

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73289; File No. SR-FINRA-2014-039)

October 2, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of the Trade Reporting Amendments Approved Pursuant to SR-FINRA-2013-050

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 24, 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 the Substance of the Proposed Rule Change

FINRA is proposing to delay the implementation date of amendments to the trade reporting rules relating to the OTC Reporting Facility (“ORF”), the Alternative Display Facility (“ADF”) and the Trade Reporting Facilities (“TRFs”) approved pursuant to SR-FINRA-2013-050. The proposed rule change would not make any changes to FINRA rules.

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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 November 12, 2013, FINRA filed proposed rule change SR-FINRA-2013-050 to amend FINRA rules governing the reporting of (i) over-the-counter ("OTC") transactions in equity securities to the FINRA Facilities;<sup>4</sup> and (ii) orders in NMS stocks and OTC Equity Securities to the Order Audit Trail System ("OATS"). The proposed rule change, as amended,<sup>5</sup>

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<sup>4</sup> Specifically, the FINRA Facilities are the ADF and TRFs, to which members report OTC transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS; and the ORF, to which members report transactions in "OTC Equity Securities," as defined in FINRA Rule 6420 (i.e., non-NMS stocks such as OTC Bulletin Board and OTC Market securities), as well as transactions in Restricted Equity Securities, as defined in FINRA Rule 6420, effected pursuant to Securities Act Rule 144A.

<sup>5</sup> On February 14, 2014, FINRA filed Amendment No. 1 to (1) address the comments the Commission received in response to the Federal Register publication and propose amendments, where appropriate; and (2) propose technical amendments to update cross-references and make other non-substantive changes to the ADF rules as a result of the approval of SR-FINRA-2013-053.

was approved by the Commission on February 27, 2014.<sup>6</sup>

In SR-FINRA-2013-050, FINRA proposed that the effective date of the proposed rule changes to the trade reporting rules would be no earlier than April 15, 2014, and no later than September 30, 2014, and the effective date of the proposed rule change to the OATS rules would be no later than 45 days after Commission approval. In Amendment No. 1, FINRA clarified that it would implement the amendments to the trade reporting rules in phases, with the amendments becoming operative for the ORF first (upon migration of the ORF to FINRA’s multi-product platform (“MPP”)) and for the ADF and TRFs at a subsequent date. As previously announced by FINRA, the amendments to the OATS rules became effective on April 7, 2014.<sup>7</sup> FINRA also announced that the amendments to the ORF rules would be effective on September 15, 2014 (the date of migration to the MPP), the amendments to the ADF and TRF rules relating to millisecond reporting would be effective on September 29, 2014, and the remaining amendments to the ADF and TRF rules would be effective in the first quarter of 2015.<sup>8</sup>

By letter dated August 8, 2014, the Financial Information Forum (“FIF”) formally requested a delay of migration of the ORF to the MPP and implementation of the amendments to the trade reporting rules approved pursuant to SR-FINRA-2013-050 until February 23, 2015, stating that firms need additional time to complete and test the systems changes. Firms have indicated that they do not believe they could meet a September 2014 implementation date, in

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<sup>6</sup> See Securities Exchange Act Release No. 71623 (February 27, 2014), 79 FR 12558 (March 5, 2014) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA-2013-050).

<sup>7</sup> See March 21, 2014 OATS Report, “Firms Capturing Time in Milliseconds Required to Report to OATS in Milliseconds Beginning April 7, 2014.”

<sup>8</sup> See Regulatory Notice 14-21 (May 2014).

light of the development efforts that the amendments will entail, as well as other development efforts currently underway.<sup>9</sup>

To accommodate this request and to provide additional time for firms to complete the necessary systems changes, FINRA is filing this proposed rule change to revise the time frame for implementation of the amendments to the trade reporting rules approved pursuant to SR-FINRA-2013-050.

In response to the FIF's request, FINRA believes a delay in the migration of the ORF to the MPP from September 15, 2014 to November 17, 2014 is appropriate.<sup>10</sup> Accordingly, FINRA is proposing that the amendments to the ORF rules (i.e., Rules 6622 and 7330) approved pursuant to SR-FINRA-2013-050 be effective on November 17, 2014.

In addition, FINRA is proposing that the amendments to the ADF and TRF rules approved pursuant to SR-FINRA-2013-050 requiring firms to report time in milliseconds if their systems capture milliseconds<sup>11</sup> be effective on November 10, 2014.

Finally, FINRA is proposing that the remaining amendments to the ADF and TRF trade reporting rules, as well as the technical and conforming amendments to the rules, approved pursuant to SR-FINRA-2013-050 be implemented no earlier than March 1, 2015 and no later than April 30, 2015. Specifically, the remaining amendments to the ADF and TRF rules (i)

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<sup>9</sup> See letter dated August 8, 2014 from Manisha Kimmel, FIF, to Steve Joachim and Stephanie Dumont, FINRA ("FIF Letter"). By letter dated August 21, 2014, FINRA responded to the FIF Letter. See letter dated August 21, 2014 from Steven Joachim, FINRA, to Manisha Kimmel, FIF ("FINRA Response"). Copies of the FIF Letter and FINRA Response are attached to the proposed rule change as Exhibit 2.

<sup>10</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).

<sup>11</sup> See Rules 6282.04, 6380A.04, 6380B.04, 7130.01, 7230A.01 and 7230B.01.

require firms to report an additional time field for Stop Stock transactions<sup>12</sup> and transactions that reflect an execution price that is based on a prior reference point in time,<sup>13</sup> and when reporting block transactions using the exception for Intermarket Sweep Orders (ISOs) (outbound) under SEC Rule 611 of Regulation NMS, if the time the firm routed the ISOs is different from the execution time;<sup>14</sup> (ii) require firms to identify the original trade when reporting a reversal by including the control number and report date for the original trade report;<sup>15</sup> (iii) require firms to report trades executed on non-business days and trades reported more than 365 days after trade date (T+365) to the ADF or a TRF (and not on “Form T” through FINRA’s Firm Gateway) and further to report non-business day trades on an “as/of” basis by 8:15 a.m. the next business day with the unique trade report modifier to denote their execution outside normal market hours;<sup>16</sup> (iv) provide that where both sides are submitting a clearing-only report to effectuate a step-out, the member transferring out of the position must report a step-out and the member receiving the position must report a “step-in”;<sup>17</sup> and (v) address the processing of trades that are submitted for clearing.<sup>18</sup> In addition, SR-FINRA-2013-050 made a number of non-substantive technical and conforming changes to the ADF and TRF rules that were otherwise being amended. FINRA will

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<sup>12</sup> See paragraph (F) of Rules 6282(a)(4), 6380A(a)(5) and 6380B(a)(5).

“Stop stock transaction” means a transaction resulting from an order in which a firm and another party agree that the order will be executed at a stop stock price or better, which price is based upon the prices at which the security is trading at the time the firm receives the order. See Rules 6220, 6320A and 6320B.

<sup>13</sup> See paragraph (G) of Rules 6282(a)(4), 6380A(a)(5) and 6380B(a)(5).

<sup>14</sup> See Rules 6282.03, 6380A.03 and 6380B.03.

<sup>15</sup> See Rules 6282(g), 6380A(g) and 6380B(f).

<sup>16</sup> See Rules 6282(a)(2), 6380A(a)(2) and 6380B(a)(2).

<sup>17</sup> See Rules 7130(g), 7230A(i) and 7230B(h).

<sup>18</sup> See Rules 7140, 7240A and 7240B.

announce the new effective dates for the amendments to the trade reporting rules approved under SR-FINRA-2013-050 in a Notice.

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>19</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 provides firms additional time to complete the systems changes necessary to comply with SR-FINRA-2013-050, which amendments will, among other things, ensure a more accurate and complete audit trail, enable FINRA to recreate more accurately members' market activity and enhance FINRA's ability to surveil on an automated basis for compliance with FINRA trade reporting and other rules.

### 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 providing adequate time for firms to make the systems changes necessary to comply with SR-FINRA-2013-050 will benefit all interested parties.

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<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

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

Copies of the FIF Letter and FINRA Response, which addresses the issues raised in the FIF Letter, are attached to this filing. In response to the FIF's request, as discussed above, FINRA has delayed migration of the ORF and is proposing to delay implementation of the trade reporting amendments approved under SR-FINRA-2013-050. FINRA believes that the revised implementation timeline set forth above will provide members additional time to make the necessary system changes while balancing the need to implement the amendments without undue delay.

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>20</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>21</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>22</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</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.

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

interest.<sup>23</sup> FINRA has requested that the Commission waive the 30-day operative delay so that FINRA can immediately delay the implementation dates, as provided in this proposal.

The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow FINRA to extend the implementation dates of certain changes approved pursuant to SR-FINRA-2013-050 in a timely manner. Therefore, the Commission designates the proposal operative upon filing.<sup>24</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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.<sup>25</sup> If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.<sup>26</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

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Id.

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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).

<sup>25</sup>

15 U.S.C. 78s(b)(3)(C).

<sup>26</sup>

Id.



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2014-039 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-2014-039. 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-2014-039, 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>27</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).