

in the first syndicate covering transaction, as well as other pertinent information, such as identification of the security, its symbol, and the date such activity will occur. In addition, members would be required to subsequently confirm such activity within one business day of completion, including identification of the security and its symbol, the total number of shares and the date(s) of such activity. The proposed provision is substantially similar to NASD Rule 6540(d)(1)(D)(iii). FINRA believes that by including these notice requirements in proposed Rule 5190, the proposed rule change would clarify that they apply to distributions of all OTC Equity Securities and are not limited to distributions of OTCBB-eligible securities.

In light of the foregoing, FINRA proposed to delete paragraphs (b)(10) and (11) from NASD Rule 2710 and Incorporated NYSE Rule 392 in its entirety. FINRA represented that the notice requirements of NASD Rule 2710(b)(10) and (11) and Incorporated NYSE Rule 392(a) largely would be incorporated in proposed Rule 5190. Because Incorporated NYSE Rule 392(b) is specific to the NYSE marketplace, FINRA did not propose that these requirements become part of the Consolidated FINRA Rulebook.

3. Proposed Amendments to Marketplace Rules

FINRA also proposed to clarify the scope and application of the Regulation M-related requirements that are in the current OTCBB and ADF marketplace rules. FINRA proposed to adopt new FINRA Rule 6470 (Withdrawal of Quotations in an OTC Equity Security in Compliance with SEC Regulation M), which would: (1) require a member that is a distribution participant, affiliated purchaser, selling security holder or issuer in a distribution of an OTC Equity Security that is a covered security subject to Rule 101 or Rule 102 of Regulation M to withdraw all quotations in the security during the restricted period; and (2) prohibit the entry of stabilizing bids for the OTC Equity Security pursuant to Rule 104 of Regulation M. FINRA represented that proposed Rule 6470 is substantially similar to NASD Rule 6540(d)(1)(D)(ii) and would clarify that the requirements apply not only to OTCBB-eligible securities, but to all OTC Equity Securities quoted in any inter-dealer quotation system (*i.e.*, OTCBB and Pink Sheets). Thus, under the proposed rule change, the Regulation M-related provisions would be deleted from the OTCBB rules (specifically, paragraphs (d)(1)(D), (E) and (F) would be deleted

from NASD Rule 6540) and comparable requirements would be housed in either proposed Rule 5190, as discussed above, or proposed Rule 6470.

FINRA also proposed to make certain conforming changes to the Regulation M-related rules applicable to the ADF. Specifically, FINRA proposed to amend NASD Rule 4619A(f) to conform to the language and structure of proposed Rule 6470. Thus, a Registered Reporting ADF Market Maker that is a distribution participant, affiliated purchaser, selling security holder or issuer in a distribution of an NMS stock that is a covered security subject to Rule 101 or 102 of Regulation M would be required to request an excused withdrawal of its quotations in the ADF in the offered security. FINRA believes that it is more appropriate to impose such obligation on the member that is posting the quotation, rather than require the manager of the distribution to do so on behalf of each member. FINRA further proposed to amend NASD Rule 4200A, which sets forth the definitions applicable to the ADF rules, to make technical and conforming changes such as adding necessary references to Regulation M and deleting definitions that are currently not used in the ADF rules.

FINRA believes that the proposed rule change will significantly improve the clarity of the current rules and enhance the information FINRA receives, which will better enable FINRA to monitor member OTC quoting and trading for purposes of Regulation M compliance.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval.

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.²⁵ In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁶ which requires, among other things, that FINRA rule 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 Commission believes that moving the

²⁵ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

²⁶ 15 U.S.C. 78o-3(b)(6).

Regulation M-related provisions of the rules under FINRA's jurisdiction in the manner proposed will provide greater clarity to members and aid in compliance. The Commission also notes that it has previously approved the portions of NASD Rule 2710 to be adopted as FINRA Rule 5110,²⁷ and the proposal merely moves that portion of Rule 2710 nearly verbatim from the NASD rulebook to the Consolidated FINRA Rulebook. The Commission believes that this move is primarily ministerial and only aids FINRA members in complying with existing obligations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (File No. SR-FINRA-2008-039) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58520; File No. SR-FINRA-2008-040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Eliminate the Requirement To Report Yield to TRACE and for FINRA To Calculate and Disseminate a Standard Yield

September 11, 2008.

I. Introduction

On July 17, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to eliminate the requirement for members to report yield to the Trade Reporting and Compliance Engine ("TRACE") in connection with a transaction in a TRACE-eligible security, and instead for TRACE to calculate and disseminate a "standard

²⁷ *See, e.g.*, Securities Exchange Act Release No. 48989 (December 23, 2003), 68 FR 75684 (December 31, 2003).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

yield." The proposal was published for comment in the **Federal Register** on August 7, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Background

NASD Rule 6230(c) currently requires a member, in connection with a transaction in a TRACE-eligible security, to report various pieces of information to TRACE, including, for most transactions, the lower of yield to call or yield to maturity.⁴ Upon receipt of that trade report, TRACE disseminates certain information about the transaction (except if it is a Rule 144A transaction), including the yield as reported by the member. TRACE calculates the standard yield⁵ but generally does not disseminate it.⁶

FINRA has proposed (1) to eliminate the requirement for members to report yield; and (2) to disseminate the standard yield in most cases.⁷ FINRA stated that there currently is no uniformity in the manner by which members calculate yield, and that disseminating standard yield—calculated according to a single formula and with a uniform set of assumptions—will provide more useful information to market participants. Moreover, FINRA believes that it may be useful for customers to compare the standard yield in a transaction as reported by TRACE against the member-calculated yield that

the member provides on the customer confirmation required by Rule 10b-10 under the Act.⁸

Vendors. FINRA also has proposed to require that data vendors and redistributors that provide TRACE information display the yield. However, certain vendors desire to disseminate a yield calculated by the vendor, rather than the standard yield. FINRA would permit this flexibility, provided that a vendor displaying a yield other than the standard yield disclose that fact.

Effective Date. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date would be no later than 90 days following publication of that *Regulatory Notice*.

III. Discussion and Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁹ In particular, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act,¹⁰ 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 Commission believes that the proposal will likely improve transparency in the corporate debt markets by making available a standard yield for most transactions that is calculated using an industry-recognized formula with a uniform set of assumptions. At the same time, the proposal reduces regulatory burdens by relieving FINRA members of the obligation to calculate and report yield for each transaction in a TRACE-eligible security.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-FINRA-2008-040) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant delegated authority.¹²

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58502; File No. SR-NYSEArca-2008-93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing of the iShares Lehman Agency Bond Fund

September 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 25, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to list and trade shares ("Shares") of the following fund of iShares Lehman Agency Bond Fund. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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, the Exchange 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

³ Securities Exchange Act Release No. 58283 (August 1, 2008), 73 FR 46108 (August 7, 2008) (SR-FINRA-2008-040).

⁴ The member is not required to report yield if the TRACE-eligible security is in default; the interest rate on the security floats; the interest rate will or may be "stepped-up" or "stepped-down", and the amount of increase or decrease is an unknown variable; the security is a pay-in-kind ("PIK") security; the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable; or if FINRA determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security. See NASD Rule 6230(c)(13).

⁵ FINRA stated that the standard yield in TRACE: (1) is calculated as the internal rate of return according to a discounted cash flow model; (2) is calculated, in a principal trade, on the reported price, which includes the mark-up/mark-down, and in an agency trade, on the reported price and reported commission; (3) does not include any fees or charges that are not included, in a principal trade, as part of the reported price, and in an agency trade, in the reported commission; (4) is calculated as the lower of yield to call (if the bond is callable) and yield to maturity, or so-called "yield-to-worst;" and (5) is calculated utilizing a methodology that is widely used by professionals in the securities industry.

⁶ Standard yield is included in the disseminated TRACE data when the member is required to report yield but fails to do so.

⁷ TRACE would not disseminate a standard yield for any transaction where a member currently is not required to report yield under NASD Rule 6230(c)(13). See *supra* note 4.

⁸ 17 CFR 240.10b-10.

⁹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.