

received any unsolicited written comments from interested parties.

### 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)<sup>10</sup> of the Act and Rule 19b-4(f)(4)(ii)<sup>11</sup> thereunder. 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.<sup>12</sup>

### 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-CME-2013-31 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-CME-2013-31. 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 or 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 CME and on CME's Web site at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

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-CME-2013-31 and should be submitted on or before December 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70924; File No. SR-FINRA-2013-050]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Over-the-Counter Equity Trade Reporting and OATS Reporting

November 22, 2013.

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 12, 2013, 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 the self-regulatory organization. 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 amend FINRA rules governing the reporting of (i) over-the-counter ("OTC") transactions in

equity securities to the FINRA Facilities;<sup>3</sup> and (ii) orders in NMS stocks and OTC Equity Securities to the Order Audit Trail System ("OATS").

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 the 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

FINRA is proposing amendments to the equity trade reporting rules relating to reporting (i) an additional time field for specified trades, (ii) execution time in milliseconds, (iii) reversals, (iv) trades executed on non-business days and trades that are more than one year old, and (v) "step-outs." The proposed amendments also reflect changes in the processing of trades that are submitted to a FINRA Facility for clearing as well as technical changes to the rules relating to the OTC Reporting Facility ("ORF"). The proposed amendments also codify existing OATS guidance regarding reporting order event times to OATS in milliseconds.

###### Reporting an Additional Time Field

FINRA rules require that trade reports submitted to the FINRA Facilities include the time of trade execution, except where another time is expressly required by rule. For some transactions, there may be more than one critical time associated with a trade report (for example, the actual time of execution

<sup>3</sup> Specifically, the FINRA Facilities are the Alternative Display Facility ("ADF") and the Trade Reporting Facilities ("TRF"), to which members report OTC transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS; and the OTC Reporting Facility ("ORF"), to which members report transactions in "OTC Equity Securities," as defined in FINRA Rule 6420 (i.e., non-NMS stocks such as OTC Bulletin Board and OTC Market securities), as well as transactions in Restricted Equity Securities, as defined in FINRA Rule 6420, effected pursuant to Securities Act Rule 144A.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>13</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.

and a reference time on which the trade price may be based); however, only one time field is currently supported in FINRA trade reports. FINRA is proposing to require members to report an additional time field when reporting the following three types of transactions to FINRA.

With respect to Stop Stock transactions, as defined for purposes of the FINRA trade reporting rules,<sup>4</sup> and transactions that reflect an execution price that is based on a prior reference point in time (“PRP transactions”), current FINRA rules require that in lieu of the actual time the trade was executed, members report the time at which the member and the other party agreed to the Stop Stock price and the prior reference time, respectively.<sup>5</sup> For example, for Stop Stock transactions, if the parties agree to the Stop Stock price at 10:00 a.m. and the trade is executed at 11:00 a.m., the reporting member would report 10:00 a.m. in the execution time field. Similarly, for PRP transactions, if a member executes a market-on-open order at 10:30 a.m., the member would report 9:30 a.m. (the time the market opened).

FINRA is proposing to require members to include two times when reporting Stop Stock transactions and PRP transactions: (1) The time currently required by rule (i.e., the time at which the parties agree to the Stop Stock price or the prior reference time), and (2) the actual time of execution.<sup>6</sup> Thus, in the two examples above, the trade report would reflect times of 10:00 a.m. and 11:00 a.m. for the Stop Stock transaction, and 9:30 a.m. and 10:30 a.m. for the PRP transaction.<sup>7</sup> FINRA believes that requiring members to report additional time-related information will ensure a more accurate and complete audit trail and enhance FINRA’s ability to surveil on an automated basis for compliance with FINRA trade reporting and other rules.

<sup>4</sup> “Stop Stock transaction” means a transaction resulting from an order in which a member and another party agree that the order will be executed at a Stop Stock price or better, which price is based upon the prices at which the security is trading at the time the order is received by the member. See Rules 6220, 6320A, 6320B and 6420.

<sup>5</sup> See paragraphs (F) and (G) of Rules 6282(a)(4), 6380A(a)(5), 6380B(a)(5) and 6622(a)(5).

<sup>6</sup> The rules provide that if the trade is executed within 10 seconds of the time the parties agree to the Stop Stock price or within 10 seconds of the prior reference time, then the designated modifier should not be used. FINRA also is proposing to amend the rules to clarify that in this instance, only the actual time of execution should be reported.

<sup>7</sup> Upon implementation of the proposed rule change, any Stop Stock and PRP transactions that are reported more than 10 seconds following execution will be marked late.

In addition, FINRA is proposing to require members to include two times when reporting block transactions using the Intermarket Sweep Order (“ISO”) exception (outbound) under SEC Rule 611 (“Order Protection Rule”) of Regulation NMS. Current FINRA guidance requires members to use the time that all material terms of the transaction are known as the execution time in the trade report.<sup>8</sup> The staff is proposing to adopt Supplementary Material in Rules 6282, 6380A and 6380B to require that trade reports reflect both the time the firm routed ISOs and the execution time, if different. With this additional time in the trade report, FINRA will be able to determine better whether ISOs were properly sent to other trading centers in compliance with the ISO exception to the Order Protection Rule. The staff notes that many firms have requested that they be permitted to provide the additional time to avoid the appearance of non-compliance with the Order Protection Rule.

#### Reporting Time in Milliseconds

FINRA trade reporting rules currently require members to report execution time to the FINRA Facilities in seconds (i.e., HH:MM:SS),<sup>9</sup> while the execution time for exchange trades is expressed in milliseconds (i.e., HH:MM:SS:mmm). Similarly, Rule 7440(a)(2) of the OATS rules currently requires members to record order event times in terms of hours, minutes, and seconds.<sup>10</sup> Because FINRA’s audit trails consolidate

<sup>8</sup> See NASD Member Alert: *Guidance Relating to “Execution Time” for Purposes of Compliance with NASD Trade Reporting Rules* (June 13, 2007).

To comply with the ISO exception simultaneously with execution of a block transaction, the firm is required to route an ISO to execute against the full displayed size of any protected quotation with a price superior to the block transaction price (see question and answer 13 in NASD *Notice to Members 07–23* (May 2007)). Under certain circumstances, fills received from the execution of routed ISOs may be reflected in the size of the block transaction that is reported to FINRA with the ISO exception. Thus, under such circumstances, the execution time to be reported for the block transaction may be different than the time the member uses to determine whether ISOs were properly routed to execute against any better-priced protected quotations.

<sup>9</sup> See, e.g., Rules 6282(c)(2)(H), 6380A(c)(5), 6380B(c)(5) and 6622(c)(5).

<sup>10</sup> Rule 7450 generally requires all applicable order information required to be recorded under Rule 7440 to be reported to OATS. Although Rule 7440(a)(2) requires order event times to be recorded to the second, FINRA published guidance in 2011 in connection with the expansion of OATS to all NMS stocks stating that firms that capture time in milliseconds should report time to OATS in milliseconds. See *Regulatory Notice 11–03* (January 2011); see also OATS Reporting Technical Specifications, Cover Memo, at iv (May 3, 2011 ed.). The proposed rule change codifies this guidance into Rule 7440(a)(2).

exchange and OTC trades for regulatory purposes, sequencing consolidated transactions by execution time can be difficult with the different time formats, particularly in active stocks.<sup>11</sup>

To enhance and help bring consistency to FINRA’s audit trail, FINRA is proposing amendments to require members to express time in milliseconds when reporting trades to the FINRA Facilities or order information to OATS, if the member’s system captures time in milliseconds.<sup>12</sup> However, FINRA is not proposing to mandate that members enhance their systems to capture time in milliseconds.<sup>13</sup> Members with systems that do not capture milliseconds will be permitted to continue reporting time in seconds.<sup>14</sup>

FINRA believes that where trades are executed by electronic systems, such as alternative trading systems and automated execution systems, that already capture execution time in milliseconds, it should be relatively straightforward for members to report such trades to the FINRA Facilities using milliseconds. Thus, FINRA does not believe that the proposed requirement would be burdensome for members, nor would it require them to make significant systems changes. FINRA recognizes, however, that where trades are executed manually, e.g., by instant messaging or telephone, it would be more difficult for members to capture milliseconds for purposes of trade reporting. Accordingly, FINRA believes that it is appropriate not to require that all members capture and report time in milliseconds at this time.<sup>15</sup>

<sup>11</sup> FINRA also notes that the Intermarket Surveillance Group (“ISG”) consolidated audit trail can accommodate execution times expressed in milliseconds. The ISG consolidated audit trail, which combines data from all exchange and OTC trades, is used by all self-regulatory organizations for regulatory purposes.

<sup>12</sup> See proposed Rules 6282.04, 6380A.04, 6380B.04, 6622.04, 7130.01, 7230A.01, 7230B.01, 7330.01, and 7440(a)(2).

<sup>13</sup> Members may, however, need to update their systems for OATS reporting to reflect the fact that other systems in the firm utilize milliseconds so that the times used by those systems (if in milliseconds) are accurately reflected in the member’s OATS reports. As noted above, FINRA is not requiring firms to use milliseconds or update existing systems to use milliseconds; however, to the extent a firm’s system uses milliseconds, those timestamps should be to the millisecond when they are reported to OATS.

<sup>14</sup> FINRA expects members that have systems currently capable of capturing time in milliseconds to continue to do so and not to make systems changes to revert to seconds unless they have a legitimate business reason for doing so (e.g., a member wants to use the services of a vendor that does not capture time in milliseconds). FINRA may review any such systems changes in the course of an inquiry or a member examination.

<sup>15</sup> The time fields in trade reports submitted to the FINRA Facilities currently do not accommodate

## Reporting Reversals

FINRA rules require that if a trade that was previously reported to FINRA is cancelled, members must report the cancellation to the same FINRA Facility to which the trade was originally reported<sup>16</sup> and must do so within the time frames set forth in the rules.<sup>17</sup> Members report a “cancellation” when trades are cancelled on the date of execution and a “reversal” when trades are cancelled on a day after the date of execution.<sup>18</sup>

Today, when a member reports a reversal of a trade that was previously reported to a FINRA Facility, there is no requirement that the member provide information in the reversal report to identify the original trade.<sup>19</sup> FINRA is proposing to adopt new paragraph (3) in Rules 6282(j), 6380A(g) and 6380B(f) and new paragraph (4) in Rule 6622(f) to require that members identify the original trade in the reversal report by including the control number generated by the FINRA Facility and report date for the original trade report. This information will enable FINRA to better “link” reports of reversals with the associated previously reported trades and thereby allow FINRA to recreate more accurately the firm’s market activity, as well as surveil for compliance with FINRA trade reporting rules.<sup>20</sup> In addition, paragraph (1) of these Rules, which provides that the member with the trade reporting obligation is responsible for submitting the cancellation in accordance with the

milliseconds, and therefore, FINRA does not know the exact number of firms that capture milliseconds for trade reporting purposes today. However, as noted above, OATS supports reporting in milliseconds. FINRA reviewed OATS data from October 11, 2013 through October 22, 2013, and the daily percentage of OATS execution reports that include time in milliseconds range from a low of 80.53% to a high of 82.96%. In addition, 189 firms submitted at least one execution report to OATS using milliseconds during this period. This suggests that for trade reporting purposes, a significant number of executing firms have systems that currently capture execution time in milliseconds and, as a result, would be subject to the proposed requirement.

<sup>16</sup> See Rules 7130(d), 7230A(i), 7230B(h) and 7330(h).

<sup>17</sup> See, e.g., Rules 6282(j)(2), 6380A(g)(2), 6380B(f)(2), and 6622(f)(2) and (f)(3).

<sup>18</sup> See, e.g., Trade Reporting FAQ #305.6, available at [www.finra.org/Industry/Regulation/Guidance/p038942#305](http://www.finra.org/Industry/Regulation/Guidance/p038942#305).

<sup>19</sup> Where the cancel functionality is used on the date of trade, the cancellation is automatically linked by the system to the original trade.

<sup>20</sup> FINRA notes that the FINRA Facilities will retain historic trade data and the amount of data retained will vary among the facilities. Members must maintain sufficient records to enable them to identify the control number and report date for any trades that they reverse, to the extent such information cannot be obtained from the data retained by the FINRA Facility.

procedures set forth in paragraph (2), would be amended to also refer to the proposed new provision.

FINRA is proposing several additional conforming amendments to the rules relating to trade cancellations.<sup>21</sup>

## Reporting Non-Business Day Trades and T+365 Trades

Due to current systems limitations, trades executed on non-business days (i.e., weekends and holidays) and trades reported more than 365 days after trade date (T+365) cannot be reported to a FINRA Facility. Instead, these trades must be reported on “Form T” through FINRA’s Firm Gateway.<sup>22</sup> Because these trades are not reported to a FINRA Facility, they are not captured for purposes of FINRA’s automated surveillance systems, and regulatory fees under Section 3 of Schedule A to the FINRA By-Laws (“Section 3”)<sup>23</sup> must be assessed manually.

FINRA is making systems enhancements to enable members to submit reports of non-business day trades and T+365 trades electronically to the FINRA Facilities rather than using “Form T” to report such trades. As is the case today, non-business day trades

<sup>21</sup> First, FINRA is proposing to expressly refer to “reversals” and “reversed trades,” as applicable, in Rules 6282(j), 6380A(g), 6380B(f), 6622(f), 7230A(f), 7230B(e) and 7330(f). Second, FINRA is proposing to amend Rules 7230A(f)(2), 7230B(e)(2) and 7330(f)(2) to clarify that members must comply with the deadlines “and other requirements” (i.e., the proposed new requirement to include the control number and report date of the original trade) set forth in the rules. Third, to bring consistency to the trade reporting rules, FINRA is proposing conforming changes to the ADF rules to (1) add the language “with the exception of trades cancelled in accordance with the Rule 11890 Series” in Rule 6282(j)(1), which is identical to the language in Rules 6380A(g)(1), 6380B(f)(1) and 6622(f)(1) relating to the other FINRA Facilities; (2) refer in Rule 6282(j)(1) to the member with the trade reporting obligation under “Rule 6282” (rather than the more general reference to the Rule 6280 Series); and (3) adopt new paragraph (e) in Rule 7130, which is identical to Rules 7230A(f), 7230B(e) and 7330(f), as amended herein, relating to the other FINRA Facilities. Finally, FINRA is proposing to include a reference to paragraph (f)(3) in Rule 6622(f)(1), which currently provides that members must comply with the requirements of paragraph (f)(2) when submitting cancellations and reversals. FINRA inadvertently did not add this reference when paragraph (f)(3) was originally adopted.

<sup>22</sup> Under FINRA rules, “Form T” is to be used for trade reporting only where electronic submission to a FINRA Facility is not possible. See Rules 6282(a)(5), 6380A(a)(8), 6380B(a)(8) and 6622(a)(8); see also *Trade Reporting Notice 6/3/2011* (FINRA Reminds Firms of Their Trade Reporting Obligations and Announces New Submission Process for Form T).

<sup>23</sup> Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government’s supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership in accordance with Section 3.

and T+365 trades will not be submitted to clearing by the FINRA Facility<sup>24</sup> or disseminated. FINRA also is proposing to amend the rules to require that members report non-business day trades on an “as/of” basis by 8:15 a.m. the next business day following execution with the unique trade report modifier to denote their execution outside normal market hours; trades not reported by 8:15 a.m. will be marked late.<sup>25</sup> Thus, for example, a trade executed on Saturday must be reported by 8:15 a.m. the following Monday (since the FINRA Facilities are not open on Saturday to accept the trade report), and if the trade is not reported by that time, it will be marked late. This requirement will ensure that non-business day trades are properly sequenced for audit trail purposes. All T+365 trades will be reported on an “as/of” basis and will be marked late.

## Reporting Step-Outs

Today, members can effectuate a “step-out”<sup>26</sup> by submitting a clearing-only report to a FINRA Facility. FINRA rules prohibit members from submitting to a FINRA Facility any non-tape report (including but not limited to reports of step-outs) associated with a previously executed trade that was not reported to that FINRA Facility.<sup>27</sup> For every step-

<sup>24</sup> FINRA is proposing to expressly provide that these trades will not be submitted to clearing in Rules 7140(b), 7240A(b), 7240B(b) and 7340(b).

<sup>25</sup> See Rules 6282(a)(2), 6380A(a)(2), 6380B(a)(2) and 6622(a)(2). FINRA also is proposing to delete the reference to “T+1” in subparagraph (D) of these rules because, e.g., the next business day would be greater than T+1 for a trade that is executed on a Saturday.

FINRA also is proposing a conforming change to Rule 6622(a)(3) to provide that any Securities Act Rule 144A transaction in a Restricted Equity Security that is executed on a non-business day must be reported by the time the ORF closes the next business day.

<sup>26</sup> A step-out allows a member firm to allocate all or part of a client’s position from a previously executed trade to the client’s account at another firm. In other words, a step-out functions as a client’s position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership. The step-out function was designed and implemented as a service to facilitate the clearing process for members involved in these types of transfers. See Trade Reporting FAQ 301.1, available at [www.finra.org/Industry/Regulation/Guidance/p038942#301](http://www.finra.org/Industry/Regulation/Guidance/p038942#301).

Each firm is required to report its side to effectuate a step-out; however, if the two firms have the proper agreements in place (i.e., an Automatic Give-Up (“AGU”) or Qualified Special Representative (“QSR”) agreement), the step-out can be effectuated with only one submission. The proposed rule change will not affect the process for effectuating a step-out with a single submission via AGU or QSR.

<sup>27</sup> See Rules 7130(d), 7230A(i), 7230B(h) and 7330(h). Thus, for example, a member cannot use one TRF to step out of an OTC trade that was originally reported to another TRF.

out, one member is stepping out of (or transferring) the position and the other member is stepping into (or receiving) the position. Where both members are submitting a clearing-only report to a FINRA Facility, each member currently must use the "step-out" indicator.

Some clearing firms have requested the ability to see whether their correspondents are stepping out or stepping in with respect to such transfers. Accordingly, FINRA is proposing to amend Rules 7130(d), 7230A(i), 7230B(h) and 7330(h) to provide that where both sides are submitting a clearing-only report to effectuate a step-out, the member transferring out of the position must report a step-out and the member receiving the position must report a step-in.<sup>28</sup>

#### Trade Processing

Rules 7140, 7240A and 7340 address the trade acceptance and comparison process for locking in trades submitted for clearing through the ADF, FINRA/Nasdaq TRF and ORF, respectively. When firms use the trade acceptance and comparison functionality, the reporting party reports the trade and the contra party subsequently either accepts or declines the trade.<sup>29</sup> Today, any trade that has been declined by the contra party is purged from the system at the end of trade date processing.<sup>30</sup>

FINRA is proposing to amend the rules to provide that rather than being purged, declined trades will be carried over and remain available for cancellation or correction by the reporting party or acceptance by the contra party. Declined trades that are carried over will not be available for the automatic lock-in process described in the rules and will not be sent to clearing unless the parties take action. FINRA also is proposing to amend paragraph (a) of Rules 7140, 7240A and 7340 to codify the existing requirement that the reporting member must cancel a declined trade that was previously reported for dissemination purposes to have the trade removed from the tape,

<sup>28</sup> FINRA notes that the step-out and step-in indicators should not be used when reporting a riskless principal or agency "flip," both of which entail a change in beneficial ownership and must be reported to FINRA where specified by rule.

<sup>29</sup> Alternatively, one member may submit a locked-in trade on behalf of the other member, if the members have the requisite agreements in place. In that instance, the trade acceptance and comparison functionality would not be used.

FINRA notes that the FINRA/NYSE TRF currently does not offer trade acceptance and comparison, and as such, all trades must be locked-in prior to submission to this facility. See Rule 7240B.

<sup>30</sup> See Rules 7140(a), 7240A(b) and 7340(b).

i.e., the system does not remove the trade automatically from the tape.

In addition, FINRA is proposing technical changes to Rules 7140, 7240A and 7340 to reorganize and clarify the provisions relating to locking in trades for clearing in paragraph (a) and the processing of T+N (also referred to "as/of") trades in paragraph (b).<sup>31</sup>

FINRA notes that the proposed changes to Rules 7140, 7240A, 7240B and 7340 will not impact the way members report to FINRA and will not require members to make changes to their systems.<sup>32</sup>

#### ORF Technical Amendments

FINRA is proposing several additional technical amendments to the ORF rules. First, FINRA is proposing to close the ORF at 6:30 p.m. Eastern Time rather than 8:00 p.m. Thus, the ORF rules (i.e., the Rule 6620 and 7300 Series) will be amended to replace all references to 8:00 p.m. with 6:30 p.m. Members will be required to report trades executed after 6:30 p.m. on an "as/of" basis by 8:15 a.m. the next business day.<sup>33</sup> In

<sup>31</sup> Specifically, FINRA is proposing to relocate the provision relating to carrying over and automatically locking in trades that is currently in paragraph (b) of Rules 7140, 7240A and 7340 to new paragraph (a)(2) of Rule 7140 and new paragraph (a)(3) of Rules 7240A and 7340. The process for automatically locking in trades for clearing will remain essentially the same: Any T to T+21 trade that has not been declined and remains open (i.e., unmatched or unaccepted) at the end of its entry day will be carried over and will be automatically locked in and submitted to DTCC if it remains open as of 2:30 p.m. the next business day. Trades that are T+22 or older that remain open will be carried over, but will not be subject to the automatic lock-in process (today such T+22 trades are not subject to the automatic lock-in process and are purged from the FINRA Facilities, but members may subsequently resubmit them).

FINRA also is proposing to include language in new Rule 7240B(b) clarifying that T+N (or "as/of") entries may be submitted until the FINRA/NYSE TRF closes for the day, i.e., 8:00 p.m. This language conforms to the language of Rules 7140(b), 7240A(c) and 7340(c) (as renumbered herein) relating to the other FINRA Facilities.

<sup>32</sup> FINRA also is proposing several non-substantive technical changes to rules that are otherwise being amended by this proposed rule change. First, FINRA is proposing to delete or replace references to "TRACS" with "the ADF" in Rule 6282 and to delete or replace references to "TRACS" or the "TRACS trade comparison feature" with "the System" in the Rule 7100 Series heading and Rule 7140. FINRA intends to submit a separate proposed rule change proposing this technical change throughout the Rule 6200, 7100 and 7500 Series. In addition, FINRA is proposing to (1) amend Rules 6380A(g)(1), 6380B(f)(1), 6622(f)(1), 7230A(f)(1), 7230B(e)(1) and 7330(f)(1) to insert "the" before the reference to the Rule 11890 Series; (2) delete the unnecessary reference to "or cancellation" in Rule 6282(j)(2)(G); (3) capitalize the term "Rule" in Rule 6380A(g)(2)(G); and (4) capitalize "Eastern Time" in Rule 6622(a)(5)(H).

<sup>33</sup> FINRA reviewed the volume of trades reported to the ORF between 6:30 p.m. and 8:00 p.m. and determined that they represent only a very small percentage of reported trades. For example, for all

addition, FINRA is proposing to delete the language in Rule 7320 that states "unless the member has an alternative electronic mechanism pursuant to FINRA rules for reporting and clearing such transaction." This language is unnecessary, given that the ORF is the only electronic mechanism for reporting OTC transactions in OTC Equity Securities and transactions in Restricted Equity Securities effected under Rule 144A. FINRA also is proposing a minor change in terminology to delete the term and references to "Browse" from Rules 7310 and 7330. While the functionality remains available, the term itself does not apply to the ORF.

FINRA believes that the amendments proposed herein will enhance FINRA's audit trail and automated surveillance program, promote more consistent trade reporting by members and detect violations of FINRA trade reporting and other rules.

FINRA staff discussed the proposed rule change with several of FINRA's industry advisory committees in developing its approach. The committees supported the proposed amendments and did not believe that compliance would be particularly burdensome for firms. However, the committees noted the following specific comments and questions: (1) Several committee members requested that members be provided sufficient time to implement the necessary systems changes (FINRA has proposed an extended implementation period herein); (2) one committee member raised the possibility that members that currently capture execution time in milliseconds could revert their systems to seconds and still be in compliance with the rule (see note 14 herein); (3) one committee member asked if there would be instances where the control number for the original trade might not be available for purposes of reporting a reversal (see note 20 herein); (4) one committee member asked whether FINRA intends to mandate that firms capture execution time in milliseconds (FINRA notes that there is currently no intention to adopt such a requirement; moreover, any such proposal would be subject to a separate rule filing and notice and comment); and (5) with respect to the proposal to close the ORF at 6:30 p.m., a committee member asked whether FINRA would grant an extension beyond 6:30 in the event of

trades reported to the ORF between January 1, 2012 and February 6, 2013, the percentage of tape reports submitted between 6:30 p.m. and 8:00 p.m. compared to the overall number of trades range from a low of 0% to a high of 0.5% (on a single day), while non-tape reports range from a low of 0.0% to a high of 3.0% (on a single day).

market-wide systems problems or trading halts where members may need additional time to report (FINRA typically does not extend operating hours for the FINRA Facilities in such circumstances; however, FINRA takes unusual market conditions, such as extreme volatility in a security, or in the market as a whole, into consideration in determining whether a pattern or practice of late trade reporting exists).

FINRA believes that the proposed amendments reflect the least burdensome approach to obtaining the additional trade report information that FINRA needs for its audit trail and automated surveillance program. For example, with respect to the proposed additional time field, a possible alternative would be to retain a single time field in trade reports and require that members report the actual execution time for Stop Stock transactions and PRP transactions. In that instance, however, a number of false positives could potentially be generated (i.e., members would appear to have violated FINRA and other rules), requiring members to respond to FINRA inquiries and investigations. The current approach of requiring members to report the reference time instead of the actual execution time is cumbersome for FINRA staff and members alike, because the actual execution time must be reviewed during member examinations. Having both times reflected in the trade report will streamline member reviews and facilitate members' ability to demonstrate compliance with FINRA and other rules.

Furthermore, with respect to the millisecond requirement, requiring only those members with systems that capture time in milliseconds to report in milliseconds is less burdensome for members than mandating that all members capture and report time in milliseconds. With respect to the linking requirement, FINRA does not believe that there is a viable alternative to requiring that members include the control number and report date for the original trade. The member that reports the trade is also required to report the reversal, and as such, should have this information available for reporting purposes. FINRA also believes that requiring members to report trades executed on non-business days and T+365 trades to the FINRA Facilities is more efficient for members than retaining the current "Form T" reporting process.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*. FINRA proposes that the effective date of the proposed rule

changes to the trade reporting rules will be no earlier than April 15, 2014, and no later than September 30, 2014, and the effective date of the proposed rule change to the OATS rules will be no later than 45 days after Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>34</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 change to require members to report additional time-related information for Stop Stock transactions, PRP transactions and block transactions using the ISO (outbound) exception under Regulation NMS is consistent with the Act because it will ensure a more accurate and complete audit trail and enhance FINRA's ability to surveil on an automated basis for compliance with FINRA trade reporting and other rules.

FINRA believes that the proposed change to require members to report to OATS and the FINRA Facilities in milliseconds if their systems capture time in milliseconds is consistent with the Act because it will enhance and help bring consistency to FINRA's audit trail. FINRA believes that it is appropriate not to require that all members capture and express time in milliseconds, in light of the difficulty that members may face in capturing time for certain order events and trades in milliseconds, such as manually executed trades. FINRA does not believe that the proposed change would be burdensome or require members with execution systems that capture time in milliseconds to make significant systems changes to comply, and FINRA's industry advisory committees did not raise concerns about the proposed requirement.

FINRA believes that the proposed change to require members to provide information to identify the original trade when reporting reversals to FINRA is consistent with the Act because it will enable FINRA to recreate more accurately members' market activity and surveil for compliance with FINRA trade reporting rules.

FINRA believes that the proposed changes relating to reporting trades executed on non-business days and

T+365 trades are consistent with the Act because these trades are required to be reported today, and the changes would make the reporting process more efficient for members. In addition, the proposed change to require that non-business day trades be reported by 8:15 a.m. the next business day following execution is consistent with the Act because it is consistent with the existing reporting requirements for trades that are executed on business days during the hours that the FINRA Facilities are closed and also will ensure that the trades are properly sequenced for audit trail purposes.

FINRA believes that the proposed change to require members to use a new "step-in" indicator is consistent with the Act because it will more accurately reflect the transfer (in that only one member steps out of, and one member steps into, the position) and will provide greater transparency for clearing firms whose correspondents effect these transfers.

FINRA believes that the proposed changes to Rules 7140, 7240A, 7240B and 7340 are consistent with the Act because they will update the rules to reflect changes in the processing of trades by the FINRA Facilities and will not impact the way members report to FINRA or require them to make changes to their systems.

Similarly, FINRA believes that the proposed technical changes to the ORF rules (i.e., to reflect the closing at 6:30 p.m., and to delete terms and language that are inapplicable to the ORF) are consistent with the Act because they will ensure that the rules accurately reflect the operation of the ORF.

Finally, FINRA believes that those aspects of the proposed rule change that make technical or conforming changes to the rules are consistent with the Act because they are non-substantive and are designed to bring clarity and, to the extent practicable, uniformity to the trade reporting rules relating to the FINRA Facilities.

### *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. Not all of the proposed amendments will impact the way members report to FINRA or require members to make systems changes. For example, the changes to trade processing will not require members to change the way they report to FINRA, and the proposed millisecond requirement will not require members to begin capturing time in milliseconds.

<sup>34</sup> 15 U.S.C. 78o-3(b)(6).

To the extent that the proposed amendments will change the way members report to FINRA, they will affect only those members that execute and report OTC equity trades to FINRA.<sup>35</sup> For example, many firms, including smaller firms, route their order flow to another firm, e.g., their clearing firm, for execution, and as the routing firm, they do not have the trade reporting obligation. Today, on average, only several hundred members regularly report trades to the FINRA Facilities. For example, for the eight-month period from August 2012 through April 2013, 456 firms reported at least one trade, and of those firms, 186 reported fewer than 10 trades. Thus, the amendments will have no impact on many members.

Nonetheless, some members will need to make systems programming changes to comply with the proposed amendments (e.g., members that execute the types of transactions for which two times will be required, members that execute trades on non-business days, etc.). FINRA believes these changes will enhance FINRA's audit trail and surveillance capabilities and will not significantly burden competition as all firms that report OTC trades to FINRA will be subject to the same standard. The staff proposes to provide members a sufficient implementation period to accommodate such changes and may phase in implementation, if appropriate, to lessen the impact on members, as well as any potential burden on competition.

### *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

<sup>35</sup> FINRA trade reporting rules require that for transactions between members, the "executing party" report the trade to FINRA. For transactions between a member and a non-member or customer, the member must report the trade. "Executing party" is defined under FINRA rules as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b).

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-2013-050 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-2013-050. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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 Number SR-FINRA-

2013-050, and should be submitted on or before December 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

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

[FR Doc. 2013-28572 Filed 11-27-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70940; File No. SR-Phlx-2013-113]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Offer a Customer Rebate**

November 25, 2013.

#### **I. Introduction**

On October 31, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "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 proposed rule change to amend the Customer Rebate Program in Section B of the Exchange's Pricing Schedule to increase Customer rebates available to certain market participants that transact Customer orders on Phlx. Phlx designated the proposed rule change as immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The Commission published notice of filing of the proposed rule change in the **Federal Register** on November 19, 2013.<sup>4</sup> To date, the Commission has received two comment letters on the proposal.<sup>5</sup>

Pursuant to Section 19(b)(3)(C) of the Act, the Commission hereby is: (1) Temporarily suspending File No. SR-Phlx-2013-113; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR-Phlx-2013-113.

<sup>36</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> See Securities Exchange Act Release No. 70866 (November 13, 2013), 78 FR 69472 ("Notice").

<sup>5</sup> See letters to Elizabeth M. Murphy, Secretary, Commission from: Michael J. Simon, Secretary, International Securities Exchange, LLC, dated November 11, 2013 ("ISE Letter"); and William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, dated November 13, 2013 ("DirectEdge Letter").