

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

Robert W. Errett,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75160; File No. SR-FINRA-2015-016]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exemptions From the Order Audit Trail System Recording and Reporting Requirements

June 11, 2015.

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 June 10, 2015, 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 “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</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 7470 to extend for four years FINRA’s ability to exempt certain members from the recording and reporting requirements of the Order Audit Trail System (“OATS”) Rules (“OATS Rules”) for manual orders received by the member.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

#### 7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES

\* \* \* \* \*

#### 7400. ORDER AUDIT TRAIL SYSTEM

\* \* \* \* \*

#### 7470. Exemption to the Order Recording and Data Transmission Requirements

(a) through (b) No Change.

(c) This Rule shall be in effect until July 10, 2019[2015].

\* \* \* \* \*

#### 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

The OATS Rules impose obligations on FINRA members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members relating to OTC equity securities and NMS stocks. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is then used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws and regulations.

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, gave FINRA the authority to grant exemptive relief from the OATS reporting requirements for manual orders.<sup>4</sup> In 2006, FINRA’s exemptive authority was expanded to include the authority to exempt manual orders received by members from the OATS recording

requirements.<sup>5</sup> Under Rule 7470, at a minimum, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in any security subject to the OATS Rules; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.<sup>6</sup> An exemption granted by FINRA pursuant to Rule 7470 is for a maximum of two years; however, a member that continues to meet the criteria may request subsequent exemptions at or prior to the expiration of a grant of exemptive relief.<sup>7</sup>

Rule 7470 also includes a sunset provision. As initially adopted, the exemptive provision expired as of July 10, 2011, which was five years from the original effective date of the rule.<sup>8</sup> In 2011, FINRA filed a proposed rule change to extend the sunset provision until July 10, 2015, noting that FINRA adopted this exemptive authority so that it would have the ability to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where temporary relief from the OATS Rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship.<sup>9</sup> FINRA noted that these concerns continued to be present for many firms and concluded it was appropriate to allow firms that have received an exemption from OATS to continue to rely on their current exemption (or request an additional two-year exemption) until the scope and

<sup>5</sup> See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. See FINRA Regulatory Notice 08-57 (October 2008).

<sup>6</sup> See Rule 7470(a).

<sup>7</sup> See Rule 7470(b).

<sup>8</sup> See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

<sup>9</sup> See Securities Exchange Act Release No. 64717 (June 21, 2011), 76 FR 37384 (June 27, 2011).

<sup>45</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> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

application of the SEC's consolidated audit trail was determined.<sup>10</sup>

On July 18, 2012, the SEC adopted Rule 613 under Regulation NMS, which requires FINRA and the national securities exchanges ("SROs") to jointly file an NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository.<sup>11</sup> The SROs initially filed the NMS plan required by Rule 613 on September 30, 2014, and, on February 27, 2015, filed a subsequent NMS plan to amend and restate the original plan filed the previous September ("CAT NMS Plan").<sup>12</sup> Under Rule 613 and the CAT NMS Plan, all broker-dealers that are members of FINRA or a national securities exchange must report order information to the central repository; small broker-dealers must report the required information no later than three years following the SEC's approval of the CAT NMS Plan, and all other broker-dealers must report the required information no later than two years following the SEC's approval.<sup>13</sup>

FINRA believes that extending the sunset provision in Rule 7470 for an additional four years is appropriate given the current state of the consolidated audit trail. If the CAT NMS Plan is published and approved by the SEC within the next year,<sup>14</sup> all of those FINRA member firms currently reporting to OATS or relying on an exemption from OATS reporting will be reporting to the consolidated audit trail within four years, provided the SEC does not extend the implementation timeline laid out in Rule 613(a) or exempt some firms from reporting to the consolidated audit trail. If the SEC does not approve the CAT NMS Plan within the next year, FINRA still believes it is appropriate to extend the sunset provision in Rule 7470 so that those firms relying on the exemption may continue to do so provided they meet the criteria to qualify. FINRA believes that the proposed rule change will enable FINRA to exempt manual orders

received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA is not proposing any substantive changes to the criteria necessary for firms to qualify for an exemption because FINRA believes that the criteria continue to ensure that only those firms with limited revenue, no recent final disciplinary actions, and limited business models will be eligible.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 10, 2015.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>15</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. FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA believes that the proposed rule change is particularly appropriate given the current state of the development of the consolidated audit trail which, unless amended, will require these small firms to report order information to the central repository created pursuant to Rule 613. If the CAT NMS Plan is approved, these small firms can then devote resources to any applicable reporting obligations under Rule 613 and the CAT NMS Plan rather than reporting manual order information to OATS for a brief period of time in the interim.

### 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. As noted above, FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA notes that the compliance burden on these firms would also potentially be imposed for

only a short period of time as these firms will also be required to develop a means to report order information to the central repository of the consolidated audit trail if the SEC approves the CAT NMS Plan.

### 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</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 Number SR-FINRA-2015-016 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-FINRA-2015-016. This file

<sup>10</sup> The SEC proposed Rule 613 under Regulation NMS regarding the consolidated audit trail on May 26, 2010. See Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

<sup>11</sup> See 17 CFR 242.613(a); see also Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

<sup>12</sup> Although the SEC has not yet published the CAT NMS Plan for public comment, the CAT NMS Plan submitted by the SROs is available on the SROs' Web site at [www.catnmsplan.com](http://www.catnmsplan.com).

<sup>13</sup> See 17 CFR 242.613(a)(3)(v), (vi). Small broker-dealers are those that qualify as small broker-dealers as defined in 17 CFR 240.0-10(c).

<sup>14</sup> Once an NMS plan is published for public comment, the SEC has a maximum of 180 days to approve the plan with such changes or subject to such conditions as the SEC may deem necessary or appropriate. See 17 CFR 242.608(b)(2).

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

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 will also 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-2015-016 and should be submitted on or before July 8, 2015.

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

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75165; File No. S7-11-15]

### Request for Comment on Exchange-Traded Products

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Request for comment.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is seeking public comment on topics related to the listing and trading of exchange-traded products on national securities

exchanges and sales of these products by broker-dealers.

**DATES:** Comments should be received by August 17, 2015.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>);
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov), including File Number S7-11-15 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>), following the instructions for submitting comments.

#### Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-11-15. 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 of submission. The Commission will post all comments on the Commission's Web site (<http://www.sec.gov>). Comments are also 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. 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.

#### FOR FURTHER INFORMATION CONTACT:

Edward Cho, Special Counsel, at (202) 551-5508; Christopher Chow, Special Counsel, at (202) 551-5622; or Sarah Schandler, Special Counsel, at (202) 551-7145, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-7010.

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## I. Discussion

### A. Introduction

Exchange-traded products ("ETPs") constitute a diverse class of financial products that seek to provide investors with exposure to financial instruments, financial benchmarks, or investment strategies across a wide range of asset classes. ETP trading occurs on national securities exchanges and other secondary markets that are regulated by the Commission under the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> making ETPs widely available to market participants, from individual investors to institutional investors, including hedge funds and pension funds.

The Commission approved the listing and trading of shares of the first ETP—the SPDR S&P 500 ETF ("SPY")—in 1992.<sup>2</sup> Since the SPY began trading on January 22, 1993, there has been enormous growth in the number, aggregate market capitalization, and variety of ETPs. The chart below depicts the growth of ETPs, both in number and market capitalization, since 1993.

As reflected in Figure 1 (below), from 2006 to 2013, the total number of ETPs listed and traded as of year end rose by an average of 160 per year, with a net increase of more than 200 in both 2007 and 2011. By comparison, from 1993 to 2005, the total number of ETPs listed and traded as of year end rose by an average of just 17 per year, with a net increase of 60 in 2000. The total market capitalization of ETPs has also grown substantially, nearly doubling since the end of 2009. Much of this growth has been in index-based ETPs.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78a *et seq.* Once listed on a national securities exchange, ETP shares also can be traded on Alternative Trading Systems (as defined in Rule

300 of Regulation ATS, 17 CFR 242.300) or in other over-the-counter transactions.

<sup>2</sup> See Securities Exchange Act Release No. 31591 (Dec. 11, 1992), 57 FR 60253 (Dec. 18, 1992) (SR-

Amex-92-18) (order approving the adoption of listing standards for Portfolio Depository Receipts and the listing and trading of shares of SPY pursuant to those listing standards).