

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77523; File No. SR-FINRA-2016-006)

April 5, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rules 7410 (Definitions) and 7440 (Recording of Order Information)

I. Introduction

On February 11, 2016, the Financial Industry Regulatory Authority, Inc. (“FINRA”), 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> filed with the Securities and Exchange Commission (“Commission”) a proposal to amend FINRA Rules 7410 and 7440 to require FINRA members to include on their Order Audit Trail System (“OATS”) reports the identity of broker-dealers that are not FINRA members when the member receives an order from such a broker-dealer. The proposed rule change was published for comment in the Federal Register on February 25, 2016.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

First, FINRA proposes to define an “SRO-assigned identifier” in Rule 7410 as “a unique identifier assigned to a broker or dealer by a national securities exchange or national securities association for use by such broker or dealer when accessing the exchange or a facility of the association.” The identifier would be considered “unique” if the identifier assigned by the exchange or association is used to identify a single broker-dealer.<sup>4</sup>

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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> See Securities Exchange Act Release No. 77180 (February 19, 2016), 81 FR 9545 (“Notice”).

<sup>4</sup> See Notice, supra note 3, at 9546, note 4.

Second, FINRA is proposing to amend Rule 7440 of the OATS rules to require members that are subject to the OATS rules (“Reporting Members”) to identify non-FINRA-member broker-dealers (“Non-Member Firms”) from which they receive orders, on the OATS report for the order.<sup>5</sup> Under the proposed rule change, Reporting Members that receive an order from a “Reportable Non-Member” (a U.S.-registered broker-dealer that is not a FINRA member or a broker-dealer that is not registered in the U.S. but has received an SRO-assigned identifier in order to access certain FINRA trade reporting facilities) would be required to identify that broker-dealer when reporting receipt of the order to OATS.<sup>6</sup> Reporting Members that receive an order from, or route an order to, a Non-Member Firm would report one of the following: the Non-Member Firm’s Central Registration Depository (“CRD<sup>®</sup>”) number, the Non-Member Firm’s SRO-assigned identifier, or, for a Non-Member Firm that does not have a CRD number or SRO-assigned identifier (e.g., a foreign broker-dealer), a value indicating that the Non-Member Firm has no CRD number or SRO-assigned identifier.<sup>7</sup> The proposed rule change does

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<sup>5</sup> FINRA Rule 7410(o) defines a Reporting Member as “a member that receives or originates an order and has an obligation to report information under Rules 7440 and 7450.” The rule also has exceptions. See FINRA Rule 7410(o)(1) and (2).

<sup>6</sup> See Notice, supra note 3, at 9545-6. Certain broker-dealers registered in Canada, but not in the U.S., have SRO-assigned identifiers so that they can access FINRA trade reporting facilities pursuant to FINRA Rule 7220A or 7320. Id. at 9546, n. 5.

<sup>7</sup> See Notice, supra note 3, at 9546. The OATS Reporting Technical Specifications currently require that OATS reports include an identifier for each national securities exchange to which an order is routed. However, the current OATS Reporting Technical Specifications do not require that the identity of the specific Non-Member Firm to which an order is routed be provided. To address this gap and to conform the reporting of orders received from and orders routed to Non-Member Firms, FINRA intends to update the OATS Reporting Technical Specifications to reflect the revised requirements. See OATS Reporting Technical Specifications, at 4-4, and A-4 to A-5 (October 12, 2015 ed.). Id. at 9546-7.

not mandate which identifier Reporting Members must use.<sup>8</sup> FINRA will be able to obtain the identity of Reportable Non-Members from the OATS report which will make its audit trail more comprehensive.<sup>9</sup> FINRA will use the information to identify Non-Member Firm activity in the over-the-counter market, as well as Non-Member Firm sponsored access activity.

### III. Discussion

After careful review, the Commission finds that FINRA's proposal is consistent with the requirements of Section 15A of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities association.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>12</sup> which requires, among other things, that FINRA rules 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.

The proposed rule change will provide FINRA, via OATS reports, the identity of Reportable Non-Members that route orders or to which an order has been routed, which will make the OATS reports more complete. Having the information regarding which Reportable Non-Member was involved in a transaction will enable FINRA to better surveil off-exchange market activity as well as enhance the surveillance it performs of exchange activity pursuant to

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<sup>8</sup> See Notice, supra note 3, at 9546.

<sup>9</sup> See Notice, supra note 3, at 9547. FINRA stated that if the Commission approved the proposed rule change, it would announce the effective date of the proposed rule no later than 60 days following Commission approval, and the effective date would be no later than 120 days following Commission approval. Id.

<sup>10</sup> 15 U.S.C. 78(f).

<sup>11</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

its Regulatory Services Agreements. FINRA will be able to consistently identify Non-Member Firm activity, providing FINRA with a more complete view of such activities across all exchanges and over-the-counter market centers.

The Commission believes that requiring Reporting Members to include the identity of Reportable Non-Members in OATS reports on orders they receive from either a U.S.-registered broker-dealer that is not a FINRA member or a broker-dealer that is not registered in the U.S. but has received an SRO-assigned identifier, will provide FINRA with a more complete view of such market participants' activities across exchanges and over-the-counter market centers. This, in turn, should enhance FINRA's cross-market surveillance efforts. Improved surveillance should help FINRA detect and deter fraudulent and manipulative acts and practices, and thus promote just and equitable principles of trade and the protection of investors and the public interest.

#### IV. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>13</sup> that the proposed rule change (SR-FINRA-2016-006), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Robert W. Errett  
Deputy Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).