

each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to align their fees on the costs incurred by the process they offer. For this reason, and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed rule change will result in any burden on competition for listings.

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

No written comments were either solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>16</sup> NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of such 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-NASDAQ-2013-004 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-NASDAQ-2013-004. 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 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-NASDAQ-2013-004 and should be submitted on or before February 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68675, File No. SR-FINRA-2012-053]

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

January 16, 2013.

#### I. Introduction

On November 30, 2012, the 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish optional TRACE data delivery services and related fees. The proposed rule change was published for comment in the **Federal Register** on December 13, 2012.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

FINRA utilizes the Trade Reporting and Compliance Engine ("TRACE") to collect from its members and to publicly disseminate information on transactions in eligible fixed income securities. 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. These files are available for Asset-Backed Securities transactions and separately for corporate bonds and Agency Debt Securities ("Corporate/Agency Debt Securities"). The FINRA ADDS service is free, and there are no limits on the number of reports that a firm may request or the number of firm personnel associated with a specified MPID that may submit such requests.

Currently, to access the transaction information in FINRA ADDS, 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 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 either in Asset-Backed Securities or Corporate/Agency Debt Securities. 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 another member) on the specified date. 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.

FINRA has proposed 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

<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. 68387 (December 7, 2012), 77 FR 74249 (December 13, 2012) (SR-FINRA-2012-053) (the "Notice").

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

with these services. Firms would have the option to enroll in neither, one, or both of these services.

*TRACE Data Delivery Plus* would provide greater access to TRACE trade journal files by allowing an MPID subscriber to obtain reports for Asset-Backed Securities or Corporate/Agency Debt Securities data for transactions to which the MPID was a party that were reported more than 30 calendar days before the MPID's request (*i.e.*, transaction data in trade journal files no

longer available through the free FINRA ADDS service).<sup>4</sup> The subscriber would be able to download the requested report(s) on demand.<sup>5</sup>

To provide TRACE Data Delivery Plus, FINRA has proposed 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>6</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>7</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* is an optional service that would provide a subscribing firm with an automated interface to retrieve (without sending a request or query) its prior day's TRACE trade journal files from FINRA ADDS automatically via SFTP. FINRA has proposed 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; and (2) a monthly fee of \$200 per subscriber.

FINRA has indicated 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, and that the effective date would be no later than 120 days following publication of the *Regulatory Notice*.

**III. Discussion**

After carefully reviewing the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section

15A(b)(6) of the Act,<sup>9</sup> 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, as well as with 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 which the association operates or controls.

FINRA stated that it proposed the described optional data services in response to feedback from firms requesting access to more of their TRACE transaction history and increased flexibility to access such data.<sup>11</sup> The Commission believes that the proposed rule change to establish these data delivery services is consistent with the Act because it will provide member firms with flexible access to more of their TRACE transaction history, thereby assisting them in overseeing their trading in fixed income securities. Further, the Commission

believes that the proposed fees are consistent with the Act.

**IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-FINRA-2012-053) is approved.

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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<sup>4</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>5</sup> 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. 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. 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>6</sup> Once assigned to a tier, a subscriber would remain in the tier for the remainder of the calendar year. For example, an MPID that subscribes in September 2012 would be assigned to a tier based upon the TRACE transactions reported in 2011 in which the MPID was a party, and would remain in that tier until December 31, 2012. In 2013, the MPID would 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>7</sup> A subscriber's monthly fee would be assessed each month and could vary, depending on the number of reports FINRA provides in response to the subscriber's requests. The fee would not be

charged 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 from legacy TRACE technology to the Multi-Product Platform ("MPP").

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

<sup>11</sup> See Notice, 77 FR at 74250.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).