

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59216; File No. SR-FINRA-2008-065]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a TRACE Pilot Program

January 8, 2009.

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 18, 2008, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) (“FINRA” or “Exchange”) 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 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 pilot program in FINRA Rule 6730(e)(4) (formerly NASD Rule 6230(e)(4)) to January 7, 2011, and incorporate a reference to current New York Stock Exchange (“NYSE”) Rule 86.<sup>4</sup> The pilot program exempts from reporting to Trade Reporting and Compliance Engine (“TRACE”) transactions in TRACE-eligible securities that are executed on a facility of the NYSE in accordance with NYSE Rules 1400 and 1401 and reported to NYSE in accordance with NYSE’s applicable trade reporting rules and disseminated publicly by NYSE.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

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#### 6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

\* \* \* \* \*

##### 6730. Transaction Reporting

(a) through (d) No Change.

##### (e) Transactions Exempt From Reporting

The following types of transactions shall not be reported:

(1) through (3) No Change.

(4) [For the duration of a two-year pilot program, effective upon the later of either: (1) approval of this Rule by the SEC, or (2) execution by FINRA and the New York Stock Exchange (“NYSE”) of a data sharing agreement addressing data related to transactions covered by this Rule,] *Provided that a data sharing agreement between FINRA and NYSE related to transactions covered by this Rule remains in effect, for a pilot program expiring on January 7, 2011,* transactions in TRACE-eligible securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400, [and] 1401 and 86 and reported to NYSE in accordance with NYSE’s applicable trade reporting rules and disseminated publicly by NYSE.

(5) No Change.

(f) No Change.

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#### 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 those 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 parts 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 SR-NASD-2006-110, FINRA amended FINRA Rule 6730(e) (then NASD Rule 6230(e)) to exempt from TRACE reporting requirements, for a pilot period of two years, transactions in TRACE-eligible securities that are executed on a facility of the NYSE in accordance with NYSE Rules 1400 and 1401, reported to NYSE in accordance with NYSE’s applicable trade reporting rules and disseminated publicly by

NYSE. The exemption did not take effect until FINRA and NYSE entered into a data sharing agreement addressing data related to the transactions covered by FINRA Rule 6730(e)(4) (then NASD Rule 6230(e)(4)). The Commission approved SR-NASD-2006-110 on an accelerated basis on November 16, 2006, and the two-year pilot period began on January 9, 2007. The pilot program is scheduled to expire on January 9, 2009.

FINRA is proposing to extend the pilot program for two years to continue to exempt members that execute transactions in TRACE-eligible securities on an NYSE facility (and as to which all the other conditions of the exemption are met) from the TRACE reporting requirements. The pilot will expire at 11:59:59 p.m. on January 7, 2011. FINRA believes that a two-year extension will provide additional time to analyze the impact of the exemption. Without the extension, members would be subject to both FINRA’s and NYSE’s trade reporting requirements with respect to these securities.

FINRA also proposes two technical changes to FINRA Rule 6730(e)(4). FINRA proposes to incorporate a reference to amended NYSE Rule 86 in FINRA Rule 6730(e)(4) to identify more clearly the scope of the pilot program. FINRA believes this is necessary because the NYSE recently established a new bond trading facility, which is not reflected in NYSE Rules 1400 or 1401 (i.e., the rules currently referenced in FINRA Rule 6730(e)(4)). Rather, NYSE Rule 1400, which addresses eligibility requirements for unlisted debt securities to be traded on the NYSE, refers to ABS, the bond trading facility that is no longer in existence.<sup>5</sup> FINRA’s proposal

<sup>5</sup> On January 9, 2007, when FINRA Rule 6730(e)(4) (then NASD Rule 6230(e)(4)) became effective, the operation of NYSE’s bond trading system, the “Automated Bond System” or “ABS,” was addressed in NYSE Rule 86 and identified by name in NYSE Rule 1400. In 2007, the NYSE replaced the ABS with a new bond trading facility, “New York Bonds.” NYSE Rule 86 was amended to reflect the name and operation of New York Bonds. However, NYSE Rule 1400 continues to refer to ABS and does not reflect the establishment of New York Bonds. See Securities Exchange Act Release No. 55496 (March 20, 2007); 72 FR 14631 (March 28, 2007) (SR-NYSE-2006-37) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Amended, Relating to the Establishment of NYSE Bonds). In addition, a bond trading facility, which is “based on NYSE Bonds,” was recently established by an affiliate of the NYSE, NYSE Alternext US LLC (“NYSE Alternext”). See Securities Exchange Act Release No. 58839 (October 23, 2008); 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Relocation of the Trading of Certain Debt Securities Conducted On or Through the

<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).

<sup>4</sup> FINRA Rule 6730 became effective on December 15, 2008. See *Regulatory Notice* 08-57 (October 2008).

to reference NYSE Rule 86 in FINRA Rule 6730(e)(4) would clarify the scope of the pilot program currently in effect and proposed to be extended. The proposed rule change would not expand or otherwise change the pilot program.

Also, the proposed rule change would amend FINRA Rule 6730(e)(4) to restate the requirement that the exemption is predicated on the data agreement between FINRA and NYSE to share data related to the transactions covered by the Rule remaining in effect. The success of the pilot program remains dependent on FINRA's ability to effectively continue to conduct surveillance on corporate debt trading in the over-the-counter market.

The effective date of the proposed rule change will be January 8, 2009.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</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 that the extension of the exemptive provision protects investors and the public because transactions will be reported, price transparency will be maintained for these transactions, and NYSE's agreement to share data with FINRA allows FINRA to conduct surveillance in the corporate debt securities market.

### 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.

### 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

FINRA represented that the proposed rule change qualifies for immediate

Exchange's Legacy Trading Systems and Facilities to an Automated Bond Trading Platform Based on NYSE Bonds). FINRA's proposed amendment makes explicit that the pilot program is intended to include transactions executed on a facility of NYSE in accordance with NYSE Rules 1400, 1401 and 86, but would not extend to any transactions executed on the NYSE Alternext bond trading facility.

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

effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder<sup>8</sup> because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>9</sup>

The Exchange has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission hereby grants the Exchange's request and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>10</sup> This will allow the existing pilot program to continue without interruption and thereby eliminate duplicative transaction reporting obligations of broker-dealers engaging in transactions in TRACE-eligible debt securities on NYSE.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

## 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-2008-065 on the subject line.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> In addition, Rule 19b-4(f)(6)(iii) 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. FINRA has satisfied this requirement.

<sup>10</sup> For the 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).

## 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-2008-065. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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-2008-065 and should be submitted on or before February 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>11</sup> 17 CFR 200.30-3(a)(12).