

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68325; File No. SR-FINRA-2012-051)

November 30, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Waiver of Certain TRACE Late Trade Reporting Fees Due to Hurricane Sandy

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 26, 2012, the 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 “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 waive certain Trade Reporting and Compliance Engine (“TRACE”) late trade reporting fees specified in FINRA Rule 7730(b)(3) due to disruptions in normal business operations as a result of Hurricane Sandy.

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

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

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

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

The text of the proposed rule change is available on FINRA's website 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

Transactions in TRACE-Eligible Securities, as defined in FINRA Rule 6710(a), are required to be reported to FINRA within the time frames specified in FINRA Rule 6730(a). FINRA Rule 7730(b) sets forth the charges to be assessed against each member responsible for reporting such transactions. FINRA Rule 7730(b)(3) provides that members shall be charged a \$3.00 per transaction late fee for those transactions that are not timely reported "as/of" as required by the FINRA Rule 6700 Series. Due to significant disruptions in normal business operations as a result of Hurricane Sandy or Superstorm Sandy ("Sandy") that made landfall along the mid-Atlantic Coast on October 29, 2012, FINRA proposes to waive such TRACE late trade reporting fees if a firm in an area affected by Sandy<sup>5</sup> reported certain transactions in

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<sup>5</sup> An affected area means any area, such as a state or a county, that the President declared a major disaster or for which the President signed a federal emergency declaration as a result of Sandy (e.g., the state, or certain counties, of Connecticut, New York, New

TRACE-Eligible Securities late. The late trade reporting fee would be waived for transactions that were executed on Monday, October 29, 2012 or Tuesday, October 30, 2012, by firms located in the affected areas (or that have their fixed income operations in the affected areas), provided that the affected firms reported the transactions no later than Wednesday, October 31, 2012 by the TRACE system closing.<sup>6</sup>

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>7</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 waive the late trade reporting fee for those firms that were adversely affected by Sandy is appropriate considering the lack of communications, transportation, electricity, facilities and available staff as a result of Sandy that hampered the ability of members in the affected areas (or with fixed income operations in the affected area) to meet their TRACE

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Jersey, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, Virginia and West Virginia) (the “affected areas”).

<sup>6</sup> FINRA has identified a number of transactions that qualify for the waiver of the late trade reporting fee of \$3.00, and proposes to credit those firms with the identified relevant transactions on their TRACE invoices for November 2012 (the “November Invoice”). However, upon receipt of the November Invoice, if a firm has not received credit for a transaction(s) it believes qualifies for the fee waiver because its fixed income operations are located in one of the affected areas, the firm should contact TRACE Data Services by emailing [TRACEDataServices@finra.org](mailto:TRACEDataServices@finra.org) or calling (888) 507-3665, and provide a list of such transactions and the reason why the firm believes such transactions qualify for the waiver.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

reporting deadlines. FINRA believes that this limited waiver results in reasonable fees and financial benefits from late trade reporting fee waivers that are equitably allocated. The financial benefit of the late trade reporting fee waiver would be available to all firms located in the affected areas (or that have their fixed income operations in the affected areas). In addition, the financial benefit of the late trade reporting fee waiver would be available for a very limited period (i.e., only for transactions that were executed on Monday, October 29, 2012 or Tuesday, October 30, 2012 provided that such transactions were reported no later than Wednesday, October 31, 2012, by the TRACE system closing), such that members not eligible for the late trade reporting fee waiver are not unfairly or inequitably affected. The proposed rule change is reasonable because the waiver of a standard FINRA late trade reporting fee, and the financial benefit from such waiver is of limited amount, duration and application as noted above. Finally, the proposed late trade reporting fee waiver does not unfairly discriminate between or among members in that the waiver would be available to any such member in the affected areas that executed transactions on the relevant dates, provided that the firm reported the transaction(s) no later than Wednesday, October 31, 2012 by the TRACE system closing.

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. FINRA believes that the proposed rule change to waive the late trade reporting fee for those firms that were adversely affected by Sandy is appropriate considering the lack of communications, transportation, electricity, facilities and available staff as a result of Sandy that hampered the ability of members in the affected areas (or with fixed income operations in the affected area) to meet their TRACE reporting deadlines. FINRA believes that the limited late trade reporting fee waiver would not place an unreasonable fee burden on members, nor confer an

uncompetitive benefit to members that may have their late trade reporting fees waived, in that such waiver would be available for a very limited period (only for trades executed on Monday, October 29, 2012 or Tuesday, October 30, 2012 provided that such transactions were reported no later than Wednesday, October 31, 2012, by the TRACE system closing), and the financial impact of such a waiver would be de minimis.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>9</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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2012-051 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-2012-051. This file number should be included on the subject line if e-mail 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 website (<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 website 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 the 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-2012-051 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).