

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68255; File No. SR-FINRA-2012-049)

November 19, 2012

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Limited Waiver of the TRACE Professional Real-Time Data Display Fee on a Pilot Basis

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 November 7, 2012, the 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, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 FINRA Rule 7730(c) to establish a pilot program to provide a limited waiver of the Professional Real-Time Data Display Fee of \$60 to access Real-Time Trade Reporting and Compliance Engine (“TRACE”) transaction data in connection with certain free trials of data products. In addition, FINRA proposes technical amendments to Rule 7730(c) and related statements in the fee chart to use a single term, “display application,” to

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

describe uniformly a software program that interrogates and displays TRACE data and allows a person to access TRACE data.

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

Pursuant to FINRA Rule 7730(c)(1)(A), FINRA charges a Professional \$60 per month, per display application per Data Set<sup>5</sup> ("display application") of Real-Time<sup>6</sup> TRACE transaction

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<sup>5</sup> A Data Set is each of the FINRA databases, which currently include the Real-Time TRACE transaction data disseminated by FINRA for corporate bonds and Agency Debt Securities (as defined in Rule 6710(l)). Effective November 12, 2012, FINRA will add the Data Set for Asset-Backed Securities, when dissemination of Agency-Pass Through Mortgage-Backed Securities traded To Be Announced begins. See Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (SEC Approval Order regarding dissemination of Agency-Pass Through Mortgage-Backed Securities traded To Be Announced (TBA)), Regulatory Notice 12-26 (May 2012) and Regulatory Notice 12-48 (November 2012).

<sup>6</sup> Real-Time is defined in FINRA Rule 7730(f)(3).

data.<sup>7</sup> The term display application refers to any software program that interrogates and displays TRACE data. In general, Real-Time TRACE transaction data is accessed not directly from FINRA but through a vendor, such as Bloomberg, L.P. and its Bloomberg display application, or other redistributors (collectively, “vendors”) of financial market data. Under this arrangement, a Professional pays the vendor for the license to use the vendor’s display application and if the display application displays Real-Time TRACE transaction data, the payment must include the applicable TRACE fee, which the vendor remits to FINRA.

FINRA understands that vendors are continually developing new products that, among other data, may display Real-Time TRACE transaction data. Often a vendor will make its new products available to members and other Professional end-users of Real-Time TRACE transaction data to test on a free trial basis. In these cases, FINRA believes it would be beneficial also to permit Professionals to access Real-Time TRACE transaction data on a free trial basis in connection, and concurrently, with the free trial of the vendor’s product. Accordingly, FINRA proposes to amend FINRA Rule 7730(c) to establish a pilot program to waive the \$60 fee for one month for a Professional to access Real-Time TRACE transaction data in connection with a vendor’s offer of a free trial.

The pilot program would operate for approximately one year until November 8, 2013 to allow FINRA sufficient time to assess the efficacy and operation of the program.<sup>8</sup> In the event

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<sup>7</sup> Real-Time TRACE transaction data is also available for a flat fee of \$7,500 per month per Data Set for Professionals to make unlimited internal use of such data as provided in Rule 7730(c)(1)(A). Professionals associated with enterprises that pay the \$7,500 flat rate per month are not eligible for the fee waiver set forth in the proposed rule change because, as further described herein, the waiver is limited to four Professionals during one free trial period.

<sup>8</sup> A fee waiver granted less than one month prior to the expiration of the pilot period would continue to be valid and the \$60 fee would be waived for the full month notwithstanding the pilot expiration date.

FINRA determines to extend the pilot program or make the program permanent, FINRA will file a proposed rule change in accordance with the Act. Specifically, the FINRA fee waiver would be limited to one month (i.e., a period not longer than 31 days), and would be available only if the fee waiver is provided in conjunction and concurrently with a vendor's offer of a free trial to a Professional to test a data product that included Real-Time TRACE transaction data. In addition, the FINRA fee waiver would be available to not more than four Professionals associated with, employed by, or otherwise affiliated with a member, employer or other person during one free trial period. Once the Real-Time Data Display Fee had been waived, a Professional and the member, employer or other person with whom the Professional is associated with, employed by, or otherwise affiliated with would not be eligible for the FINRA fee waiver again in connection with another free trial offered by the same vendor until 12 months had lapsed from the last day of the prior fee waiver.<sup>9</sup> However, a Professional and the member, employer or other person with whom the Professional is associated or otherwise affiliated with would be eligible for a fee waiver in connection with a free trial offered by a different vendor regarding its data products.

FINRA also proposes technical amendments to Rule 7730(c) and related statements in the fee chart to use a single term, "display application," to describe uniformly a software program that interrogates and displays TRACE data and allows a person to access TRACE data.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be November 7, 2012.

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<sup>9</sup> For example, if a Professional were granted a waiver for one month beginning on November 1, 2012, the individual would not be eligible for another waiver in connection with another free trial offered by the same vendor until December 1, 2013. This example assumes that the pilot program is extended or adopted on a permanent basis.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</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 and Section 15A(b)(5) of the Act,<sup>11</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed amendment, which is designed to encourage additional Professionals to test and use Real-Time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members, and may prevent fraudulent and manipulative acts and practices regarding pricing and valuations, for the protection of investors and the public interest.

FINRA believes that the pilot program providing for a limited waiver of the monthly fee per display application for access to Real-Time TRACE transaction data also results in reasonable fees and financial benefits from fee waivers that are equitably allocated. The financial benefit of the fee waiver would be available to all Professionals that accept an offer to test a vendor data product that includes Real-Time TRACE transaction data on a free trial basis. Any Professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, subject to the proscriptions against a Professional obtaining multiple free trials as previously described. In addition, the financial benefit of the fee waiver would be available for a very limited period (i.e., 31 days or less), such that Professionals not eligible for the fee waiver are not unfairly or inequitably affected. The proposed amendment

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<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

is reasonable because the waiver of a standard FINRA fee, and the financial benefit from such waiver, is of limited amount, duration (i.e., one month) and application (i.e., only four Professionals per member (or other end-user)), limited to concurrent free trials of data products offered by vendors, and subject to restrictions on re-use, and is being proposed to enhance a member's ability to access and test, among other things, the uses of Real-Time TRACE transaction data to determine if access to such Real-Time TRACE transaction data would further its business needs. Finally, the proposed amendment does not unfairly discriminate between or among Professionals and members (or other end-users) in that the waiver would be available to any of such persons that accepts an offer to test a vendor data product that includes Real-Time TRACE transaction data on a free trial basis, subject to the limitations described above. The data vendor, rather than FINRA, would decide initially whether to offer a free trial of its data product to a particular Professional, member, or other end-user. FINRA's role would be limited to refusing to extend a fee waiver to a particular person previously identified by the data vendor, due to the prohibition against extending multiple fee waivers to the same person. FINRA believes that establishing such a program on a pilot basis for approximately one year will provide FINRA sufficient time to assess the efficacy and utility of the program.

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 amendment, which is designed to encourage additional Professionals to test and use Real-Time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members. Moreover, the pilot program providing for a limited waiver of the monthly fee per display application for access to Real-Time

TRACE transaction data would not place an unreasonable fee burden on members and other persons (i.e., Professionals) that currently subscribe to receive Real-Time TRACE transaction data, nor confer an uncompetitive benefit to Professionals taking advantage of the pilot program, in that the fee waiver would be available for a very limited period (i.e, 31 days or less), and the financial impact of such a pilot program on Professionals would be de minimis. In addition, the proposed rule change does not place a burden on competition in that the financial benefit of the fee waiver would be available in general to all Professionals. Any Professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, subject to the proscriptions against a Professional obtaining multiple free trials previously described.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>13</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>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

#### 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-2012-049 on the subject line.

##### Paper comments:

- 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-2012-049. 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; 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-2012-049 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>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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