

costs by assessing a Remote Specialist Fee.

The Exchange currently assesses Remote Specialists a monthly fee of \$50 per option allocation.<sup>4</sup> The Exchange caps the fee at \$4,500 per month. The Exchange is now proposing to increase the Remote Specialist Fee monthly from \$50 per option allocation to \$200 per option allocation. The \$4,500 cap would remain unchanged. The purpose of the increase is to enable the Exchange to better account for and defray the operational and regulatory costs of maintaining this post.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed increase in the Remote Specialist Fee is reasonable because it will enhance the Exchange's ability to recoup costs that are incurred by the Exchange for maintaining a defined physical location or post on the Exchange's trading floor to facilitate interaction amongst market participants located on the Exchange's physical trading floor. The Exchange also believes the proposal is reasonable because the Exchange proposes to maintain the existing cap on the Remote Specialist Fee at \$4,500 per month.

The Exchange believes that the proposed Remote Specialist Fee is equitable because it would be uniformly applied to all Remote Specialists.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

<sup>4</sup> See Securities Exchange Act Release No. 64705 (June 20, 2011), 76 FR 37163 (June 24, 2011) (SR-Phlx-2011-83). Pursuant to Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, a Remote Specialist must meet certain requirements to be approved as an RSQT. Rule 507(b)(i) describes the process for the assignment of options. See Exchange Rule 507. An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or 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)(ii) of the Act.<sup>7</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2012-53 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 No. SR-Phlx-2012-53. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-Phlx-2012-53 and should be submitted on or before May 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-11257 Filed 5-9-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66924; File No. SR-FINRA-2012-023]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Trading Activity Fee Rate for Transactions in Covered Equity Securities**

May 4, 2012.

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 May 2, 2012, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>8</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>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

FINRA is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's Trading Activity Fee ("TAF") for transactions in covered equity securities.

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's primary member regulatory pricing structure consists of the following fees: the Personnel Assessment; the Gross Income Assessment; and the TAF. These fees are used to fund FINRA's regulatory activities, including examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.<sup>3</sup> Because the proceeds from these fees are used to fund FINRA's regulatory mandate, Section 1 of Schedule A to FINRA's By-Laws notes that "FINRA shall periodically review these revenues in conjunction with costs to determine the applicable rate."<sup>4</sup>

FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq's Automated Confirmation Transaction system then in place.<sup>5</sup> Currently, the TAF is generally assessed on the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities), over-the-counter equity securities, security futures,

TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to Municipal Securities Rulemaking Board reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.<sup>6</sup>

The current TAF rate for covered equity securities is \$0.000095 per share for each sale of a covered equity security, with a maximum charge of \$4.75 per trade. This rate has been in place for trades occurring on or after March 1, 2012, and was based on estimated trading volumes.<sup>7</sup> If the execution price for a covered equity security is less than the TAF rate on a per share basis, then no TAF is assessed.

Because the TAF is based on trading volumes, FINRA's revenues derived from the TAF are subject to the volatility of trading in the securities markets and, in particular, the equity markets. Although the TAF is generally charged on transactions in equity securities, TRACE-reportable securities, options, and futures, over 95% of TAF revenue is generated by transactions in covered equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets.

Share volume in the equity markets has been difficult to project given the volatility of the markets through 2011 and into the early months of 2012. Declining share volume during December 2011 and the first two months of 2012 indicate that share volumes are not holding to the level seen in 2011 as FINRA anticipated. Given this trend, FINRA's TAF projections for the year indicate a shortfall. Equity trading volume from December 2011 through February 2012 averaged approximately 6.7 billion shares per day; when setting the previous TAF rate, FINRA estimated average equity trading of approximately 7.7 billion shares per day. Recognizing these volume conditions remain weaker than anticipated, it is necessary for FINRA to adjust the TAF rate for the second half of 2012.

To stabilize revenue flows necessary to support FINRA's regulatory mission in light of the decreased volume of trading in the equity markets, FINRA is proposing an increase to the TAF rate for covered equity securities from \$0.000095 per share to \$0.000119 per share, with a corresponding increase to the per-transaction cap for covered

equity securities from \$4.75 to \$5.95.<sup>8</sup> FINRA believes that increasing the TAF rate on these securities by \$0.000024 per share is the minimum increase necessary to bring the revenue from the TAF to its needed levels to adequately fund FINRA's member regulatory obligations. As with the prior rate change to the TAF, the proposed increase to the TAF rate on transactions in covered equity securities seeks to remain revenue neutral to FINRA (i.e., as adjusted, FINRA would aim to receive a substantially similar amount in revenue from the TAF as the TAF has generated in prior years).

When FINRA proposed replacing the former NASD Regulatory Fee with the TAF in 2002, several commenters at the time expressed concern to the Commission that FINRA could raise the TAF rate at any time without notice and comment and Commission approval.<sup>9</sup> In approving the TAF, the Commission noted that it did not share the commenters' concern, that FINRA must file any proposed changes to the TAF with the SEC, and that FINRA agreed to file all future changes to the TAF for full notice and comment pursuant to Section 19(b)(2) of the Act.<sup>10</sup>

Consistent with the recent amendments by Congress to Section 19(b)(3)(A) of the Act<sup>11</sup> to clarify the authority of a self-regulatory organization ("SRO") to file proposed rule changes establishing or changing a due, fee, or other charge imposed by the SRO for immediate effectiveness,<sup>12</sup> FINRA believes it is appropriate to file future amendments to the TAF rates under Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4 thereunder<sup>14</sup> rather than for full notice and comment under Section 19(b)(2) of the Act.<sup>15</sup> FINRA notes that it will continue to file all TAF rate changes with the Commission, and

<sup>8</sup> Because, as noted above, transactions in covered equity securities account for over 95% of TAF revenues, FINRA is not proposing adjustments to the TAF rates for other types of securities.

<sup>9</sup> See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

<sup>10</sup> See *id.* at 34024.

<sup>11</sup> 15 U.S.C. 78s-3(b)(3) [sic].

<sup>12</sup> Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 19(b)(3)(A) of the Act to explicitly allow SROs to file proposed rule changes for immediate effectiveness if the proposed rule change establishes or changes a due, fee, or other charge imposed by the SRO on members or non-members.

<sup>13</sup> 15 U.S.C. 78s-3(b)(3)(A) [sic].

<sup>14</sup> 17 CFR 240.19b-4. Paragraph (f)(2) of Rule 19b-4 permits a proposed rule change filed by an SRO to take effect upon filing with the SEC if the SRO designates the proposed rule change as establishing or changing a due, fee, or other charge applicable only to a member. 17 CFR 240.19b-4(f)(2). The TAF is charged only to FINRA members.

<sup>15</sup> 15 U.S.C. 78s-3(b)(2) [sic].

<sup>6</sup> See FINRA By-Laws, Schedule A, § 1(b)(2).

<sup>7</sup> See *Regulatory Notice* 12-06 (January 2012); see also Securities Exchange Act Release No. 66287 (February 1, 2012), 77 FR 6161 (February 7, 2012); Securities Exchange Act Release No. 66276 (January 30, 2012), 77 FR 5613 (February 3, 2012).

<sup>3</sup> See FINRA By-Laws, Schedule A, § 1(a).

<sup>4</sup> *Id.*

<sup>5</sup> See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

the Commission summarily may temporarily suspend a proposed rule change changing a TAF rate filed pursuant to Section 19(b)(3)(A) of the Act within 60 days of filing “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].”<sup>16</sup> As noted above, FINRA anticipates filing proposed changes to TAF rates (either to increase or to decrease a rate) only when necessary to account for changes in trading volume with the goal of making the TAF revenue-neutral for FINRA (i.e., FINRA aims to receive a substantially similar amount in revenue from the TAF from year to year).

The effective date of the proposed rule change will be July 1, 2012. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>17</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. Because of the recent decrease in trading volumes in the equity markets described above, FINRA believes that the proposed rate change to the TAF is now necessary to ensure that FINRA can continue to maintain a robust regulatory program and meet its regulatory obligations effectively while attempting to remain revenue neutral.

### 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

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-2012-023 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-2012-023. 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at 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-2012-023 and should be submitted on or before May 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66922; File No. SR-ICC-2012-05]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Order Granting Accelerated Approval of Proposed Rule Change to Membership Qualifications

May 4, 2012.

## I. Introduction

On April 3, 2012, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-ICC-2012-05 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> The proposed rule change was published for comment in the **Federal Register** on April 12, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change on an accelerated basis.

## II. Description

The purpose of proposed rule change is to revise Rule 201(b)(ii) to incorporate the Commodity Futures Trading Commission (“CFTC”) mandated \$50,000,000 minimum adjusted net capital requirement for all ICC Clearing Participants. For a Participant that is not a Futures Commission Merchant (“FCM”) or a Broker-Dealer, there is no standard equivalent to “adjusted net capital” which can be utilized across all

<sup>18</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> Securities Exchange Act Release No. 34-66766 (April 6, 2012), 77 FR 22019 (April 12, 2012). In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

<sup>16</sup> 15 U.S.C. 78s-3(b)(3)(C) [sic].

<sup>17</sup> 15 U.S.C. 78o-3(b)(5).