

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65408; File No. SR-FINRA-2011-049]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Aggregation of Activity of Affiliated Members for Purposes of FINRA/Nasdaq TRF Fees and Credits

September 27, 2011.

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 September 13, 2011, 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 “constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) 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 Rule 7630A (Aggregation of Activity of Affiliated Members) relating to the pricing schedule for the FINRA/NASDAQ Trade Reporting Facility (the “FINRA/NASDAQ TRF”) under the Rule 7600A Series.

The text of the proposed rule change is available on FINRA’s Web site 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

Rule 7630A allows affiliated members to aggregate their activity under certain provisions of the fee and credit schedule applicable to the FINRA/NASDAQ TRF that make fees and credits dependent upon the volume of their activity. For example, Rule 7620A caps fees for members with a daily average number of media/executing party trades during the month in excess of 2500. Affiliated members that might not qualify for the cap by themselves may be able to qualify by aggregating their activity.

Under Rule 7630A, a member may request that the FINRA/NASDAQ TRF aggregate its activity with the activity of its affiliates.<sup>5</sup> The rule defines an “affiliate” of the member as any wholly owned subsidiary, parent or sister (as those terms are defined under the rule) of the member that is also a member. Thus, the rule requires that one affiliated member own 100% of the voting interests in the other, or that they both be under the common control of a parent that owns 100% of each. A member requesting aggregation of affiliate activity under Rule 7630A is required to certify the affiliate status of entities whose activity it seeks to aggregate and immediately to provide notice of any event that causes an entity to cease to be an affiliate. A review of information regarding the entities is conducted, and the member may be requested to provide additional information to verify the affiliate status of an entity. A request will be approved unless it is determined that the member’s certification is not accurate.<sup>6</sup> FINRA is proposing to clarify Rule 7630A by describing the process for review and approval in proposed

<sup>5</sup> The rule is administered by The NASDAQ OMX Group, Inc. (“NASDAQ”), in its capacity as the “Business Member” and operator of the FINRA/NASDAQ TRF on behalf of FINRA. FINRA’s oversight of this function performed by the Business Member is conducted through an annual assessment and review of TRF operations by an outside independent audit firm.

<sup>6</sup> In the event of an inaccurate certification, FINRA would investigate whether the member had violated FINRA rules and would take appropriate disciplinary action.

paragraph (a)(1). However, FINRA is not proposing any changes to this process.

In addition, FINRA is proposing to adopt a stated policy with respect to the timing of recognition of aggregation requests. Because bills for the FINRA/NASDAQ TRF are prepared on a monthly basis, recognizing an affiliation in the middle of a month would require a complex proration of members’ bills. Accordingly, it has been the FINRA/NASDAQ TRF’s practice to recognize an affiliation request either at the beginning of the month in which the affiliation occurs or at the beginning of the following month. FINRA is proposing to adopt new paragraph (a)(2) of Rule 7630A, which provides that if two or more members become affiliated on or prior to the sixteenth day of a month and submit a request for aggregation on or prior to the twenty-second day of the month, approval of the request shall be deemed effective as of the first day of that month. Thus, for example, if one member acquires another, the acquisition is completed by June 16, and the members file a request for aggregation by June 22, approval of the request would allow the members to aggregate all activity during June. This would be the case regardless of the time required to review and approve the request. However, if members become affiliated after the sixteenth day of the month, or do not submit a request for aggregation until after the twenty-second day of the month, the request would not be recognized until the following month.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15(b)(6) of the Act,<sup>7</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. FINRA believes that the proposed rule change, by adopting a clear policy with respect to the meaning, administration and enforcement of Rule 7630A, will promote members’ understanding of the parameters of the rule and enhance the efficiency of its administration.

FINRA further believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,<sup>8</sup> which requires, among other things, that

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<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)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

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. All similarly situated members are subject to the same fee structure, and access to the FINRA/NASDAQ TRF is offered on fair and non-discriminatory terms. The proposed rule change is reasonable because it establishes a standard for recognition of aggregation requests that is easy to administer and that reflects the need to review and approve aggregation requests while avoiding the complexities associated with proration of the bills of members that affiliate during the course of a month. The proposed rule change is equitable because all members seeking to aggregate their activity are subject to the same parameters, in accordance with a commonsense standard that recognizes an affiliation as of the month's beginning closest in time to when the affiliation occurs, provided the members submit a timely request.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and paragraph (f)(1) of Rule 19b-4 thereunder.<sup>10</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.

### **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-2011-049 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-2011-049. 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 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 Web site 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 a.m. and 3 p.m. Copies of such 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 publicly available. All submissions should refer to File Number SR-FINRA-2011-049 and should be submitted on or before October 24, 2011.

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

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-25352 Filed 9-30-11; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65406; File No. SR-BYX-2011-023]

### **Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.**

September 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 14, 2011, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange 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 proposed rule change effective upon filing with 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**

The Exchange proposes to amend the fee schedule applicable to Members<sup>5</sup> of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 16, 2011.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

<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).

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).