

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69543; File No. SR-FINRA-2013-021]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Extension of the Implementation Date for FINRA Rule 5270 (Front Running of Block Transactions)

May 9, 2013.

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 May 2, 2013, 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. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to establish September 3, 2013, as the implementation date of FINRA Rule 5270 (Front Running of Block Transactions) that the Commission approved on September 4, 2012.<sup>4</sup> The proposed rule change adopted NASD Interpretive Material (“IM”) 2110-3 (Front Running Policy) as FINRA Rule 5270 with certain changes, including broadening the rule’s scope and providing further clarity into trading activity that FINRA believes is inconsistent with just and equitable principles.

The proposed rule change does not make any changes to the text of FINRA rules.

#### 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 is filing the proposed rule change to establish September 3, 2013, as the implementation date for FINRA Rule 5270 regarding front running.

On September 4, 2012, the SEC approved SR-FINRA-2012-025, which adopted NASD IM-2110-3 as FINRA Rule 5270 in the Consolidated FINRA Rulebook<sup>5</sup> with certain changes, including broadening the rule’s scope and providing further clarity into trading activity that FINRA believes is inconsistent with just and equitable principles.<sup>6</sup> On December 3, 2012, FINRA published *Regulatory Notice* 12-52 announcing that the Commission approved the proposed rule change and announcing an implementation date of June 1, 2013.

Since the publication of the *Notice*, many firms and industry groups have requested that the implementation date for Rule 5270 be delayed to allow firms sufficient time to make necessary systems updates and changes. Firms have noted that, because of the expansion of the rule to include a wider range of securities and other related financial instruments,<sup>7</sup> existing vendor

<sup>5</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>6</sup> See Approval Order, *supra* note 4.

<sup>7</sup> FINRA Rule 5270(c) defines a “related financial instrument” as “any option, derivative, security-based swap, or other financial instrument overlying a security, the value of which is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the

systems and internally-developed controls cannot easily be revised to include the expanded securities and instruments covered by the rule. Firms are also reconsidering, and in some cases adjusting, the scope of existing information barriers to account for the broader scope of the rule as well as implementing education and training programs. Although FINRA has stated, and firms recognize, that the underlying conduct addressed in Rule 5270 is largely covered by existing FINRA rules, FINRA understands the need for firms to adjust their training, education, and internal surveillance programs in an effort to successfully comply with the expansion of Rule 5270. As a result of these discussions, and the comment letter discussed in Item 5 below,<sup>8</sup> FINRA is seeking to delay the implementation of Rule 5270 until September 3, 2013, to give firms sufficient time to make necessary changes to their programs and systems to enable them to review their trading activity for compliance with the rule.<sup>9</sup> FINRA stresses, however, that much of the trading activity prohibited by Rule 5270 may already violate other existing FINRA rules.

FINRA has filed the proposed rule change for immediate effectiveness.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that extending the implementation date will ensure that firms have sufficient time to make the necessary changes to their systems to be able to effectively surveil their trading activity in the securities and financial instruments that are subject to the rule. Extending the implementation date by three months will also ensure firms have sufficient time to complete the assessment of their existing information barriers and any needed training or education. FINRA notes that members are already under an existing obligation to prevent the front running of customer orders under other FINRA rules and that these rules will continue to apply to members’ trading

functional economic equivalent of a position in such security.”

<sup>8</sup> The Commission notes that Item 5 is discussed in the filing, not this Notice.

<sup>9</sup> FINRA does not anticipate providing further extensions beyond September 3, 2013.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<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).

<sup>4</sup> See Securities Exchange Act Release No. 67774 (September 4, 2012), 77 FR 55519 (September 10, 2012) (Order Approving SR-FINRA-2012-025) (“Approval Order”).

activity notwithstanding the extension of the implementation date for Rule 5270.

#### *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. Because the proposed rule change does not amend FINRA rules and merely extends the implementation date for Rule 5270, FINRA does not believe the proposed rule change imposes any unnecessary or inappropriate burden on competition.

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

The Securities Industry and Financial Markets Association ("SIFMA") submitted a written request to FINRA for a three-month extension of the implementation date for Rule 5270.<sup>11</sup> A copy of the SIFMA Letter is attached as Exhibit 2.<sup>12</sup>

In its letter, SIFMA represents that, since Rule 5270 was approved, its members "have been actively working to update their policies and are expanding and implementing robust education and training programs."<sup>13</sup> SIFMA states that, notwithstanding these efforts, because "existing vendor [surveillance] systems and internally-developed controls cannot easily be revised to the new, expanded product set" covered by Rule 5270, firms may not be able to implement the needed systems changes by June 1, 2013.<sup>14</sup> In particular, the expansion of firms' surveillance and supervision systems to include other product areas, in particular fixed income securities and OTC products, may not be completed by June 1, 2013.<sup>15</sup> SIFMA also represents that the implementation of certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, particularly those under Title VII, are affecting many of the same systems implicated by Rule 5270.<sup>16</sup> As a result of these factors, SIFMA requested that FINRA extend the implementation date of Rule 5270 by three months. SIFMA

<sup>11</sup> See Letter from Sean Davy, Managing Director, Corporate Credit Markets Division, SIFMA, to Brant K. Brown, Associate General Counsel, Office of General Counsel, FINRA (April 22, 2013) ("SIFMA Letter").

<sup>12</sup> The Commission notes that Exhibit 2 is attached to the filing, not this Notice.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2.

acknowledges, however, that "during this period member firms are, and would continue to be, under an existing obligation to prevent the frontrunning of customer orders" and that "much of the trading activity prohibited by new Rule 5270 may already violate existing FINRA Rules."<sup>17</sup>

#### **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>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</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-2013-021 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-2013-021. This file number should be included on the subject line if email is used. To help the

<sup>17</sup> *Id.*

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

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 offices 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-2013-021, and should be submitted on or before June 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

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

[FR Doc. 2013-11508 Filed 5-14-13; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69547; File No. SR-Phlx-2013-48]

#### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees and Rebates Applicable to Qualified Contingent Cross Orders**

May 9, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 1, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

<sup>20</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.