exclude from the trade reporting requirements any transfer of equity securities for the sole purpose of creating or redeeming an instrument that evidences ownership of or otherwise tracks the underlying securities transferred. FINRA explained that such transfers are not considered transactions for purposes of the trade reporting rules and thus are not reportable events.\(^\text{10}\) FINRA represented that the proposed rule change codifies current guidance and practice in this area. The Commission believes that this codification of current practice will help reduce confusion with regard to what is required to be reported under FINRA’s trade reporting requirements and thus reduce reporting errors.

FINRA stated that the proposed rule change will be effective 90 days following the date of Commission approval.

### III. Commission’s Findings

After carefully considering the proposed rule change, the Commission finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposal is consistent with Section 19(b)(6) of the Act,\(^\text{11}\) which requires, in particular, the Commission finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. The Commission believes that this codification of current practice will help reduce confusion with regard to what is required to be reported under FINRA’s trade reporting requirements and thus reduce reporting errors.

FINRA stated that the proposed rule change will be effective 90 days following the date of Commission approval.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,\(^\text{12}\) that the proposed rule change (SR–FINRA–2011–027), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\(^\text{13}\)

Elizabeth M. Murphy, Secretary.

\[^{10}\text{FINRA explained, however, that purchases and sales of the securities that are to be transferred for the purpose of creating or redeeming instruments such as ADRs and ETFs and subsequent purchases and sales of the instruments in the secondary market are OTC transactions and must be reported to FINRA in accordance with the trade reporting rules. FINRA also noted that purchases and sales of the underlying securities in order to track the performance of an instrument such as an ADR or ETF, without actually creating the instrument, are trade reportable and that such transactions are subject to regulatory transaction fees under Section 3 and the TAF.}\]

\[^{11}\text{15 U.S.C. 78o–3(b)(6).}\]

\[^{12}\text{In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).}\]

\[^{13}\text{15 U.S.C. 78o–3(b)(2).}\]

\[^{14}\text{17 CFR 200.30–3(b)(12).}\]