

## 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-NYSEARCA-2012-136 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.

All submissions should refer to File Number SR-NYSEARCA-2012-136. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-NYSEARCA-2012-136 and should be submitted on or before January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-30047 Filed 12-12-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68387; File No. SR-FINRA-2012-053]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Establish Optional TRACE Data Delivery Services and Related Fees

December 7, 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 November 30, 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, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 7730 to establish certain optional Trade Reporting and Compliance Engine ("TRACE") data delivery services and fees in connection with such optional services.

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 Rule 7730 to establish two new optional TRACE data delivery services, TRACE Data Delivery Plus and TRACE Data Delivery Secure File Transfer Protocol ("TRACE Data Delivery SFTP"), and fees in connection with such optional services. Firms will have the option to enroll in neither, one or both of these services.

##### Background

The FINRA Automated Data Delivery System ("FINRA ADDS") is a secure Web site that provides a firm, by market participant identifier ("MPID"), access to TRACE trade journal files. The TRACE trade journal files in FINRA ADDS are available for Asset-Backed Securities transactions as well as for corporate bonds and Agency Debt Securities ("Corporate/Agency Debt Securities").<sup>3</sup> The Asset-Backed Securities trade journal files are separate from the Corporate/Agency Debt Securities trade journal files.

Currently, to access the transaction information in FINRA ADDS, a firm must have an MPID for trade reporting. Entitled users of the MPID must submit a request for a trade journal file for a specified date, which must be within 30 calendar days prior to the date of the request. A "report" is provided in response to the firm's request.

FINRA ADDS generates a separate report for each data archive (Asset-Backed Securities or Corporate/Agency Debt Securities) requested as well as a separate report for each date requested. Thus, a single report is a trade journal file for one date listing all transactions to which the requesting MPID was a party that were reported on that date

<sup>3</sup> Transactions in Asset-Backed Securities began to be reported to TRACE on May 16, 2011, and TRACE trade journal files on FINRA ADDS are available from that date. See *Regulatory Notice 11-20* (May 2011). Transactions in Corporate/Agency Debt Securities became available on FINRA ADDS as a result of the migration of the reporting of such securities and related data functions from legacy TRACE technology to the Multi-Product Platform ("MPP"), which occurred on February 6, 2012. See *Regulatory Notice 11-53* (November 2011). Accordingly, the FINRA ADDS trade journal files for Corporate/Agency Debt Securities transactions are available only for transactions that are reported on or after February 6, 2012. Corporate/Agency Debt Securities transactions reported prior to February 6, 2012 are not available on FINRA ADDS.

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

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

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

either in Asset-Backed Securities or Corporate/Agency Debt Securities.<sup>4</sup>

The FINRA ADDS service is free, and there are no limits on the number of requests for reports that a firm may make or the number of firm personnel associated with a specified MPID that may submit such requests. The FINRA ADDS reports can be used by firms to assist in monitoring their trading and reporting activity and in performing other business activities, such as compliance.

#### Proposed Optional Data Services and Proposed Fees

Since FINRA ADDS was initiated in July 2011, FINRA has received feedback from firms requesting access to more of the firm's TRACE transaction history and increased flexibility to access such data. In response, FINRA is proposing to establish two additional, optional data delivery services, TRACE Data Delivery Plus and TRACE Data Delivery SFTP, and proposed fees in connection with such optional services.

**TRACE Data Delivery Plus.** TRACE Data Delivery Plus provides greater access to TRACE trade journal files. With TRACE Data Delivery Plus, an MPID subscriber will be able to obtain reports for Asset-Backed Securities or

Corporate/Agency Debt Securities transaction data for transactions to which the MPID was a party that were reported more than 30 calendar days prior to the date of the MPID's request (*i.e.*, transaction data in trade journal files no longer available through the free FINRA ADDS service).<sup>5</sup> For example, if on September 21, 2012, a subscriber requests its transaction activity in Asset-Backed Securities and Corporate/Agency Debt Securities reported on June 21, 2012 and June 22, 2012, the subscriber will receive four reports—one from the Asset-Backed Securities trade journal files for transactions reported on June 21, 2012, a second report for such transactions reported on June 22, 2012, and two additional reports from the Corporate/Agency Debt Securities trade journal files for the respective dates. Moreover, the subscriber will be able to download the requested report(s) on demand.

Subscribers to TRACE Data Delivery Plus also will have the option to obtain automated daily delivery of the subscriber's TRACE trade journal files to the FINRA ADDS Web site.<sup>6</sup> Once a subscriber has activated subscription preferences, the files to which the user subscribes will automatically appear on

the Web site each morning for download by the user, eliminating the need for the user to submit file requests. The automated daily delivery of the subscriber's TRACE trade journal files to the Web site will not constitute a request for a report for purposes of calculating the monthly fee described below. Accordingly, if a subscriber has no other requests for reports, the monthly fee would fall in the second column of the table below.

To provide TRACE Data Delivery Plus, FINRA proposes to amend Rule 7730 to charge an MPID subscriber a monthly fee. The proposed monthly fee is based on two factors: (1) The average number of transactions per month to which the MPID was a party that was reported to TRACE in the prior calendar year, which number is used to categorize the MPID in one of four tiers;<sup>7</sup> and (2) the number of FINRA ADDS reports received in a given month for transaction data that is no longer available through the free FINRA ADDS service (*i.e.*, transaction data regarding transactions that were reported more than 30 calendar days prior to the date of the request) ("Plus reports").<sup>8</sup> The proposed monthly fees for Plus reports are:

Tier based on average number of transactions per month MPID subscriber was a party to in prior calendar year	0–5 Plus reports received per month	6–25 Plus reports received per month	>25 Plus reports received per month
Tier 1: 10,000+ .....	\$60	\$80	\$100
Tier 2: 3,000–9,999 .....	40	55	70
Tier 3: 500–2,999 .....	20	30	40
Tier 4: <500 .....	10	15	20

**TRACE Data Delivery SFTP.** Firms also have requested an automated interface to retrieve (without sending a request or query) their prior day's TRACE trade journal files daily from FINRA ADDS. The new optional TRACE Data Delivery SFTP will provide such a service, permitting an MPID subscriber to retrieve the subscriber's prior day TRACE trade journal files automatically via SFTP.

FINRA proposes to amend Rule 7730 to establish two fees to provide the TRACE Data Delivery SFTP: (1) A one-time set-up fee of \$250 per subscriber for TRACE Data Delivery SFTP; and (2) a monthly fee of \$200 per subscriber.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 120 days

following publication of the *Regulatory Notice* announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and

<sup>4</sup> The FINRA ADDS report provides all of the transaction reports in which the MPID is a party to a transaction (whether the trade was reported by the firm or otherwise reported) on the specified date. The MPID also may request "reject" files (*i.e.*, transaction reports submitted by the MPID that were not accepted by the system due to missing or inaccurate information). If a firm uses multiple MPIDs, persons authorized to use the specified MPID must make the data request to FINRA ADDS and the data provided by FINRA ADDS is limited to transactions involving that MPID.

<sup>5</sup> As with the free FINRA ADDS service, firms interested in TRACE Data Delivery Plus must subscribe per MPID. To access transaction

information for multiple MPIDs, a firm must obtain a subscription for each MPID.

<sup>6</sup> In contrast, firms using the free FINRA ADDS service must submit a request for data (*e.g.*, if an MPID wants daily delivery of the prior day's Asset-Backed Security trade journal file, the MPID must log in each day and submit a request).

<sup>7</sup> Once assigned to a tier, a subscriber remains in the tier for the remainder of the calendar year. For example, an MPID that subscribes in September 2012 will be assigned to a tier based upon the TRACE transactions reported in 2011 in which the MPID was a party, and will remain in that tier until December 31, 2012. In 2013, the MPID will be re-evaluated and assigned to a tier for 2013 fee

purposes, based upon the MPID's trading in TRACE-Eligible Securities in 2012.

<sup>8</sup> A subscriber's monthly fee would be assessed each month and accordingly may vary during a calendar year, depending on the number of reports FINRA sends to the subscriber in response to the subscriber's requests. The TRACE Data Delivery Plus fee is based upon the number of reports provided to avoid charging for data requests that FINRA is unable to provide. For example, FINRA ADDS would be unable to provide a report for a Corporate/Agency Debt Securities trade journal file for a date prior to February 6, 2012, the date such securities were migrated to the MPP.

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

equitable principles of trade, and, in general, to protect investors and the public interest; and Section 15A(b)(5) of the Act,<sup>10</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that the proposed rule change to establish two optional data delivery services subject to appropriate fees would provide a member firm with access to more of its TRACE transaction history and increased flexibility to access such data, which may assist a member firm in monitoring its trading and reporting activity and in performing other business activities. FINRA believes that providing member firms an additional automated avenue to review pricing in and the transaction history of the member firm's TRACE-Eligible Securities transactions may enhance the member firm's oversight of its trading in fixed income securities, which would promote market integrity and provide for the protection of investors and the public generally.

FINRA believes that the proposed rule change provides for the equitable allocation of the proposed reasonable fees among all member firms. The optional services would be accessible by all member firms, subject to reasonable fees. As with fees for other optional data services provided by FINRA, the proposed fees would be charged only to those member firms that voluntarily opt to receive one or both of the services. Only those member firms that elect to become subscribers and use the optional services would incur the costs related to such services. The fees proposed for TRACE Data Delivery Plus are equitably allocated among those member firms that opt to subscribe in that the fees are scaled according to both the average number of transactions in TRACE-Eligible Securities per month per MPID and the number of requested reports, such that higher volume users would be subject to higher fees. Similarly, the fees proposed for TRACE Data Delivery SFTP are equitably allocated among MPID subscribers in that the same setup fees are charged to every member firm that elects to establish a secure and automated interface with the subscriber, and the same monthly fee is charged to all subscribers because each subscriber receives the same service—an automated daily transmission of the subscriber's prior day TRACE trade journal files.

FINRA believes that the proposed fees are reasonable in light of the costs and benefits provided by the corresponding services. In creating such services, FINRA incurred costs related to data warehousing, software and hardware upgrades and software programming, as well as costs related to personnel to support and maintain such services. The proposed fees are reasonable in that such fees are designed to defray a portion of expenses incurred to establish, operate, and administer the two optional services. The proposed fees for TRACE Data Delivery Plus are reasonable as the fees would be scaled according to both the average number of transactions in TRACE-Eligible Securities per month per MPID and the number of requested reports. In general, the fees are scaled such that those MPID subscribers having fewer transactions per month and making fewer requests for reports per month would have lower monthly fees while those subscribers reporting larger numbers of transactions per month and making many requests for reports would have higher monthly fees. The proposed one-time fee for TRACE Data Delivery SFTP would permit FINRA to offset the expense of establishing a secure and automated interface with the subscriber. Moreover, the monthly TRACE Data Delivery SFTP fee is reasonable, because it would provide an MPID subscriber the benefit of automating its daily request for, and receipt of, the TRACE trading data from the prior trade date, and likely reduce the costs of an MPID subscriber that otherwise would make a daily request for such data, and also would offset, in part, FINRA's expenses relating to maintaining the automated daily transmission of TRACE data to subscribers and the secure and automated interface with all subscribers to the service.

FINRA believes that the services and the proposed fees are not unfairly discriminatory because, in addition to the services being voluntary, they would be available to all member firms on an equal basis. The same range of services would be available to all members and the proposed fees would be applicable to all interested members. Thus, the proposed rule change would not unfairly discriminate between or among similarly situated members as to the optional services or the applicable fees.

#### *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. As further

detailed above, FINRA is proposing to establish two optional data delivery services subject to reasonable fees. Members that do not elect to receive such data using the optional data delivery services will continue to have the ability to access such data upon request at no charge. While such members can continue to request such data for a specified date, which must be within 30 calendar days prior to the date of the request, FINRA does not believe that this alternative imposes a significant operational burden on firms seeking access to TRACE trade journal files at no charge.

In addition, because the fees that will be charged for the two optional data delivery services are both optional and reasonable in amount, FINRA does not believe that the payment of such fees by any member, or any group or class of members, will result in a burden on competition to such industry members relative to other industry members that elect not to subscribe to the optional services.

#### *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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

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

Number SR-FINRA-2012-053 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-2012-053. 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 on official business days between the hours of 10:00 a.m. and 3:00 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-2012-053, and should be submitted on or before January 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. 2012-30106 Filed 12-12-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68384; File No. SR-ISE-2012-94]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Payment for Order Flow Fees

December 7, 2012.

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> notice is hereby given that on November 29, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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

The ISE proposes to amend its payment for order flow fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, 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 self-regulatory organization 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 self-regulatory organization 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

The Exchange currently has a payment for order flow ("PFOF") program that helps its market makers establish PFOF arrangements with an

Electronic Access Member ("EAM") in exchange for that EAM routing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each Priority Customer contract they execute in the symbols that are subject to the PFOF fee.<sup>3</sup> Specifically, ISE currently charges a PFOF fee of \$0.65 per contract for options classes that are not in the penny pilot program. For penny pilot classes that are not subject to the Exchange's maker/taker fees, the Exchange currently charges a PFOF fee of \$0.25 per contract.

The Exchange now proposes to increase the PFOF fee applicable to classes that are not in the penny pilot program from \$0.65 per contract to \$0.70 per contract. The Exchange is not proposing any change to the PFOF fee charged to penny pilot classes that are not subject to the Exchange's maker/taker fees. With this proposed rule change, ISE's PFOF fee in classes that are not in the penny pilot program will be more competitive with the PFOF fee charged by at least one other options exchange in these options classes.<sup>4</sup> This proposed rule change will also allow ISE market makers to compete better for order flow in these options classes.

As noted above, the PFOF fee is collected by the Exchange for each Priority Customer contract executed in the symbols where PFOF fees are collected. For the sake of clarity, the Exchange proposes to add rule text to its Schedule of Fees to note that the PFOF fee applies to market makers for each Priority Customer contract executed. Aside from adding the proposed clarifying text to its Schedule of Fees, the Exchange is not amending its PFOF program in any other respect.

The Exchange has designated this proposal to be operative on December 3, 2012.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation

<sup>3</sup> PFOF fees do not apply to market makers for each Regular Priority Customer contract executed in Select Symbols. PFOF fees are waived for Singly Listed Symbols, FX Options, Flash Orders and for Complex Orders in all symbols. See Schedule of Fees, Section IV, D.

<sup>4</sup> NASDAQ OMX PHLX LLC ("PHLX") currently charges a payment for order flow fee of \$0.70 per contract for options classes that are not in the penny pilot program. See PHLX Pricing Schedule, Section II, Payment for Order Flow Fees.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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

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

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