

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73863; File No. SR-FINRA-2014-051)

December 17, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to In Concert Reporting of Options Positions

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 December 11, 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 amend Rule 2360(b)(5) regarding reporting of options positions to codify an existing requirement that the reporting rules apply to all accounts acting in concert, consistent with the application of the reporting rules of the options exchanges.

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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> 17 CFR 240.19b-4(f)(6).

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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**2000. DUTIES AND CONFLICTS**

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**2300. SPECIAL PRODUCTS**

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**2360. Options**

(a) No Change.

**(b) Requirements**

(1) through (4) No Change.

**(5) Reporting of Options Positions**

(A)(i)a. Conventional Options

Each member shall file or cause to be filed with FINRA a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer account, which, acting alone or in concert, has established an aggregate position of 200 or more option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index, combining for purposes of this subparagraph long positions

in put options with short positions in call options and short positions in put options with long positions in call options, provided, however, that such reporting with respect to positions in conventional index options shall apply only to an option that is based on an index that underlies, or is substantially similar to an index that underlies, a standardized index option.

b. Standardized Options

Each member that conducts a business in standardized options but is not a member of the options exchange upon which the standardized options are listed and traded shall file or cause to be filed with FINRA a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer account, which, acting alone or in concert, has established an aggregate position of 200 or more option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index, combining for purposes of this subparagraph long positions in put options with short positions in call options and short positions in put options with long positions in call options.

(ii) No Change.

(B) No Change.

(6) through (24) No Change.

(c) No Change.

••• Supplementary Material: -----

.01 through .03 No Change.

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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 Rule 2360(b)(5) requires that members file, or cause to be filed, reports for each account that has an aggregate position of 200 or more options contracts (whether long or short) on the same side of the market covering the same underlying security or index. These reports are referred to as Large Options Position Reports (“LOPRs”). All LOPRs are filed electronically and The Options Clearing Corporation (“OCC”) currently hosts and maintains the LOPR reporting system. FINRA Rule 2360(b)(5)(A)(i)a. sets

forth the requirements for the LOPR for conventional options.<sup>4</sup> FINRA Rule 2360(b)(5)(A)(i)b. sets forth the requirements for the LOPR for standardized options by members that are not members of the options exchange upon which the standardized options are listed (so called “access members”).<sup>5</sup> Among other things, the LOPRs allow FINRA to confirm that firms have not exceeded the options position limits set forth in FINRA Rule 2360(b)(3).<sup>6</sup> The position limit requirements are uniform across the options exchanges and FINRA.<sup>7</sup>

The position limit rules require that all accounts acting in concert, by the same individual or entity, must be aggregated to ensure position limit compliance. Accordingly, the position report should also be based on when accounts acting in concert exceeds the 200 contract threshold. This would ensure the report is accurately capturing

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<sup>4</sup> FINRA Rule 2360(b)(5)(A)(i)a. provides that the reporting requirement for conventional index options only applies to an option that is based on an index that underlies, or is substantially similar to an index that underlies, a standardized index option. As a result, conventional index options based on customized indexes are not required to be reported. See Notice to Members 07-03 (January 2007); and see also Securities Exchange Act Release No. 54755 (November 15, 2006), 71 FR 67675 (November 22, 2006) (Order Approving File No. SR-NASD-2006-007).

<sup>5</sup> As noted below, the reporting rules are meant to be uniform across the industry and thus FINRA’s rules only require access members to report standardized options positions to FINRA. If a firm is a member of the options exchange on which the standardized option trades, then the firm would report the LOPR to the exchange of which is a member.

<sup>6</sup> FINRA Rule 2360(b)(3)(A) imposes a ceiling or position limit on the number of conventional and standardized equity options contracts in each class on the same side of the market (i.e., aggregating long calls and short puts or long puts and short calls) that can be held or written by a firm, a person associated with a firm, or a customer acting alone or in concert with others.

<sup>7</sup> See, e.g., CBOE Rule 4.11, ISE Rule 412 and NYSE Arca Options Rule 6.8. The standards for the calculation of position limits for a particular underlying security are the same across the options exchanges.

the entire position to monitor for position limit purposes. The options exchanges and FINRA acting through the Intermarket Surveillance Group (the “ISG”) outlined this requirement in a May 1, 1991 Notice.<sup>8</sup> In addition, the LOPR Frequently Asked Questions (“FAQs”) maintained on the OCC’s site that are updated by the ISG members, including FINRA, outline the requirement that the “[m]embers must report any account or accounts acting “in concert” that hold over 200 contracts on either the long call/short put (bullish) or the short call/long put (bearish) side of the market.”<sup>9</sup> Like the position limit rules, the reporting rules and requirements are meant to be uniform across the industry.

Certain options exchanges rules are explicit about the requirement to report a position whether acting alone or in concert,<sup>10</sup> while FINRA and other options exchanges rules have by interpretation and relying on the ISG Notice and LOPR FAQs required firms to report such information. FINRA proposes to amend Rule 2360(b)(5)(A)(i)a. and b.<sup>11</sup> to codify the existing requirement that members must report each account in which the member has an interest, each account of a partner, officer, director or employee of

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<sup>8</sup> See ISG Important Notice, Large Options Position Report (LOPR)/Mandatory Automated Reporting Requirement Notice dated May 1, 1991 (“ISG Notice”).

<sup>9</sup> See Large Options Positions Reporting (LOPR) Frequently Asked Questions (FAQs), FAQ #24 available at [http://www.optionsclearing.com/components/docs/clearing/industry-services/lopr/lopr\\_faqs.pdf](http://www.optionsclearing.com/components/docs/clearing/industry-services/lopr/lopr_faqs.pdf).

<sup>10</sup> See BATS Rule 18.10(a), CBOE Rule 4.13(a), NYSE Arca Rule 6.6(a), and NASDAQ OMX PHLX Rule 1003(a).

<sup>11</sup> FINRA proposes to harmonize the reporting provision with the options exchanges for standardized options and clarify the requirement for conventional options to similarly ensure the report is accurately capturing the entire position to monitor for position limit purposes.

such member, and each customer, non-member broker, or non-member dealer account which, acting alone or in concert, has established an aggregate position of 200 or more option contracts. FINRA believes that firms are already complying with this requirement as it has been a stated FINRA interpretation since May 1991. FINRA believes that harmonizing its rule with those options exchanges rules that are explicit about the in concert requirement will clarify firms reporting requirements and ensure continued consistency in monitoring for position limits.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>12</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 clarifying that members must report options position reports for accounts of members, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer acting alone or in concert with others is necessary to fully and effectively monitor compliance with the position limit requirements, which are based on similar standards. In addition,

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<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

FINRA believes that the proposed rule change will promote consistent regulation by harmonizing FINRA's rules with those of the options exchanges.

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 clarifying that members must report options position reports for accounts of members, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer acting alone or in concert with others is necessary to fully and effectively monitor compliance with the position limit requirements. This proposed rule change reflects existing FINRA and ISG interpretation, which has been express since 1991 and is widely understood by firms. In addition, FINRA believes that the proposed rule change will promote consistent regulation by harmonizing FINRA's rules with those of the options exchanges and thus will impose no burden on members since such reports are already being filed.

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 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>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2014-051 on the subject line.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2014-051. 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 a.m. and 3 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-2014-051 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>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).