

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68471; File No. SR-FINRA-2012-056)

December 19, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps)

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 12, 2012, 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 extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to July 17, 2013. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.

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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).

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

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),<sup>4</sup> Title VII of which established a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was intended among other things to enhance the authority of regulators to implement new rules designed to reduce risk, increase transparency, and promote market integrity with respect to such products. In general, the Dodd-Frank Act provides that the Commodity Futures Trading Commission ("CFTC") will regulate "swaps" and the SEC will regulate "security-based swaps."<sup>5</sup> The Dodd-Frank Act contemplates certain self-regulatory organization responsibilities in this area as well.<sup>6</sup>

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<sup>4</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>5</sup> The terms "swap" and "security-based swap" are defined in Sections 721 and 761 of the Dodd-Frank Act. See also Securities Exchange Act Release No. 67453

Title VII of the Dodd-Frank Act became effective on July 16, 2011 (360 days after the enactment of the Dodd-Frank Act, i.e. the “Effective Date”), unless a provision requires a rulemaking.<sup>7</sup> The SEC has taken a number of actions in connection with Title VII, including providing certain temporary exemptions<sup>8</sup> to address the expansion, pursuant to Title VII, of the Act’s definition of “security” to expressly encompass security-based swaps<sup>9</sup> and requesting public comment on the anticipated sequencing of the compliance dates of final rules to be adopted by the SEC pursuant to Title VII.<sup>10</sup>

In its Exemptive Release, the SEC noted that the expansion of the Act’s definition of “security” raises certain complex issues of interpretation, including issues as to the application of those provisions to registered broker-dealers. The SEC determined that it was appropriate to provide market participants with additional time to consider the

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(July 18, 2012), 77 FR 48208 (August 13, 2012) (Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Record-Keeping).

<sup>6</sup> See, e.g., Sections 712 and 763 of the Dodd-Frank Act.

<sup>7</sup> The Dodd-Frank Act provides that if a Title VII provision requires a rulemaking, the provision will go into effect “not less than” 60 days after publication of the related final rule or on July 16, 2011, whichever is later. See Sections 754 and 774 of the Dodd-Frank Act.

<sup>8</sup> See Securities Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of “Security” To Encompass Security-Based Swaps) (the “Exemptive Release”).

<sup>9</sup> See SEA Section 3(a)(10) (15 U.S.C. 78c(a)(10)), as revised by Section 761 of the Dodd-Frank Act.

<sup>10</sup> See Securities Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35625 (June 14, 2012) (Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act) (the “Policy Statement”).

potential impact on their businesses and the interpretive questions raised, and to provide the SEC with any related requests for guidance or relief, along with the underlying analysis. Further, in the Policy Statement, the SEC noted that it has been considering how to implement the new requirements that will be applicable to security-based swaps pursuant to the final rules to be adopted by the SEC pursuant to Title VII in a practical and efficient manner that avoids unnecessary disruption to the security-based swaps market.

Because the Act's expanded definition of "security" has implications for numerous provisions under FINRA rules<sup>11</sup> similar to those noted by the SEC in the Exemptive Release, and in the interest of avoiding unnecessary market disruption, on July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180,<sup>12</sup> which, with certain exceptions, is intended to temporarily limit the application of FINRA rules with respect to security-based swaps.<sup>13</sup>

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<sup>11</sup> The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules"). 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>12</sup> See Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-033) ("FINRA Rule 0180 Notice of Filing"). On January 13, 2012, FINRA filed for immediate effectiveness a rule change to extend the implementation of FINRA Rule 0180 to January 17, 2013. See Securities Exchange Act Release No. 66156 (January 13, 2012), 77 FR 3027 (January 20, 2012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2012-004).

<sup>13</sup> In its Exemptive Release, the Commission noted that the relief is targeted and does not include, for instance, relief from the Act's antifraud and anti-

The CFTC's and the Commission's rulemaking with respect to swaps and security-based swaps pursuant to Title VII is ongoing. FINRA believes it is appropriate and in the public interest to extend FINRA Rule 0180 for a limited period, to July 17, 2013, pending the implementation of new rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities, so as to provide relief from certain FINRA requirements and thereby help avoid undue market disruptions resulting from the change to the definition of "security" under the Act. FINRA will amend the expiration date of Rule 0180 in subsequent filings as necessary such that the expiration date will coincide with the implementation of such rules and guidance.

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, such that FINRA can implement the proposed rule change immediately and prevent FINRA Rule 0180 from lapsing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

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manipulation provisions. FINRA has noted that FINRA Rule 0180 is similarly targeted. For instance, paragraph (a) of FINRA Rule 0180 provides that FINRA rules shall not apply to members' activities and positions with respect to security-based swaps, except for FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 3310 (Anti-Money Laundering Compliance Program) and 4240 (Margin Requirements for Credit Default Swaps). See also paragraphs (b) and (c) of FINRA Rule 0180 (addressing the applicability of additional rules) and FINRA Rule 0180 Notice of Filing.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, consistent with the goals set forth by the Commission in the Exemptive Release and the Policy Statement, the proposed rule change will help to avoid undue market disruption resulting from the expiration of FINRA Rule 0180 before the implementation of new rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities.

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 would prevent undue market disruption that would otherwise result if security-based swaps were, by virtue of the expansion of the Act's definition of "security" to encompass security-based swaps, subject to the application of all FINRA rules before the implementation of new rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6) 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>17</sup>, the Commission may 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 both the 5-day advance filing requirement<sup>18</sup> and the 30-day operative delay requirement so that the proposal may become operative upon filing. The Commission hereby grants both of those requests. The proposed rule is consistent with the goals set forth by the Commission when it issued the Exemptive Release and the Policy Statement and will help avoid undue market interruption resulting from the change to the definition of “security” under the Act. Therefore, the Commission believes it is consistent with the protection of investors and

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its 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 public interest to waive both the requirement that the proposed rule be filed at least five (5) days in advance and the 30-day operative delay requirement. Therefore the Commission designates the proposal as operative upon filing.<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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2012-056 on the subject line.

##### Paper Comments:

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<sup>19</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).



- 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-2012-056. 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 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-2012-056 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>20</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).