

the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than January 7, 2016. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016–41 and CP2016–50 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than January 7, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2015–32236 Filed 12–22–15; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76673; File No. SR–NYSEArca–2015–104]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt a New Policy Relating to Trade Reports for Exchange Traded Products

December 17, 2015.

On October 28, 2015, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a rule change proposing a new policy related to the Exchange’s treatment of trade reports for “Exchange Traded Products”<sup>3</sup> that it determines to be inconsistent with the prevailing

market. The proposed rule change was published for comment in the **Federal Register** on November 18, 2015.<sup>4</sup> The Commission has received two comment letters on the proposal.<sup>5</sup>

Section 19(b)(2) of the Act<sup>6</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 2, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change and the comments received.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> designates February 16, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2015–104)

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

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015–32187 Filed 12–22–15; 8:45 am]

**BILLING CODE 8011–01–P**

<sup>4</sup> See Notice, *supra* note 3.

<sup>5</sup> See Letter from Gary Gastineau, ETF Consultants.com, Inc., to the Commission (Nov. 27, 2015); Letter from James J. Angel, Associate Professor, Georgetown University, to the Commission (Dec. 5, 2015). All comments on the proposed rule change are available on the Commission’s Web site at: <http://www.sec.gov/comments/sr-nysearca-2015-104/nysearca2015104.shtml>.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> *Id.*

<sup>8</sup> 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76676; File No. SR–CBOE–2015–099]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options That Overlie a Reduced Value of the FTSE China 50 Index

December 17, 2015.

#### I. Introduction

On October 30, 2015, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to list and trade options that overlie a reduced value of the FTSE China 50 Index. The proposed rule change was published for comment in the **Federal Register** on November 10, 2015.<sup>3</sup> The Commission received no comments on the proposed rule change. On December 14, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On December 16, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> This order grants approval of the proposed rule

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 76354 (November 4, 2015), 80 FR 69741 (“Notice”).

<sup>4</sup> Amendment No. 1 makes certain technical modifications to Exhibit 5, and the corresponding cross references in the Form 19b–4, due to the recent approval of another proposed rule change (See SR–CBOE–2015–100, Securities Exchange Act Release No. 76626 (December 11, 2015), 80 FR 78793 (December 17, 2015)), and to remove a reference to “(1/100th)” that was inadvertently included. Amendment No. 1 conforms a phrase in Exhibit 3 relating to when the official closing value of the FTSE China 50 Index is reported by FTSE International Limited (“FTSE”) to the corresponding description in Form 19b–4. As described in Form 19b–4, the official closing value, due to the time zone in Hong Kong and as explained in more detail in the rest of the filing and rule text, is on the day that the contract expires. Amendment No. 1 also revises rule text to make an additional technical edit. As the changes made by Amendment No. 1 are technical in nature and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

<sup>5</sup> Amendment No. 2 corrects a typographical error in Exhibit 4 of Amendment No. 1. As the change made by Amendment No. 2 is technical in nature and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> For purposes of this proposed rule change, “Exchange Traded Products” include exchange-traded funds, exchange-traded notes, and exchange-traded vehicles. See Securities Exchange Act Release No. 76431 (Nov. 12, 2015), 80 FR 72126, n.4 (Nov. 18, 2015) (SR–NYSEArca–2015–104) (“Notice”).

change, as modified by Amendment Nos. 1 and 2.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade A.M. cash-settled, European-style options on the FTSE China 50 Index.<sup>6</sup> According to the Exchange, the FTSE China 50 Index is a free float-adjusted market capitalization index that is designed to measure the performance of 50 of the largest and most liquid Chinese stocks listed and trading on the Stock Exchange of Hong Kong (“SEHK”).<sup>7</sup> The Exchange states that the index is monitored and maintained by FTSE International Limited (“FTSE”).<sup>8</sup> Adjustments to the index could be made on a daily basis with respect to corporate events and dividends, and FTSE reviews the index quarterly.

According to the Exchange, the FTSE China 50 Index is calculated in Hong Kong dollars on a real-time basis during Hong Kong trading hours. The methodology used to calculate the FTSE China 50 Index is similar to the methodology used to calculate the value of other benchmark market-capitalization weighted indexes.<sup>9</sup> Real-time data is distributed at least every 15 seconds while the index is being calculated using FTSE’s real-time calculation engine to Bloomberg L.P. (“Bloomberg”), Thomson Reuters (“Reuters”) and other major vendors. End of day data is distributed daily to clients through FTSE as well as through major quotation vendors, including Bloomberg and Reuters.

The Exchange proposes that trading hours for FTSE China 50 Index options would be from 8:30 a.m. (Chicago time) to 3:15 p.m. (Chicago time).

<sup>6</sup> The Exchange proposes to list up to twelve near-term expiration months at any one time for the FTSE China 50 Index options. The Exchange also proposes to list up to ten expirations in Long-Term Index Option Series (LEAPS) on the reduced value of the FTSE China 50 Index Options. The Exchange proposes that options on the FTSE China 50 Index would be eligible for all other expirations permitted for other broad-based indexes (e.g., End of Week/End of Month Expirations, Short Term Option Series, and Quarterly Options Series). In addition, the Exchange proposes to designate the FTSE China 50 Index as eligible for trading as FLEX options.

<sup>7</sup> The Exchange states that the FTSE China 50 Index meets the definition of a broad-based index as set forth in Exchange Rule 24.1(i)(1).

<sup>8</sup> The Exchange proposes to designate FTSE as the reporting authority for the FTSE China 50 Index.

<sup>9</sup> Specifically, the FTSE China 50 Index is governed by the FTSE Ground Rules for the FTSE China 50 Index. The level of the FTSE China 50 Index reflects the free float-adjusted market value of the component stocks relative to a particular base date and is computed by dividing the total market value of the companies in the FTSE China 50 Index by the index divisor. Further detail regarding this methodology can be found in the Notice, *supra* note 3, at n.7 and accompanying text.

The Exchange proposes that FTSE China 50 Index options would expire on the third Friday of the expiration month.<sup>10</sup> The exercise settlement value would be one-hundredth (1/100th) of the official closing value of the FTSE China 50 Index as reported by FTSE on the last trading day of the expiring contract, which occurs between approximately 3:00 a.m. and 4:00 a.m. (Chicago time). The exercise settlement amount would be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by the contract multiplier (\$100).<sup>11</sup> Exercise would result in delivery of cash on the business day following expiration.

The Exchange proposes to create specific initial and maintenance listing criteria for options on the reduced value of the FTSE China 50 Index. Specifically, the Exchange proposes to add new Interpretation and Policy .03(a) to Rule 24.2 to provide that the Exchange may trade FTSE China 50 Index options if each of the following conditions is satisfied: (1) the index is broad-based, as defined in Rule 24.1(i)(1); (2) options on the index are designated as A.M.-settled index options; (3) the index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted; (4) the index consists of 45 or more component securities; (5) each of the component securities of the index will have a market capitalization of greater than \$100 million; (6) no single component security accounts for more than fifteen percent (15%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than fifty percent (50%) of the weight of the index; (7) non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index; (8) the Exchange may continue to trade FTSE China 50 Index options after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors,

<sup>10</sup> According to the Exchange, when the last trading day/expiration date is moved because of an Exchange holiday or closure, the last trading day/expiration date for expiring options would be the immediately preceding business day.

<sup>11</sup> According to the Exchange, if the exercise settlement value is not available or the normal settlement procedure cannot be utilized due to a trading disruption or other unusual circumstance, the settlement value would be determined in accordance with the rules and bylaws of The Options Clearing Corporation.

provided that FTSE China 50 futures contracts are trading and prices for those contracts may be used as a proxy for the current index value; (9) the Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange’s current Independent System Capacity Advisor allocation and the number of new messages per second expected to be generated by options on such index; and (10) the Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

Additionally, the Exchange proposes to add new Interpretation and Policy .03(b) to Rule 24.2 to set forth the following maintenance listing standards for options on the FTSE China 50 Index: (1) the conditions set forth in subparagraphs .03(a) (1), (2), (3), (4), (7), (8), (9) and (10) must continue to be satisfied, the conditions set forth in subparagraphs .03(a)(5) and (6) must be satisfied only as of the first day of January and July in each year; and (2) the total number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing. In the event a class of index options listed on the Exchange pursuant to Interpretation and Policy .03(b) fails to satisfy these maintenance listing standards, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Act.

The contract multiplier for the FTSE China 50 Index options would be \$100. The FTSE China 50 Index options would be quoted in index points and one point would equal \$100. The Exchange proposes that the minimum tick size for series trading below \$3 would be 0.05 (\$5.00), and at or above \$3 would be 0.10 (\$10.00). The Exchange also proposes that the strike price interval for FTSE China 50 Index options would be no less than \$5, except that the strike price interval would be no less than \$2.50 if the strike price is less than \$200.

The Exchange proposes to apply the default position limits for broad-based index options of 25,000 contracts on the same side of the market (and 15,000 contracts near-term limit) to FTSE China 50 Index options. All position limit hedge exemptions would apply. The exercise limits for FTSE China 50 Index options would be equivalent to the position limits for those options. In

addition, the Exchange proposes that the position limits for FLEX options on the FTSE China 50 Index would be equal to the position limits for non-FLEX options on the FTSE China 50 Index. The exercise limits for FLEX options on the FTSE China 50 Index would be equivalent to the position limits for those options.

The Exchange states that, except as modified by the proposal, Exchange Rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB would equally apply to FTSE China 50 Index options. The Exchange also states that FTSE China 50 Index options would be subject to the same rules that currently govern other CBOE index options, including sales practice rules, margin requirements,<sup>12</sup> and trading rules.<sup>13</sup>

The Exchange represents that it has an adequate surveillance program in place for FTSE China 50 Index options and intends to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in the proposed options. The Exchange also states that it is a member of the Intermarket Surveillance Group, is an affiliate member of the International Organization of Securities Commissions, and has entered into various comprehensive surveillance agreements and/or Memoranda of Understanding with various stock exchanges, including SEHK. Finally, the Exchange represents that it believes it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of FTSE China 50 Index options.<sup>14</sup>

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> Specifically, the Commission finds that the proposed

rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 believes that the listing and trading of FTSE China 50 Index options will broaden trading and hedging opportunities for investors by providing an options instrument based on an index designed to measure the performance of 50 of the largest and most liquid Chinese stocks listed and trading on SEHK. Moreover, the Exchange states that FTSE China 50 ETFs, such as the iShares China Large-Cap exchange traded fund ("FXI"), are actively-traded products. The Exchange also lists actively-traded options overlying those ETFs and states that those options are actively traded as well.

Because the FTSE China 50 Index is a broad-based index composed of actively-traded, well-capitalized stocks, the trading of options on the index does not raise unique regulatory concerns. The Commission believes that the listing standards, which are created specifically and exclusively for the index, are consistent with the Act, for the reasons discussed below.

The Commission notes that proposed Interpretation and Policy .03 to Exchange Rule 24.2 would require that the FTSE China 50 Index consist of 45 or more component securities. Further, for options on the FTSE China 50 Index to trade, each of the minimum of 45 component securities would need to have a market capitalization of greater than \$100 million.

The Commission notes that the proposed listing standards for options on the FTSE China 50 Index would not permit any single component security to account for more than 15% of the weight of the index, and would not permit the five highest weighted component securities to account for more than 50% of the weight of the index in the aggregate. The Commission believes that, in view of the requirement on the number of securities in the index and on each security's market capitalization, this concentration standard is consistent with the Act. As noted above, the Exchange represents that it has an adequate surveillance

program in place for FTSE China 50 Index options and intends to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in the proposed options.

The Commission notes that, consistent with the Exchange's generic listing standards for broad-based index options, non-U.S. component securities of the FTSE China 50 Index that are not subject to comprehensive surveillance agreements will not, in the aggregate, represent more than 20% of the weight of the index.

The Exchange states that, because trading in the components of the FTSE China 50 Index starts at approximately 8:30 p.m. (Chicago time) (prior day) and ends at approximately 3:00 a.m. (Chicago time) (next day), there will not be a current FTSE China 50 Index level calculated and disseminated while FTSE China 50 Index options would be traded (from approximately 8:30 a.m. (Chicago time) to 3:15 p.m. (Chicago time)). However, the listing standards state that the Exchange may continue to trade FTSE China 50 Index options after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every 15 seconds by one or more major market data vendors, provided that FTSE China 50 futures contracts are trading and prices for those contracts may be used as a proxy for the current index value. The Exchange states that during time that the options would be trading on the exchange, E-Mini FTSE China 50 Index futures contracts will be trading and that the futures prices would be a proxy for the current FTSE China 50 Index level during this time period.<sup>17</sup>

In addition, the proposed listing standards require the Exchange to reasonably believe that it has adequate system capacity to support the trading of options on the FTSE China 50 Index. As noted above, the Exchange represents that it believes it and the OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of FTSE China 50 Index options.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,<sup>18</sup> to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own

<sup>12</sup> The Exchange states that FTSE China 50 Index options would be margined as broad-based index options.

<sup>13</sup> See, e.g., Exchange Rule Chapters IX (Doing Business with the Public), XII (Margins), IV (Business Conduct), VI (Doing Business on the Exchange Floor), VIII (Market-Makers, Trading Crowds and Modified Trading Systems), and XXIV (Index Options).

<sup>14</sup> For a complete description of the Exchange's proposal, please see the Notice, *supra* note 3.

<sup>15</sup> In approving this proposed rule change, as modified by Amendments Nos. 1 and 2, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> The Exchange states that E-Mini FTSE China 50 Index futures contracts are listed for trading on the Chicago Mercantile Exchange Inc.

<sup>18</sup> 15 U.S.C. 78f(b)(1).

rules. As noted above, the Exchange states that, except as modified by the proposal, Exchange Rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB would equally apply to FTSE China 50 Index options. The Exchange also states that FTSE China 50 Index options would be subject to the same rules that currently govern other CBOE index options, including sales practice rules, margin requirements, and trading rules.

The Commission further believes that the Exchange's proposed position and exercise limits, trading hours, margin, strike price intervals, minimum tick size, series openings, and other aspects of the proposed rule change, as modified by Amendment Nos. 1 and 2, are appropriate and consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-CBOE-2015-099), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-32190 Filed 12-22-15; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76677; File No. SR-FINRA-2015-055]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide FINRA with Authority To Grant Exemptions from TRACE Reporting Requirements for Certain ATS Transactions

December 17, 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 December 8, 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 and II 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 the Substance of the Proposed Rule Change

FINRA is proposing to adopt new FINRA Rule 6732 to provide FINRA with authority to exempt certain transactions by a member alternative trading system ("ATS") that meet specified criteria from the transaction reporting obligations under FINRA Rule 6730. In addition, FINRA is proposing a conforming change to FINRA Rule 9610 to specify that FINRA has exemptive authority under proposed Rule 6732.

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

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Rule 6730 (Transaction Reporting) generally requires that each FINRA member that is a party to a transaction in a TRACE-Eligible Security<sup>4</sup> report the transaction to TRACE within the period of time prescribed in the rule.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Rule 6710(a) provides that a "TRACE-Eligible Security" is a debt security that is United States dollar-denominated and issued by a U.S. or foreign private issuer, and, if a "restricted security" as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar-denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n). "TRACE-Eligible Security" does not include a debt security that is issued by a foreign sovereign, a U.S. Treasury Security as defined in paragraph (p), or a Money Market Instrument as defined in paragraph (o).

"Party to a transaction" means an introducing broker-dealer, if any, an executing broker-dealer or a customer.<sup>5</sup> Thus, in transactions in a TRACE-Eligible Security between members, each member is a party to the transaction and is required to report the transaction. An ATS is a party to a transaction in a TRACE-Eligible Security occurring through its system and has a TRACE transaction reporting obligation, unless an exception or exemption applies.<sup>6</sup>

On February 28, 2012, FINRA adopted Rule 6731 (Exemption from Trade Reporting Obligation for Certain Alternative Trading Systems) to provide FINRA with authority to exempt ATSs from TRACE trade reporting obligations under certain circumstances; specifically, where the ATS demonstrates that: member subscribers are fully disclosed to one another at all times on the ATS; the system does not permit automatic execution (and a member subscriber must take affirmative steps beyond the submission of an order to agree to a trade with another member subscriber); the trade does not pass through any ATS account (and the ATS does not in any way hold itself out to be a party to the trade); and the ATS does not exchange TRACE-Eligible Securities or funds on behalf of the member subscribers or take either side of the trade for clearing or settlement purposes (including, but not limited to, at DTC or otherwise), or in any other way insert itself into the trade.<sup>7</sup> In addition, trades on the ATS must be between subscribers that are both FINRA members. Where a Rule 6731 exemption is granted, the ATS is not deemed a party to the transactions occurring through its system for purposes of trade reporting requirements.<sup>8</sup>

<sup>5</sup> "Customer" includes a broker-dealer that is not a FINRA member.

<sup>6</sup> See *Regulatory Notice* 14-53 (November 2014) (FINRA Reminds ATSs and ATS Subscribers of Their Trade Reporting Obligations in TRACE-Eligible Securities).

<sup>7</sup> See Securities Exchange Act Release No. 66513 (March 5, 2012), 77 FR 14454 (March 9, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-016) ("Rule 6731 Proposal").

<sup>8</sup> FINRA stated in the Rule 6731 Proposal that an ATS that satisfies all the conditions of the proposal has a more limited involvement in the trade execution than the member subscribers and, therefore, the exemption from trade reporting is appropriate. As a condition to the proposed *[sic]* Rule 6731 exemption, the ATS and its member subscribers must acknowledge and agree in writing that the ATS is not deemed a party to the trade for purposes of trade reporting, and that trades shall be reported to FINRA in accordance with Rule 6730 by each member subscriber that satisfies the definition of "party to a transaction," as defined in Rule 6710.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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.