

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71467; File No. SR-FINRA-2013-053]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Update the Rules Governing the Alternative Display Facility

February 3, 2014.

I. Introduction

On December 9, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to update the rules governing the Alternative Display Facility (“ADF”). The proposed rule change was published for comment in the **Federal Register** on December 26, 2013. ³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description

The ADF is a quotation collection and trade reporting facility that provides ADF Market Participants the ability to post quotations, display orders and report transactions in NMS stocks for submission to the Securities Information Processors for consolidation and dissemination to vendors and other market participants. ⁴ In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS. ⁵

FINRA proposes to update the rules governing the ADF to: (i) Reflect regulatory requirements that have been put into place since the last comprehensive revision of the ADF rules and to enhance operational efficiency; (ii) address changes to the ADF’s functionality resulting from FINRA’s proposed migration of the ADF to the Multi-Product Platform (“MPP”); (iii) conform the ADF trade reporting rules, to the extent practicable, to current FINRA rules relating to trade reporting to the FINRA Trade Reporting Facilities (“TRFs”); and (iv) make other non-substantive changes. ⁶ FINRA’s

changes to the ADF rules are described below.

FINRA proposes to revise FINRA Rule 6272, governing quotations posted on the ADF, to modify the quotation pricing obligations for Registered Reporting ADF Market Makers in response to the National Market System Plan to Address Extraordinary Market Volatility (“Limit Up-Limit Down Plan”). ⁷ As amended, FINRA Rule 6272(a)(2) would specify that the suspension of pricing obligations for ADF Market Makers would apply during a trading halt except as permitted under the Limit Up-Limit Down Plan. ⁸

FINRA also proposes to amend Rule 6272(b) to update the minimum quotation increment for ADF-eligible securities to account for quotations under \$1. ⁹ As revised, Rule 6272(b) would provide that the minimum quotation increment for quotations below \$1.00 in all ADF-eligible securities shall be \$0.0001. FINRA states that this provision will enable ADF Participants to submit quotations for issues under \$1 in an increment that is consistent with Rule 612 of Regulation NMS. ¹⁰

FINRA proposes to provide additional detail as to how a Registered Reporting ADF ECN may voluntarily terminate its registration. As proposed, the rule will state that a Registered Reporting ADF ECN may voluntarily withdraw from participation on the ADF upon providing, through electronic delivery, written notice to FINRA Market Operations of its intention to withdraw as a Registered Reporting ADF ECN, with such withdrawal to be effective upon the first trading day following the issuance of the written notice announcing the Registered Reporting ADF ECN’s intent to withdraw, or such other date as specified in the written notice.

FINRA states that it requires ADF Trading Centers to report order information to it so that FINRA can have detailed information regarding the origination of orders underlying an ADF Trading Center’s quotation and use that information to enhance its ability to monitor quotation activity on the ADF.

⁷ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

⁸ For example, as FINRA notes, the Limit up-Limit Down Plan provides that “[n]o trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.” *Id.* at 77 FR 33514.

⁹ FINRA Rule 6220 defines an “ADF-eligible security” as an NMS stock as defined in Rule 600(b)(47) of SEC Regulation NMS.

¹⁰ Rule 612 of Regulation NMS permits, among other things, quotations in NMS stocks that are less than \$1.00 per share to be priced in increments of \$0.0001. See 17 CFR 242.612(b).

FINRA proposes various modifications to the order reporting requirements set forth in FINRA Rule 6250, governing quote and access requirements, to enhance FINRA’s ability to efficiently monitor quoting activity on the ADF on an automated basis and conduct surveillance. ¹¹ In particular, FINRA believes that certain of these changes would better reflect the order information necessary for its surveillance programs related to the Firm Quote Rule, ¹² and to reduce the reporting of excess information that may over-burden its systems and lead to false alerts. ¹³ Further, FINRA proposes to update the reporting requirements for Order Time and Order Response Time in FINRA Rule 6250(b) so that ADF Trading Centers would report this information in hours, minutes, seconds and milliseconds if the ADF Trading Center’s system captures such information in milliseconds. ¹⁴

FINRA proposes to amend FINRA Rules 6281 and 6282 and the Rule 7100 Series relating to trade reporting to the ADF to conform those rules, to the extent practicable, to current FINRA rules relating to trade reporting to the TRFs. ¹⁵ FINRA believes that by conforming the trade reporting requirements for the ADF and TRFs, to the extent practicable, the proposed rule change will promote more consistent trade reporting by members and a more complete and accurate audit trail. FINRA notes that most of the proposed conforming changes to FINRA Rules 6281 and 6282 and the Rule 7100 Series are technical and non-substantive in nature, and FINRA does not believe that any of the proposed changes would require members to make systems changes in order to comply. Furthermore, FINRA members that currently report to one of the TRFs would already be familiar with the rule amendments that are proposed herein. FINRA proposes to amend FINRA Rule 7510(a) to assess a \$0.25 fee to each party that cancels or corrects a trade. ¹⁶ FINRA states that the purpose of adding this new change is to defray the administrative costs incurred by FINRA in processing corrective transaction charges, including cancel and correct requests. ¹⁷

¹¹ See Notice, *supra* note 3, at 78452.

¹² See 17 CFR 242.602(b)(2); see also FINRA Rule 5220.

¹³ See Notice, *supra* note 3, at 78452–78453.

¹⁴ See Proposed FINRA Rules 6250(b)(1)(I) and 6250(b)(2)(C).

¹⁵ See FINRA Rule 6300 and 7200 Series governing TRFs.

¹⁶ See Notice, *supra* note 3, at 78455.

¹⁷ See *id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 71147 (December 19, 2013), 78 FR 78451 (“Notice”).

⁴ See Notice, *supra* note 3.

⁵ See 17 CFR 242.600 *et seq.*

⁶ See Notice, *supra* note 3.

FINRA also proposes to delete FINRA Rule 7530, which assesses a minimum charge of \$5,000 for installation costs associated with connecting to the ADF.¹⁸ FINRA proposes to delete this provision because it is no longer applicable, since the ADF is software-based and there is no hardware to install, remove or relocate.¹⁹ Finally, FINRA proposes a number of technical changes throughout the ADF rules.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.²⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,²¹ which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 15A(b)(5) of the Act,²² 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.

The Commission notes that FINRA believes that the proposed changes are either: (1) Non-substantive; (2) delete functionalities that will not be available following the migration to the MPP; (3) reflect regulatory changes; (4) conform the ADF rules to other FINRA rules; or (5) otherwise increase the operational and regulatory efficiency of the ADF. To the extent that a number of the changes are non-substantive or, in the case of conforming the ADF trade reporting requirements to the TRF trade reporting requirements, mirror requirements currently applicable to FINRA members, FINRA does not believe that members

will be significantly or adversely affected by these changes. In addition, FINRA also believes that certain of the proposed changes, such as the provision to allow for the voluntary termination of registration by a Registered Reporting ADF ECN, may increase operational and regulatory efficiency for FINRA and ADF Market Participants alike.

As noted above, the proposed rule change is intended to update the rules governing the ADF to reflect changes to regulatory requirements that have occurred since FINRA last updated the ADF rules, as well as make a number of non-substantive changes to reflect changes in FINRA departments or systems, or to correct other outdated references.²³ The Commission notes that proposed changes reflecting the Limit Up-Limit Down Plan and allowing a minimum quoting increment of less than \$0.01 for quotations below \$1, modify the ADF rules to reflect regulatory initiatives that were previously approved or promulgated by the Commission.²⁴ Further, the Commission believes that updating the rules to correct outdated references and reflect current FINRA departments and systems should provide greater clarity in FINRA's rules and thereby, eliminate potential confusion by market participants.

FINRA also proposes to delete rules regarding certain functionalities that would no longer be available following the migration of the ADF to MPP. In this regard, FINRA has represented that these functionalities are not currently being utilized, and would not be offered on the ADF upon its migration to the MPP.²⁵ Accordingly, the Commission believes that these changes should ensure that the rules accurately reflect the operation of the ADF upon its migration to the new platform.

The Commission also believes that FINRA's modifications to its order reporting and trade reporting rules, including making the ADF rules more consistent with the rules governing TRFs, are also consistent with the Act. The Commission believes that the proposed rule change should enhance FINRA's ability to monitor quoting activity and help to ensure that FINRA

will continue to receive important information necessary to conduct surveillance, while reducing the receipt of excess order information that may contribute to false surveillance alerts. Further, FINRA has represented that the proposed rule change would promote more consistent trade reporting by members by better aligning the ADF trade reporting requirements with the TRF trade reporting requirements and would create a more complete and accurate audit trail.²⁶ Moreover, FINRA has represented that it does not believe that this proposed rule change would require FINRA members to make any systems changes to comply with the ADF rules.²⁷ Accordingly, the Commission believes that FINRA's proposed changes to the rules governing the ADF should help to ensure that FINRA could more efficiently monitor and prevent manipulative acts and practices on the ADF and could help foster cooperation and coordination with persons engaged in facilitating transactions in securities.

The Commission also finds that the proposed changes to the ADF fees are consistent with the Act. FINRA represents that the \$0.25 charge would apply to ADF Market Participants that cancel or correct a trade in order to defray the administrative costs incurred by FINRA in processing corrective transactions, including cancel and correct requests.²⁸ The Commission also believes that it is reasonable for FINRA to delete its fees associated with connecting to the ADF since those fees are no longer applicable.

For these reasons, the Commission believes that the proposal is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-FINRA-2013-053) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Kevin M. O'Neill,
Deputy Secretary.

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¹⁸ See *id.*

¹⁹ See *id.*

²⁰ In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78o-3(b)(6).

²² 15 U.S.C. 78o-3(b)(5).

²³ Examples of such changes include FINRA's proposal to change the reference from TRACS to "ADF" or "the System" and changing the references from "FINRA ADF Operations" to "FINRA Market Operations" or "FINRA Product Management" as applicable. See Notice, *supra* note 3, at 78456.

²⁴ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (Limit up-Limit Down adopting release); and Rule 612 of Regulation NMS, 17 CFR 242.612(b) (permitting quotations in NMS stocks that are less than \$1.00 per share to be priced in increments of \$0.0001).

²⁵ See Notice, *supra* note 3, at 78456.

²⁶ See *id.* at 78455.

²⁷ See *id.*

²⁸ See *id.*

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).