

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 the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. 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-NYSEAMEX-2011-90 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-31473 Filed 12-7-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65877; File No. SR-FINRA-2011-069]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating To Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA

December 2, 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 November 22, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 6730 to reduce the period to report TRACE-Eligible Asset-Backed

Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced ("TBA") ("TBA transactions") in two stages; FINRA Rule 6750, to provide for the dissemination of TBA transactions; FINRA Rule 7730, to establish fees for real-time TBA transaction data and historical TBA transaction data; and FINRA Rule 6730 and FINRA Rule 7730, to delete references to a pilot program that is no longer in effect and to incorporate other minor administrative, technical or clarifying changes. FINRA also proposes to establish a dissemination protocol providing that, for a TBA transaction in excess of \$50 million, the size (volume) of the transaction would be displayed in disseminated TRACE data as \$50 million plus.

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

FINRA proposes amendments to the Rule 6700 Series (the Trade Reporting and Compliance Engine ("TRACE") rules) to provide greater transparency in transactions in Asset-Backed Securities that are TBA transactions.<sup>3</sup> First, FINRA proposes to amend Rule 6730 to reduce the reporting period for TBA transactions in two phases. Second, FINRA proposes to amend Rule 6750 to provide for the dissemination of information on TBA transactions in real-time (*i.e.*, immediately upon FINRA's receipt of the transaction report). Third, in Rule 7730, FINRA proposes to

establish fees: (i) For a data set of real-time TRACE disseminated TBA transaction data at the same rates currently in effect for similar real-time TRACE disseminated data sets, and (ii) for a data set of historic TRACE TBA transaction data at the same rates currently in effect for similar Historic TRACE Data sets.<sup>4</sup> FINRA also proposes to delete references to a pilot program that is no longer in effect and make other minor technical, administrative or clarifying amendments to Rule 6730 and Rule 7730. Finally, FINRA proposes to establish a limit or "cap" of \$50 million for disseminated TBA transactions as part of FINRA's dissemination policies and protocols, so that the actual size of a TBA transaction in excess of \$50 million would be displayed as "\$50MM+" in disseminated TRACE data.

##### TBA Transactions

As defined in Rule 6710(v), an Agency Pass-Through Mortgage-Backed Security means:

a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to "pass through" the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.<sup>5</sup>

As provided in Rule 6710(u), TBA means:

"to be announced" and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security \* \* \* where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).

In a TBA transaction, the parties agree on a price for delivering a given volume of Agency Pass-Through Mortgage-Backed Securities at a specified future date. The distinguishing feature of a TBA transaction is that the actual identity of the securities to be delivered at settlement is not specified on the date of execution ("Trade Date"). Instead, the parties to the trade agree on only five general parameters of the securities to be delivered: issuer, mortgage type, maturity, coupon, and month of

<sup>3</sup> A TBA transaction is a transaction in a specific type of Asset-Backed Security, an Agency Pass-Through Mortgage-Backed Security as defined in Rule 6710(v), traded "to be announced" as defined in Rule 6710(u).

<sup>4</sup> The term Historic TRACE Data is defined in Rule 7730(f)(4).

<sup>5</sup> The terms Agency and Government-Sponsored Enterprise (GSE) are defined in, respectively, Rule 6710(k) and Rule 6710(n).

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

<sup>15</sup> 15 U.S.C. 78s(b)(1).

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

settlement. Together, the securitization process and the TBA market transform what is a fundamentally heterogeneous universe of individual mortgages and mortgage pools (with myriad credit and prepayment characteristics) into groups of fungible—and therefore liquid—fixed-income instruments.<sup>6</sup>

#### *Reduction of TBA Transaction Reporting Period*

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (“CMOs”) and real estate mortgage investment conduits (“REMICs”)) that are executed on a business day through 5 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(ii).<sup>7</sup> In contrast, secondary market transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.<sup>8</sup> With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.<sup>9</sup>

<sup>6</sup> James Vichery and Joshua Wright, *TBA Trading and Liquidity in the Agency MBS Market*, Federal Reserve Bank of New York Staff Reports, no. 468 (August 2010), available at [http://www.newyorkfed.org/research/staff\\_reports/sr468.pdf](http://www.newyorkfed.org/research/staff_reports/sr468.pdf).

<sup>7</sup> The terms Asset-Backed Security and TRACE System Hours are defined in, respectively, Rule 6710(m) and Rule 6710(t). Rule 6730(a)(3)(B)(i) addresses reporting requirements for Asset-Backed Securities transactions executed after 5 p.m. Eastern Time on a business day, and Rule 6730(a)(3)(B)(ii) addresses reporting requirements for Asset-Backed Securities transactions executed after TRACE System Hours, or on a weekend or a holiday, or other day on which the TRACE system is not open at any time during that day.

In general, Asset-Backed Securities must be reported to TRACE under Rules 6730(a)(3)(A) and (B). Although CMOs and REMICs are Asset-Backed Securities, for certain pre-issuance transactions in CMOs and REMICs, the applicable reporting provisions are set forth in Rule 6730(a)(3)(C), and Rules 6730(a)(3)(A) and (B) do not apply.

As discussed, *infra*, FINRA proposes to renumber Rule 6730(a)(3)(A)(ii) as Rule 6730(a)(3)(A).

<sup>8</sup> The terms TRACE-Eligible Security and Time of Execution are defined in, respectively, Rule 6710(a) and Rule 6710(d).

<sup>9</sup> Currently, transaction information on all types of securities that are TRACE-Eligible Securities, except Asset-Backed Securities, is disseminated as provided in Rule 6750(a). However, FINRA does not disseminate information on a transaction in a TRACE-Eligible Security that is effected pursuant to Securities Act Rule 144A (17 CFR 239.144A) under Rule 6750(b)(1), certain transfers of proprietary securities positions between a member and another member or non-member broker-dealer where the transfer is effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other

In connection with proposing that TBA transactions be disseminated real-time to the public and the market, FINRA proposes to reduce the reporting period for TBA transactions to 15 minutes to provide market participants meaningful and timely price information.

However, reduction of the reporting period for TBA transactions would occur in two stages to permit industry participants to adjust policies and procedures, and to make required technological changes. First, for a pilot program of approximately 180 days duration, FINRA proposes to reduce the reporting period for TBA transactions from no later than the close of the TRACE system on Trade Date to no later than 45 minutes from the Time of Execution (“TBA Transaction Pilot Program”), as set forth in proposed Rule 6730(a)(3)(D)(i).<sup>10</sup> Minor exceptions to the general requirements are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d.<sup>11</sup> Second, after approximately 180 days, the TBA Transaction Pilot Program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to 15 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(D)(ii). Again, the

broker-dealer’s parent under Rule 6750(b)(2), or transactions that are List or Fixed Offering Price Transactions or Takedown Transactions under Rule 6750(b)(3). The terms List or Fixed Offering Price Transaction and Takedown Transaction are defined in, respectively, Rule 6710(q) and Rule 6710(r).

<sup>10</sup> To accommodate member requests that rule changes requiring technology changes occur on a Friday, if possible, the TBA Transaction Pilot Program providing for 45-minute reporting may be in effect for 180 days or for a few additional days to fix the termination date of the TBA Transaction Pilot Program on a Friday (*i.e.*, if the 180th day is not a Friday, the 45-minute requirement will expire on the Friday next occurring that the TRACE system is open).

<sup>11</sup> Minor exceptions to the general requirement to report TBA transactions no later than 45 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d. Under proposed Rule 6730(a)(3)(D)(i)a., transactions executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(D)(i)c., transactions executed on a business day less than 45 minutes before 6:30 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated “as/of” and include the date of execution. Under proposed Rule 6730(a)(3)(D)(i)d., transactions executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1), no later than 45 minutes after the TRACE system opens, designated “as/of” and include the date of execution.

proposed rule change includes certain limited exceptions for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.<sup>12</sup> FINRA would also incorporate cross references to the proposed reporting requirements applicable solely to TBA transactions in the reporting requirements applicable generally to Asset-Backed Securities in Rule 6730(a)(3)(A) and (B).

#### *Dissemination of TBA Transaction Data*

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE. Specifically, Rule 6750(b)(4) provides that transaction information on TRACE-Eligible Securities that are Asset-Backed Securities will not be disseminated.

However, when FINRA proposed the dissemination restrictions in Rule 6750(b)(4) regarding Asset-Backed Securities, FINRA represented that it would study the Asset-Backed Securities data after transaction reporting began. In the Commission’s order approving the proposed rule change to define Asset-Backed Securities as TRACE-Eligible Securities and require reporting of Asset-Backed Securities transactions, the Commission noted FINRA’s intent to study Asset-Backed Securities dissemination issues prior to making any proposal to disseminate some or all of such information, and the Commission’s historical support of efforts to improve post-trade transparency in the fixed income markets:

FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market. FINRA has stated that, after a period of study, it would file a proposed rule change

<sup>12</sup> After the TBA Transaction Pilot Program expires, Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1), requires generally that TBA transactions be reported no later than 15 minutes from the Time of Execution, with certain minor exceptions for transactions executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. *See, e.g.*, Rule 6730(a)(1)(C). The exceptions are the same as those that apply to members reporting transactions in corporate bonds and Agency Debt Securities to TRACE. (The SEC recently approved a proposed rule change, which included reorganizing, without substantive amendment, the provisions set forth in current Rule 6730(a)(1)(C) as Rule 6730(a)(1)(A). *See* Securities Exchange Act Release No. 65791 (November 18, 2011) (Order Approving File No. SR-FINRA-2011-053). The rule change becomes effective on February 6, 2012. *See Regulatory Notice* 11-53 (November 21, 2011).)

if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities. The Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.<sup>13</sup>

Since reporting began on May 16, 2011, FINRA has reviewed Asset-Backed Securities transaction data. The reported Asset-Backed Securities transaction data, as well as input from market participants as FINRA prepared to expand TRACE to include Asset-Backed Securities, suggests that real-time disseminated TRACE transaction data should be expanded to include transaction information on TBA transactions.

First, at the launch of Asset-Backed Securities reporting, certain market participants noted that TBA transactions trade in a very liquid market and suggested that FINRA consider transparency in such transactions. Second, as FINRA reviewed and continues to review the data reported for Asset-Backed Securities, including TBA transactions, and studies the total volume of TBA transactions, the concentration of trading in such securities, and the pricing disparity among various types of Agency Pass-Through Mortgage-Backed Securities traded TBA to understand their liquidity and fungibility, the data supports FINRA's proposal to disseminate TBA transactions and increase transparency in this market.

The market activity reported and reviewed reveals that the TBA market is generally active and liquid. In addition, the degree of fungibility is high, with substantial trading concentrated among a relatively small universe of securities as identified by a unique CUSIP number (hereinafter, "CUSIP" means the specific security identified by the unique CUSIP number).<sup>14</sup> The TBA market has an average daily volume of \$248 billion traded in close to 8,000 average daily trades,<sup>15</sup> and the average daily volume of all TBA transactions is approximately ten times the average daily volume of the entire corporate bond market.<sup>16</sup> The correlation between

various TBA CUSIPs is high, and the price of one TBA transaction may be derived using available prices for TBA transactions for a different issuer, a different coupon rate, maturity, or a combination thereof.<sup>17</sup>

Accordingly, FINRA proposes to disseminate TBA transaction information reported to TRACE in real-time.<sup>18</sup> Specifically, Rule 6750(b)(4) would be amended to provide that FINRA will not disseminate information on a transaction in an Asset-Backed Security, *except* a transaction in an Agency Pass-Through Mortgage-Backed Security traded TBA.

#### *Data and Fees*

FINRA proposes to amend Rule 7730 to make available the real-time disseminated TBA transaction data and the historic TRACE data for TBA transactions, and to establish the fees for such TBA transaction data. First, FINRA proposes to amend Rule 7730(c) to establish the Asset-Backed Security data set ("ABS Data Set") as the third Real-Time TRACE market data set. The ABS Data Set will be limited to real-time disseminated TBA transaction data initially. The market data fee rates currently in effect for similar Real-Time TRACE market data sets (*i.e.*, for the Corporate Bond Data Set and the Agency Data Set) in Rule 7730(c) would be extended to the ABS Data Set.

Second, FINRA proposes to amend Rule 7730(d) to establish a third historic data product for TBA transactions ("Historic ABS Data Set") similar to the data sets for corporate bonds ("Historic Corporate Bond Data Set") and Agency Debt Securities ("Historic Agency Data Set") listed therein. FINRA also proposes to establish fees for the Historic ABS Data Set at the same rates currently in effect in Rule 7730(d) for the Historic Corporate Bond Data Set and the Historic Agency Data Set. The Historic ABS Data Set would include all TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, TBA transaction data to be included in the Historic ABS

Data Set would be released subject to a delay of approximately 18 months from the date of the transaction.<sup>19</sup>

#### *Other Rule Changes*

FINRA proposes to delete provisions regarding an expired pilot program, and to incorporate other minor administrative, technical or clarifying changes in Rule 6730 and Rule 7730.

FINRA proposes to delete Rule 6730(a)(3)(A)(i), the pilot program for Asset-Backed Securities transaction reporting that expired on November 18, 2011 ("Pilot Program"), Rule 6730(a)(3)(C)(i), which references the Pilot Program and applies to certain pre-issuance CMOs and REMICs, and all cross references to the two provisions in Rule 6730(a)(3)(A), (B) and (C).<sup>20</sup> In addition, FINRA would incorporate technical amendments to Rule 6730(a)(3)(C)(ii), and renumber Rule 6730(a)(3)(A)(ii) and Rule 6730(a)(3)(C)(ii) as, respectively, Rule 6730(a)(3)(A) and Rule 6730(a)(3)(C).<sup>21</sup>

Also in Rule 6730, FINRA proposes to incorporate an introductory sentence in Rule 6730(a)(3), stating that Asset-Backed Securities transactions must be reported as provided in that subparagraph, and a caption to Rule 6730(a)(3)(C), regarding the reporting requirements that apply to certain pre-issuance transactions involving CMOs and REMICs. In addition, FINRA proposes a technical amendment to incorporate references in Rule 6730(a)(3)(A) and (B) to the proposed reporting requirements for TBA transactions in proposed Rule 6730(a)(3)(D).

In Rule 7730, FINRA proposes to add, in paragraphs (d)(1)(A)(ii) and (d)(1)(B)(ii) regarding Historic TRACE Data, a sentence to clarify that the 2011 Historic Agency Data Set also will include the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also will include the 2012 Historic ABS

<sup>19</sup> Asset-Backed Securities transactions first began to be reported to TRACE on May 16, 2011; thus, the first Historic ABS Data Set would be available for release approximately 18 months later, in early 2013.

<sup>20</sup> Cross references to the Pilot Program would be deleted in Rule 6730(a)(3)(A)(ii) (proposed renumbered Rule 6730(a)(3)(A)), Rule 6730(a)(3)(B) and Rule 6730(a)(3)(C)(ii) (proposed renumbered Rule 6730(a)(3)(C)).

<sup>21</sup> In Rule 6730(a)(3)(C)(ii) (proposed renumbered Rule 6730(a)(3)(C)), FINRA proposes to delete the words "After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:" and add the following text in the same place: "Transactions in Asset-Backed Securities that are collateralized mortgage obligations (CMOs) or real estate mortgage investment conduits (REMICs) that are executed before the issuance of the security must be reported the earlier of:"

<sup>13</sup> See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR-FINRA-2009-065).

<sup>14</sup> CUSIP means Committee on Uniform Security Identification Procedures.

<sup>15</sup> The information is based upon FINRA's review of all TBA transactions reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>16</sup> The information is based upon FINRA's review of transactions in all TRACE-Eligible Securities, other than Agency Debt Securities, reported to TRACE from May 16, 2011 through October 28, 2011.

<sup>17</sup> From a review of all TBA transactions reported to TRACE from May 16, 2011 through July 31, 2011, the data shows that TBA transactions (with different issuers, different coupon rates, and different maturities) were priced consistently, relative to each other.

<sup>18</sup> FINRA's TRACE system would disseminate transaction information immediately upon receipt of a transaction report.

FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be subject to dissemination.

Data Set.<sup>22</sup> FINRA also proposes minor technical amendments to Rule 7730(c) and (d) to reflect that the number of Data Sets and Historic Data Sets will increase from two to three, and other minor technical amendments to Rule 7730(b)(1) and Rule 7730(c) and (d).

#### Dissemination Cap

Currently, there are two TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size (volume) of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is \$5 million (\$5MM), and the size of transactions in excess of \$5MM is displayed as "\$5MM+." For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is \$1 million (\$1MM), and the size of a transaction in excess of \$1MM is displayed as "\$1MM+."<sup>23</sup>

FINRA has analyzed the distribution of TBA trades to determine an appropriate cap for these securities. FINRA proposes initially to set a dissemination cap for a TBA transaction at \$50 million (a "\$50 million dissemination cap"). Accordingly, TBA transactions greater than \$50 million would be displayed as "\$50MM+." At this level, approximately 12 percent of TBA transactions and approximately 63 percent of TBA transaction volume will be subject to the \$50 million dissemination cap.<sup>24</sup>

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 will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

<sup>22</sup> FINRA proposes not to add the clarification to the fee chart in Rule 7730. Also, FINRA proposes to delete a similar statement—"The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set."—in two sections of the fee chart in Rule 7730 summarizing Historic TRACE Data fees. Also, FINRA proposes to delete "BTDS" in two sections of the fee chart in Rule 7730 summarizing market data fees.

<sup>23</sup> The terms Investment Grade and Non-Investment Grade are defined in, respectively, Rule 6710(h) and Rule 6710(i).

<sup>24</sup> In contrast, the existing caps for corporate Investment Grade bonds limit the display of actual size for approximately 1.6 percent of trades representing 48 percent of par value traded, and, for Agency Debt Securities, 6 percent of trades and 74 percent of par value. The information is based on a review of all TBA transactions, and transactions in Investment Grade corporate bonds and Agency Debt Securities reported to TRACE from May 16, 2011 through September 30, 2011.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>25</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>26</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 rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public, because transparency in TBA transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for Agency Pass-Through Mortgage-Backed Securities; and because the dissemination of price and other TBA transaction information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the TBA market. In addition, FINRA believes that the proposed data fees for the ABS Data Set (TBA transaction data disseminated immediately upon receipt by FINRA) and the Historic ABS Data Set (TBA transaction data delayed for 18 months), which are proposed at the same rates currently in effect for similar TRACE corporate bond and Agency Debt Securities data products, are reasonable fees that are equitably allocated among members, data vendors, qualifying Tax-Exempt Organizations and other TRACE data consumers.

#### 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.

<sup>25</sup> 15 U.S.C. 78o-3(b)(6).

<sup>26</sup> 15 U.S.C. 78o-3(b)(5).

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-069 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-2011-069. This file number should be included on the subject line if email 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 available publicly. All submissions should refer to File Number SR-FINRA-2011-069 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65876; File No. SR-BX-2011-078]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees for BX

December 2, 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 November 22, 2011, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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.

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

BX is filing with the Commission a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. The new pricing will take effect immediately. The text of the proposed rule change is available at BX's principal office, at <http://nasdaqomxbx.cchwallstreet.com/>, at the Commission's Public Reference Room, and at <http://www.sec.gov>.

#### 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 places specified in Item IV below. The Exchange 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

The purpose of the proposed rule change is to adopt fees applicable to the new routing services on the NASDAQ OMX BX Equities Market.<sup>3</sup> BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (*i.e.*, quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity; this is not changing. The proposed fees, because they apply to routed orders, will apply only to orders executed at venues other than the NASDAQ OMX BX Equities Market.

BX proposes to amend BX Rule 7018(a) to adopt fees for the execution of routed orders in securities priced at \$1 or more per share and BX Rule 7018(b) to adopt fees for routing of securities priced at less than \$1 per share. In BX Rule 7018(a), the charges depend on both where the order was executed and the order's routing strategy, which is similar to NASDAQ Rule 7018(a).<sup>4</sup> The different routing strategies, BSTG,<sup>5</sup> BSCN,<sup>6</sup> BMOP,<sup>7</sup> BTFY<sup>8</sup> and BCRT,<sup>9</sup> are defined in BX Rule 4758 and correlate to some of the routing strategies of NASDAQ, as

<sup>3</sup> Securities Exchange Act Release No. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR-BX-2011-048).

<sup>4</sup> Similar to the fees proposed here, NASDAQ bases the charge on the type of routing strategy employed and where the order was executed, because routing fees are generally intended to the recoup the cost of routing the order to another venue for execution. However, unlike BX, NASDAQ also bases its routing fees on where the security is listed. This is not a significant difference because the proposed fees include a separate charge for execution on the NYSE.

<sup>5</sup> See BX Rule 4758(a)(1)(A)(iii).

<sup>6</sup> See BX Rule 4758(a)(1)(A)(iv).

<sup>7</sup> See BX Rule 4758(a)(1)(A)(v).

<sup>8</sup> See BX Rule 4758(a)(1)(A)(v).

<sup>9</sup> See BX Rule 4758(a)(1)(A)(vii).

explained below. The proposed BX routing fees are the same as or less than NASDAQ's, which is also explained further below.<sup>10</sup>

Respecting BSTG and BSCN orders, the charge is \$0.0023 per share executed at NYSE and \$0.0030 per share executed at venues other than NYSE. Respecting NASDAQ's comparable STGY and SCAN orders,<sup>11</sup> this charge is the same for shares executed on NYSE and also the same as what NASDAQ charges for routed executions at other venues in NASDAQ-listed securities, NYSE-listed securities and for securities listed on exchanges other than NASDAQ or NYSE (\$0.0030 per share).<sup>12</sup> The Exchange believes that charging the same routing fees as NASDAQ should attract users to its new routing program.

Respecting BMOP orders, the charge is \$0.0025 per share executed at NYSE and \$0.0035 per share executed at venues other than NYSE. This is the same as what NASDAQ charges for its comparable MOPP orders,<sup>13</sup> which is, following the format of the NASDAQ fee schedule: (i) for NASDAQ-listed securities, \$0.0035 per share; (ii) for NYSE-listed securities, \$0.0035 per share executed at venues other than NYSE or \$0.0025 per share executed at NYSE; and (iii) for securities listed on exchanges other than NASDAQ or NYSE, \$0.0035 per share. The Exchange has determined that this is the appropriate charge to attract BMOP orders to BX.

Respecting BTFY orders, the charge is \$0.0022 per share executed at NYSE and \$0.0005 per share executed at venues other than NYSE, NASDAQ or PSX. For orders that execute at PSX, BX will pass through all fees assessed and rebates offered by PSX and for orders that execute at NASDAQ, BX will pass through all fees assessed and rebates offered by NASDAQ. BX, PSX and NASDAQ are affiliates. This is the same as what NASDAQ charges for its comparable TFTY orders,<sup>14</sup> which is \$0.0022 per share executed at NYSE and \$0.0005 per share executed at venues other than NYSE, BX or PSX, regardless of where the security is listed. For orders that execute at BX, NASDAQ gives a credit of \$0.0014 for orders that

<sup>10</sup> Pursuant to a November 28, 2011 conference call with Commission staff, Edith Hallahan,

Principal Associate General Counsel, the NASDAQ OMX Group, Inc., confirmed that the proposed BX routing fees are the same as (not less than) NASDAQ's existing routing fees.

<sup>11</sup> See NASDAQ Rule 4758(a)(1)(A)(iii) and (iv).

<sup>12</sup> For NASDAQ-listed securities, there is no separate, lower fee for orders executed at NYSE, because NASDAQ-listed securities do not trade on NYSE and thus would not route there.

<sup>13</sup> See NASDAQ Rule 4758(a)(1)(A)(vi).

<sup>14</sup> See NASDAQ Rule 4758(a)(1)(A)(v).

<sup>27</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.