

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-86479; File No. SR-FINRA-2019-021)

July 25, 2019

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exemptions from the Order Audit Trail System Recording and Reporting Requirements

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 July 12, 2019, 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 7470 (Exemption to the Order Recording and Data Transmission Requirements) to extend for three years FINRA’s ability to exempt certain members from the recording and reporting requirements of the Order Audit Trail System (“OATS”) Rules (“OATS Rules”) for manual orders received by the member.

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

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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).

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES**

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**7400. ORDER AUDIT TRAIL SYSTEM**

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**7470. Exemption to the Order Recording and Data Transmission Requirements**

(a) through (b) No Change.

(c) This Rule shall be in effect until July [10]11, 2022[2019].

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The OATS Rules impose obligations on FINRA members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members relating to OTC equity securities and NMS stocks. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions.

This information is then used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws and regulations.

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, gave FINRA the authority to grant exemptive relief from the OATS reporting requirements for manual orders.<sup>4</sup> In 2006, FINRA's exemptive authority was expanded to include the authority to exempt manual orders received by members from the OATS recording requirements.<sup>5</sup> Under Rule 7470, at a minimum, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in any security subject to the OATS Rules; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.<sup>6</sup> An exemption granted by FINRA pursuant to Rule 7470 is for a

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<sup>4</sup> See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005) (Order Approving File No. SR-NASD-00-23).

<sup>5</sup> See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006) (Order Approving File No. SR-NASD-2006-040). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. See FINRA Regulatory Notice 08-57 (October 2008).

<sup>6</sup> See Rule 7470(a).

maximum of two years; however, a member that continues to meet the criteria may request subsequent exemptions at or prior to the expiration of a grant of exemptive relief.<sup>7</sup>

Rule 7470 also includes a sunset provision. As initially adopted, the exemptive provision expired as of July 10, 2011, which was five years from the original effective date of the rule.<sup>8</sup> In 2011, FINRA filed a proposed rule change to extend the sunset provision until July 10, 2015, noting that FINRA adopted this exemptive authority so that it would have the ability to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where temporary relief from the OATS Rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship.<sup>9</sup> FINRA noted that these concerns continued to be present for many firms and concluded it was appropriate to allow firms that have received an exemption from OATS to continue to rely on their current exemption (or request an additional two-year exemption) until the scope and application of the SEC's consolidated audit trail (CAT) was determined.<sup>10</sup> In 2015,<sup>11</sup> FINRA filed a proposed rule change to extend the sunset provision until July 10, 2019, noting that an additional four years was appropriate given the current state of the CAT. FINRA discussed the possibility that not all member firms

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<sup>7</sup> See Rule 7470(b).

<sup>8</sup> See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005) (Order Approving File No. SR-NASD-00-23).

<sup>9</sup> See Securities Exchange Act Release No. 64717 (June 21, 2011), 76 FR 37384 (June 27, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-029).

<sup>10</sup> The SEC proposed Rule 613 under Regulation NMS regarding the consolidated audit trail on May 26, 2010. See Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

<sup>11</sup> See Securities Exchange Act Release No. 75160 (June 11, 2015), 80 FR 34727 (June 17, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-016) (“2015 Filing”).

reporting to OATS or relying on an exemption from OATS reporting would be reporting to the CAT by July 10, 2019, and the extension would allow member firms relying on the exemption to continue to do so provided they meet the criteria to qualify.

On July 18, 2012, the SEC adopted Rule 613 under Regulation NMS, which requires FINRA and the national securities exchanges (“SROs”) to jointly file an NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository (the “CAT NMS Plan”).<sup>12</sup> The CAT NMS Plan was published for comment in the Federal Register on May 17, 2016,<sup>13</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>14</sup> Under Rule 613 and the CAT NMS Plan, all broker-dealers that are members of FINRA or a national securities exchange must report order information to the central repository. FINRA expects that all FINRA members captured by this requirement will be reporting to the CAT by December 2021.

FINRA believes that extending the sunset provision in Rule 7470 for an additional three years is appropriate given the current CAT reporting timeline.<sup>15</sup> Specifically, FINRA expects that all of those FINRA member firms currently reporting to OATS or relying on an exemption from OATS reporting will be reporting to the consolidated audit trail no later than December 2021. Thus, FINRA believes it is appropriate to extend the sunset provision in Rule 7470 so that those firms relying on the exemption may continue to do so provided they meet the criteria to

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<sup>12</sup> See 17 CFR 242.613(a); see also Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

<sup>13</sup> Securities Exchange Act Rel. No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>14</sup> Securities Exchange Act Rel. No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

<sup>15</sup> See Timelines, CAT Reporting Timelines, <https://www.catnmsplan.com/timelines/>. FINRA notes that the instant filing would not impact the CAT reporting timeline or any other CAT reporting obligation.

qualify. FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA is not proposing any substantive changes to the criteria necessary for firms to qualify for an exemption because FINRA believes that the criteria continue to ensure that only those firms with limited revenue, no recent final disciplinary actions, and limited business models will be eligible.

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>16</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 the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA believes that the proposed rule change is particularly appropriate given that it is narrowly tailored to the CAT reporting timeline, which specifies that all member firms currently reporting to OATS or relying on an exemption from OATS will report to the CAT by December 2021.

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<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

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 above, FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA notes that the compliance burden on these firms will be imposed for only a short period of time as these firms are required to develop a means to report order information to the central repository of the CAT.

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>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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. FINRA has requested that the Commission waive this requirement. The Commission hereby grants this request.

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.<sup>19</sup> However, Rule 19b-4(f)(6)<sup>20</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission believes that granting this request is consistent with the protection of investors and the public interest because the extension would allow qualifying member firms to continue to rely on the exemption from the date of filing of this proposed rule change until July 11, 2022. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be effective and operative upon filing.<sup>21</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.

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

<sup>20</sup> Id.

<sup>21</sup> For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



#### 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-2019-021 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-FINRA-2019-021. 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. Persons

submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2019-021 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>22</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).