to trade under Rule 144A, the proposal would cut off credit to a substantial part of the high yield debt market, and could have significant adverse effects on FINRA members, investors and issuers.

The commenter also recommended technical changes to the proposal, including: (1) That the 100% maintenance margin requirement on non-margin eligible equity securities be

²⁷ Aman Letter, *supra* note 4.

set forth in a new subsection to FINRA Rule 4210; (2) that the margin requirements for certain non-equity securities be moved from FINRA Rule 4210(e) to FINRA Rule 4210(c); and (3) that FINRA define “non-margin eligible, non-equity security.”

In response to the comment regarding the 100% maintenance margin requirement for non-margin eligible, non-equity securities, FINRA proposes to further analyze the impact of this proposed change on member firms and the market. Accordingly, Amendment No. 1 would eliminate the requirements applicable to non-margin eligible, non-equity securities from the proposed rule. To effectuate this change, FINRA proposes to delete the exclusion of non-equity securities from FINRA Rule 4210(c)(1) as originally proposed in the Notice. In addition, FINRA proposes to delete in FINRA Rule 4210(c)(4) the reference to non-margin eligible, non-equity securities as originally proposed in the Notice. The margin requirement for non-equities held “long” in an account would be margined as provided in FINRA Rule 4210(c)(1) unless they otherwise meet an exception for the type of non-equity security provided in FINRA Rule 4210(e).

In response to the technical comments in the Aman Letter, FINRA agrees that amending the proposed rule further to clarify the 100% maintenance margin requirement for non-margin eligible equity securities held “long” would be beneficial. In Amendment No. 1, FINRA proposes to add a new subparagraph (6) to FINRA Rule 4210(c) to effectuate this clarification. Also in response to technical comments, with regard to the margin requirements for non-equity securities and the exceptions provided in FINRA Rule 4210(e), FINRA proposes in Amendment No. 1 to modify Rule 4210(c) by prefacing that the margin provisions are as stated except as set forth in Rule 4210(e) as well as Rule 4210(f) (the margin requirements for options and warrants) and Rule 4210(g) (portfolio margin requirements).

In response to the comment that FINRA define “non-margin eligible, non-equity securities,” Amendment No. 1 would delete that term in FINRA Rule 4210(c)(4) in light of the elimination of the proposal to amend the margin requirements for such securities. Finally, and unrelated to any specific comment, Amendment No. 1 would make certain clarifying changes to Rule 4210(c) to eliminate the reference to “plus” as the maintenance margin provisions are not additive.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, the comment received, and Amendment No. 1, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.²⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act, 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.²⁹ More specifically, the Commission believes that the proposed rule change modernizes the treatment of option spread strategies while maintaining margin requirements that are commensurate with the risk of those strategies. Further, because it is consistent with changes being approved to Chicago Board Options Exchange, Incorporated, Rule 12.3,³⁰ the proposed rule change will provide for a more uniform application of margin requirements for similar products. The Commission believes that FINRA has adequately responded to the concerns raised in the Aman Letter by deleting the 100% maintenance margin requirement for non-margin eligible, non-equity securities until such time as FINRA has had additional opportunity to more fully evaluate the effects of such a change. In addition, the Commission believes that FINRA has adequately responded to the technical comments by making the changes described in Amendment No. 1.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³¹ for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. In response to certain concerns raised in the Aman Letter, FINRA proposed in Amendment No. 1 to eliminate the increase in the margin requirement applicable to long positions

²⁸ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78o-3(b)(6).

³⁰ See Securities Exchange Act Release No. 67752 (Aug. 29, 2012) (SR-CBOE-2012-043) (order approving changes to CBOE Rule 12.3 relating to spread margin rules).

³¹ 15 U.S.C. 78s(b)(2).

in non-margin eligible, non-equity securities to 100%. In Amendment No. 1, FINRA also proposed other technical changes responsive to the comments made in the Aman Letter. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 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. Please include File Number SR-FINRA-2012-024 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-2012-024. 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-2012-024 and should be submitted on or before September 26, 2012.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change (SR-FINRA-2012-024), as modified by Amendment No. 1, be and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67750; File No. SR-NASDAQ-2012-098]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the WisdomTree Global Corporate Bond Fund of the WisdomTree Trust

August 29, 2012.

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 August 15, 2012, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 Nasdaq. 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

Nasdaq proposes to list and trade the shares of the WisdomTree Global Corporate Bond Fund ("Fund") of the WisdomTree Trust ("Trust") under Nasdaq Rule 5735 ("Managed Fund Shares"). The shares of the Fund are collectively referred to herein as the "Shares."

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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.³ The Fund will be an actively managed exchange traded fund ("ETF"). The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Fund is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission.⁴

³ The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008) 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). The Fund would not be the first actively-managed fund listed on the Exchange. See Securities Exchange Act Release No. 66175 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively managed WisdomTree funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. See, e.g., Securities Exchange Act Release Nos. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR-NYSEArca-2011-21) (order approving listing and trading of WisdomTree Global Real Return Fund); 65458 (September 30, 2011), 76 FR 62112 (October 6, 2011) (SR-NYSEArca-2011-54) (order approving listing and trading of WisdomTree Dreyfus Australia and New Zealand Debt Fund); 66342 (February 7, 2012), 77 FR 7623 (February 13, 2012) (SR-NYSEArca-2011-82) (order approving listing and trading of WisdomTree Emerging Markets Inflation Protection Bond Fund); and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR-NYSEArca-2012-25) (order approving listing and trading of WisdomTree Brazil Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

⁴ See Post-Effective Amendment No. 56 to Registration Statement on Form N-1A for the Trust, dated July 1, 2011 (File Nos. 333-132380 and 811-

Description of the Shares and the Fund

WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund.⁵ Western Asset Management Company serves as sub-adviser for the Fund ("Sub-Adviser").⁶ The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. ("Distributor") serves as the distributor for the Trust.⁷

Paragraph (g) of Rule 5735 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.⁸ In addition,

21864). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

⁵ WisdomTree Investments, Inc. ("WisdomTree Investments") is the parent company of WisdomTree Asset Management.

⁶ The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

⁷ The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act"). See Investment Company Act Release No. 28171 [sic] (October 27, 2008) (File No. 812-13458). In compliance with NASDAQ Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

⁸ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.