

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to adopt a PIM ISO order type is pro-competitive because it will enable the Exchange to provide market participants with an additional method of seeking price improvement through the PIM. The proposed rule change will also allow the Exchange to compete with other markets that already allow an ISO order type in their price improvement mechanisms.<sup>7</sup>

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.<sup>12</sup>

### 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-ISEGemini-2014-26 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEGemini-2014-26. 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-ISEGemini-2014-26 and should be

submitted on or before November 5, 2014.

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

Kevin M. O'Neill,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73316; File No. SR-FINRA-2014-040]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise the Operative Date for Deletion of Rule 7740 Pursuant to SR-FINRA-2014-032

October 7, 2014.

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 September 25, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to revise the operative date for the deletion of Rule 7740 (Historical Research and Administrative Reports) pursuant to SR-FINRA-2014-032. The proposed rule change would 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

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

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> *Id.*

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

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

<sup>10</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

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, Proposed Rule Change*

1. Purpose

On July 2, 2014, FINRA filed for immediate effectiveness proposed rule change SR-FINRA-2014-032 to amend Rule 7710 relating to fees for the OTC Reporting Facility ("ORF") and delete Rule 7740.<sup>4</sup> Rule 7740 sets forth the fees to be paid by the purchaser of historical research reports regarding OTC Bulletin Board ("OTCBB") securities through the OTCBB Web site.

By its terms, SR-FINRA-2014-032 will be operative upon migration of the ORF to FINRA's Multi-Product Platform ("MPP"). At the time of the filing of SR-FINRA-2014-032, the ORF was scheduled to migrate to the MPP on September 15, 2014. In response to requests by the industry, FINRA recently delayed the migration of the ORF from September 15, 2014 to November 17, 2014.<sup>5</sup> As such, the amendments to Rule 7710 relating to fees for the ORF will be operative on the revised migration date of November 17, 2014.

However, with respect to deletion of Rule 7740, FINRA is proposing that the operative date be September 30, 2014. On that date, FINRA's vendor that generates and bills for the historical research reports under Rule 7740 will migrate to a new technology platform and will no longer provide these services to FINRA. Because FINRA contemplated migration of the ORF to the MPP, and the elimination of these reports, as of September 15, 2014, FINRA did not make arrangements to connect to the vendor's new technology platform. As such, the historical research reports will not be produced as of September 30, 2014. (The last date to order a report would be September 29, 2014.) As noted in SR-FINRA-2014-032, the quotation activity through the OTCBB has decreased in recent years

<sup>4</sup> See Securities Exchange Act Release No. 72595 (July 11, 2014), 79 FR 41711 (July 17, 2014) (Notice of Filing and Immediate Effectiveness; SR-FINRA-2014-032).

<sup>5</sup> See "Revised Migration Date for New OTC Reporting Facility Technology Platform," available at [www.finra.org/Industry/Compliance/MarketTransparency/ORF/Notices/P580334](http://www.finra.org/Industry/Compliance/MarketTransparency/ORF/Notices/P580334).

and as such, the value of these reports has declined significantly. In fact, some reports in recent months have been generated with substantially all zeroes. Accordingly, the number of requests for reports continues to decrease. For example, there were 274 requests for reports pursuant to Rule 7740 in 2012, 103 in 2013 and 57 through August 2014.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</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 the proposed rule change is consistent with the Act in that it ensures that FINRA rules accurately reflect the functionality of its systems and will avoid the potential confusion of having a fee rule in FINRA's manual for reports that FINRA no longer provides.

*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 noted in SR-FINRA-2014-032, with the deletion of Rule 7740, FINRA is eliminating fees for historical research reports that are of little value today and not relied on by market participants as a source of market data.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

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

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>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. FINRA is proposing to change the deletion date of Rule 7740 due to the reports' unavailability as a result of a third-party vendor's platform change. The Commission believes it is in the interest of investors to implement this change immediately. The reports referenced in Rule 7740 will be unavailable before the 30-day operative delay is complete and, by making the filing operative immediately, this will provide the most notice of this change to the firms. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>11</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:

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

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

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

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

*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-2014-040 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR-FINRA-2014-040. 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 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-2013-040 and should be submitted on or before November 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-73319; File No. SR-FINRA-2014-005]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Broaden Arbitrators' Authority To Make Referrals During an Arbitration Proceeding**

October 8, 2014.

**I. Introduction**

On July 12, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed a proposal 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> with the Securities and Exchange Commission ("Commission") to amend Rule 12104 (Effect of Arbitration on FINRA Regulatory Activities) of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13104 (Effect of Arbitration on FINRA Regulatory Activities) of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (collectively, the "Codes"). This initial proposal would have permitted arbitrators to make referrals to FINRA during an arbitration case, would have required the FINRA Director of Arbitration ("Director") to disclose the referral to the parties, and would have required the entire panel to withdraw upon a party's request that a referring arbitrator withdraw ("original proposal"). The Commission published the original proposal for comment on September 17, 2010.<sup>3</sup> On July 7, 2011, FINRA responded to comments received by the Commission by filing an amendment to the original proposal,<sup>4</sup> which replaced the original proposal in its entirety.

Under the Amended Original Proposal, an arbitrator would have been permitted to make a mid-case referral if he or she became aware of any matter

<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 Rel. No. 62930 (Sept. 17, 2010), 75 FR 58007 (Sept. 23, 2010) (SR-FINRA-2010-036).

<sup>4</sup> See Securities Exchange Act Rel. No. 64954 (Jul. 25, 2011), 76 FR 45631 (Jul. 29, 2011) (SR-FINRA-2010-036) (Notice of Filing Proposed Rule Change and Amendment No. 1 to Amend the Codes of Arbitration Procedure To Permit Arbitrators To Make Mid-Case Referrals) (hereinafter, the "Amended Original Proposal," to distinguish Amendment No. 1 to the original proposal from the current proposal as amended by Partial Amendment No. 1).

or conduct that the arbitrator had reason to believe posed a serious threat, whether ongoing or imminent, that was likely to harm investors unless immediate action was taken. A mid-case referral could not have been based solely on allegations in the pleadings. The Amended Original Proposal also would have instructed the arbitrator to wait until the arbitration concluded to make a referral if, in the arbitrator's judgment, investor protection would not have been materially compromised by the delay. Further, if an arbitrator made a mid-case referral, the Director would have disclosed the act of making the referral to the parties, and a party would have been permitted to request recusal of the referring arbitrator. The Amended Original Proposal would have required either the President of FINRA Dispute Resolution ("President") or the Director to evaluate the referral and determine whether to forward it to other divisions of FINRA for further review. Finally, the Amended Original Proposal would have retained the provisions in Rule 12104(b) of the Customer Code and Rule 13104(b) of the Industry Code that permits an arbitrator to make a post-case referral. The Commission received five comment letters in response to the Amended Original Proposal.

On January 29, 2014, FINRA withdrew the Amended Original Proposal<sup>5</sup> without responding to the comments and filed the current proposal ("Proposed Rule"). The Proposed Rule was identical to the Amended Original Proposal. As part of the Proposed Rule, FINRA responded to comments received on the Amended Original Proposal. The Proposed Rule was published for comment in the **Federal Register** on February 12, 2014.<sup>6</sup> The Commission received 10 comment letters in response. On March 28, 2014, FINRA extended to May 20, 2014, the time period in which the Commission must approve the Proposed Rule, disapprove the Proposed Rule, or institute proceedings to determine whether to approve or disapprove the Proposed Rule. On May 19, 2014, FINRA responded to comments to the Proposed Rule and filed Partial Amendment No. 1.<sup>7</sup>

<sup>5</sup> See SR-FINRA-2010-036, Withdrawal of Proposed Rule Change, available at <http://www.finra.org/Industry/Regulation/RuleFilings/2010/P121722>.

<sup>6</sup> See Securities Exchange Act Rel. No. 71534 (Feb. 12, 2014), 79 FR 9523 (Feb. 19, 2014) (SR-FINRA-2014-005) ("Notice of Filing").

<sup>7</sup> See Letter from Mignon McLemore, Assistant General Counsel, FINRA Dispute Resolution, to Lourdes Gonzalez, Commission, dated May 19, 2014 ("May Response"). The May Response and the text of Partial Amendment No. 1 are available on

Continued

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