

interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will delay the operative date of the market-wide circuit breakers pilot until the initial date of operations of the LULD Plan, thereby allowing the pilot to run simultaneously with the LULD Plan, providing an opportunity to properly assess the impact of the two pilots on the marketplace and evaluate the pilots' effectiveness. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change 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-BX-2013-009 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-BX-2013-009. This file number should be included on the subject line if email is used. To help the

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2013-009 and should be submitted on or before March 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68832; File No. SR-FINRA-2012-050]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt a Supplementary Schedule for Derivatives and Other Off-Balance Sheet Items Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)**

February 5, 2013.

#### **I. Introduction**

On November 15, 2012, the Financial Industry Regulatory Authority, Inc.

("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a supplementary schedule for derivatives and other off-balance sheet items pursuant to FINRA Rule 4524 (Supplemental FOCUS Information). The proposed rule change was published for comment in the **Federal Register** on November 27, 2012.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> On February 1, 2013, FINRA filed Amendment No. 1 with the Commission to respond to the comment letter and to propose technical changes and the addition of a clarifying instruction.<sup>5</sup> The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### **II. Description of Proposal**

FINRA Rule 4524 requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS reports. Pursuant to FINRA Rule 4524, FINRA proposed the adoption of a supplemental schedule to the FOCUS reports to capture important information that is not otherwise reported on certain firms' balance sheets. To that end, the proposal would require all carrying or clearing firms to file with FINRA the Derivatives and Other Off-Balance Sheet Items Schedule ("OBS") within 22 business days of the end of each calendar quarter. The proposed OBS is necessary for FINRA to more effectively examine for compliance with, and enforce, its rules on capital adequacy. The proposed OBS enables FINRA to examine on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms' net capital, leverage and

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Exchange Act Release No. 68270 (Nov. 20, 2012), 77 FR 70860 (Nov. 27, 2012).

<sup>4</sup> See Email from Suzanne Shatto to Commission, dated Jan. 3, 2013, available at <http://sec.gov/comments/sr-finra-2012-056/finra2012056-1.pdf>.

<sup>5</sup> See SEC File No. SR-FINRA-2012-050 Amendment No. 1, dated Feb. 1, 2013 ("Amendment No. 1"). Amendment No. 1 is described below in Section III.B. and the text of Amendment No. 1 is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, and on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

liquidity, and ability to fulfill their customer protection obligations.

In the aftermath of the financial crisis, FINRA began to closely monitor firms' levels of leverage and available liquidity to meet their funding needs and began to collect certain additional information from certain carrying and clearing firms with regard to their proprietary positions, financing transactions and certain off-balance sheet transactions. FINRA believes the proposed OBS will allow FINRA to obtain more comprehensive and consistent information regarding carrying and clearing firms' off-balance sheet assets, liabilities and other commitments. The proposed OBS would require firms to report their gross exposures in financing transactions (e.g., reverse repos, repos and other transactions that are otherwise netted under generally accepted accounting principles, reverse repos and repos to maturity and collateral swap transactions), interests in and exposure to variable interest entities, non-regular way settlement transactions (including to be announced or TBA securities and delayed delivery/settlement transactions), underwriting and other financing commitments, and gross notional amounts in centrally cleared and non-centrally cleared derivative contracts involving equities, commodities, interest rates, foreign exchange derivatives and credit default swaps. However, the proposed OBS contains a *de minimis* off-balance sheet activity exception for each reporting period. If the aggregate of all gross amounts of off-balance sheet items is less than 10% of the firm's excess net capital on the last day of the reporting period, the firm will not be required to file the proposed OBS for the reporting period.<sup>6</sup>

FINRA stated that it would announce the first quarterly reporting period (i.e., the implementation date for purposes of the proposed off-balance sheet schedule) in a regulatory notice to be published no later than 60 days following Commission approval of the proposed rule change. The due date for the first proposed schedule would be no later than 210 days following Commission approval of the proposed rule change.

### III. Summary of Comment Letter, FINRA's Response, and Amendment No. 1

#### A. Summary of and FINRA's Response to Comment Letter

As stated above, the Commission received one comment letter in response to the proposed rule change.<sup>7</sup> The commenter asked if reporting will begin for the OBS on January 22, 2013, and if the OBS will be public. In addition, the commenter questioned if the information in the OBS will be in the December 31, 2012 financials. In response, FINRA reiterated the statement in its initial filing: "FINRA will announce the first quarterly reporting period (i.e., the implementation date for purposes of the proposed off-balance sheet schedule) in a regulatory notice to be published no later than 60 days following Commission approval of the proposed rule change." Further, the proposed OBS will be treated with the same confidentiality as the FOCUS report to which it relates.<sup>8</sup> Finally, firms are required to file annually with the SEC audited financial statements that include a publicly available Statement of Financial Condition.<sup>9</sup> The footnotes to the Statement of Financial Condition should contain off-balance sheet disclosures as required by generally accepted accounting principles.

#### B. Description of Amendment No. 1

Not in connection with the comment letter, FINRA filed Amendment No. 1 with the Commission proposing to amend the OBS and the instructions to the OBS. First, FINRA is proposing to clarify that the *de minimis* exception is based on the aggregate of all gross amounts of off-balance sheet items. Second, FINRA is making a technical change to require a firm that claims the *de minimis* exception to affirmatively indicate through functionality on the eFOCUS system that no filing is required for the reporting period. Third, FINRA is proposing to add instructions for item 6 (Total gross notional amount) of the OBS. Fourth, FINRA is proposing to renumber as line 25 both "for period ending" lines 24 and 3932 of the OBS.<sup>10</sup>

### IV. Commission's Findings

After careful consideration of the proposed rule change, as modified by Amendment No. 1, the comment letter received, and FINRA's response to the comment letter, the Commission finds

that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>11</sup> In particular, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act,<sup>12</sup> which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 FINRA adequately addressed the comments raised in response to FINRA's notice.

The proposed OBS will provide FINRA with the ability to obtain more specific information about the finances of a member broker-dealer. Thus, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the provisions of the Exchange Act noted above in that the proposed OBS will permit FINRA to assess more effectively on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations.

The Commission believes that the proposed rule change, as modified by Amendment No. 1, works in conjunction with the existing Commission broker-dealer financial responsibility rules and will further FINRA's ability to oversee its members by, among other things, increasing the transparency of the various revenue streams and sources of income of broker-dealers.

The Commission does not believe that the proposed rule change, as modified by Amendment No. 1, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As stated above, the Commission believes the proposed OBS will allow FINRA to better understand the potential impact off-balance sheet activity may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection

<sup>6</sup> For purposes of the proposed OBS, the term "excess net capital" means net capital reduced by the greater of the minimum dollar net capital requirement or two percent of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to 17 CFR 240.15c3-3.

<sup>7</sup> See *supra* note 4.

<sup>8</sup> See 17 CFR 240.17a-5(a)(3).

<sup>9</sup> See 17 CFR 240.17a-5(d) and 17 CFR 240.17a-5(e)(3).

<sup>10</sup> See Amendment No. 1.

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> See 15 U.S.C. 78o-3(b)(6).

obligations. Ready access to the information in the proposed OBS is important for FINRA to efficiently monitor on an ongoing basis the financial condition of firms.

The Commission also believes FINRA has carefully crafted the proposed OBS to achieve its intended and necessary regulatory purpose while being cognizant of the burden on firms. The information required to complete the proposed OBS should be readily available to firms due to firms' obligations to maintain books and records and take applicable capital charges in relation to off-balance sheet activity. Further, firms that are owned by a publicly held company provide much of the information required by the proposed OBS to the SEC on the quarterly Form 10-Q or on the annual Form 10-K. Finally, for those firms that conduct limited off-balance sheet activity, the proposed OBS contains a *de minimis* exception for each reporting period.

#### V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act<sup>13</sup> for approving the proposal, as modified by Amendment No. 1, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The changes proposed in Amendment No. 1 are technical or clarifying changes and do not raise regulatory concerns.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

#### VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2012-050 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-2012-050. 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, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will 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-2012-050 and should be submitted on or before March 4, 2013.

#### VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>14</sup> that the proposed rule change (SR-FINRA-2012-050), as modified by Amendment No. 1, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68824; File No. SR-NSX-2013-03]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule

February 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 25, 2013, National Stock Exchange, Inc. ("NSX" or "Exchange") 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 the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

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

The Exchange is proposing to amend its Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(a) to: (1) Make a clarifying change to Section I; and (2) amend Section III to provide a rebate of \$0.0013 per share to Equity Trading Permit ("ETP") Holders<sup>3</sup> for Double Play Orders<sup>4</sup> that are executed at or above \$1.00 on an away Trading Center.<sup>5</sup>

The text of the proposed rule change is available on the Exchange's Web site at [www.nsx.com](http://www.nsx.com), at the Exchange's principal office, 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, the Exchange 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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NSX Rule 1.5 defines the term "ETP" as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities.

<sup>4</sup> NSX Rule 11.11(c)(10).

<sup>5</sup> NSX Rule 2.11. A Trading Center is defined as "other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communication networks or other brokers or dealers."

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> See 17 CFR 200.30-3(a)(12).