

the subsidiaries are that of NASD, subject to oversight pursuant to the Exchange Act, and all officers, directors, employees and agents of the subsidiaries are that of NASD for purposes of the Exchange Act. FINRA is proposing that this rule be transferred into the Consolidated FINRA Rulebook with only minor, non-substantive changes.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following 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>5</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify and streamline the General Provisions rules for adoption as FINRA rules in the new Consolidated FINRA Rulebook.

### *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.

### *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 35 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 reason for so finding or (ii) as to which FINRA consents, the Commission will:

*A. By order approve 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-026 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2008-026. This file number should be included on the subject line if e-mail 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 inspection and copying 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 the 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-2008-026 and should be submitted on or before August 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-18152 Filed 8-6-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58283; File No. SR-FINRA-2008-040]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Eliminate the Requirement To Report Yield to TRACE and for FINRA To Calculate Yield That Will Be Disseminated by TRACE**

August 1, 2008.

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 July 17, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to: (a) Amend NASD Rule 6230(c)<sup>3</sup> to eliminate the requirement to report yield to the Trade Reporting and Compliance Engine ("TRACE") system ("TRACE System") when a member reports a transaction in a TRACE-eligible security<sup>4</sup> and (b) implement a policy to disseminate yield

<sup>6</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> On May 23, 2008, FINRA filed with the Commission a proposed rule change (SR-FINRA-2008-021) in which FINRA proposed, among other things, to adopt without material change NASD Rule 6200 Series and NASD Rule 6230 as, respectively, FINRA Rule 6700 Series and FINRA Rule 6730. If the Commission approves this proposed rule change prior to approving SR-FINRA-2008-021, FINRA will amend SR-FINRA-2008-021 as necessary to reflect such approval. If the Commission approves SR-FINRA-2008-021 prior to approving this proposed rule change, FINRA will amend this proposed rule change as necessary to reflect such approval.

<sup>4</sup> The term "TRACE-eligible security" is defined in NASD Rule 6210(a).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

as calculated by the TRACE system ("Standard yield") in TRACE data. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

\* \* \* \* \*

## 6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

\* \* \* \* \*

### 6230. Transaction Reporting

(a) through (b) No Change.

(c) Transaction Information to Be Reported

Each TRACE trade report shall contain the following information:

(1) Through (10) No Change.

(11) Stated commissions; *and*

(12) Such trade modifiers as required by either the TRACE rules or the TRACE users guide.[]; and]

[(13) The lower of yield to call or yield to maturity. A member is not required to report yield when the TRACE-eligible security is a security that is in default; a security for which the interest rate is floating; a security for which the interest rate will be or may be increased (e.g., certain "step-up bonds") or decreased (e.g., certain "step-down bonds") and the amount of increase or decrease is an unknown variable; a pay-in-kind security ("PIK"); any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that the Association designates if the Association determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.]

(d) through (f) No Change.

\* \* \* \* \*

## 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

FINRA proposes to eliminate the requirement to report yield when a member reports a transaction in a TRACE-eligible security. In addition, FINRA proposes to include a yield ("Standard yield") calculated based on the disseminated price in disseminated real-time TRACE data, with certain exceptions that would be identified clearly.

Currently, NASD Rule 6230(c) requires that a member report to TRACE price, yield and other information for every transaction in a TRACE-eligible security. NASD Rule 6230(c)(13) specifically requires that a member report, for most transactions, the lower of yield to call or yield to maturity. Yield is not reported if the TRACE-eligible security is in default, if the interest rate floats and the adjusted amount is unknown and in several other circumstances where an unknown variable prevents yield calculation or where the reported yield would provide inaccurate or misleading information.<sup>5</sup>

Information, including member-reported yield, on all transactions (except Rule 144A transactions) is disseminated currently by TRACE upon receipt of the report.<sup>6</sup> The TRACE System also calculates the Standard yield. However, generally this Standard yield currently is not disseminated in TRACE data.<sup>7</sup>

FINRA proposes to eliminate the requirement to report yield to TRACE and to disseminate a Standard yield in disseminated TRACE data. The Standard yield for each transaction would be calculated based on the same assumptions, using a method adopted by many professional market participants.<sup>8</sup> The price upon which

<sup>5</sup> Yield is not reported when the TRACE-eligible security is in default; a security for which the interest rate floats; a security for which the interest rate will or may be "stepped-up" or "stepped-down" and the amount of increase or decrease is an unknown variable; a pay-in-kind ("PIK") security; a security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable; or any other security that FINRA designates if FINRA determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security. See NASD Rule 6230(c)(13).

<sup>6</sup> The disseminated TRACE data includes all transactions reported to TRACE except certain transactions executed pursuant to Rule 144A under the Securities Act of 1933. 17 CFR 230.144A.

<sup>7</sup> Standard yield is included in the disseminated TRACE data when yield is required to be reported and the member fails to submit it.

<sup>8</sup> The Standard yield in TRACE is calculated as the internal rate of return according to a discounted

Standard yield would be calculated would be the price as disseminated by TRACE. Generally, this means that, for principal transactions, it would be the reported price inclusive of markup, and, for agency trades, it would be the reported price plus any reported commission.

Disseminated TRACE data would not include Standard yield for those transactions with respect to which a member currently is not required to report yield under NASD Rule 6230(c)(13). Thus, Standard yield would not be disseminated when the TRACE-eligible security is in default; a security for which the interest rate floats; a security for which the interest rate will or may be "stepped-up" or "stepped-down" and the amount of increase or decrease is an unknown variable; a pay-in-kind ("PIK") security; a security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable; or when FINRA determines that disseminating a yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.

FINRA does not believe that transparency will be affected adversely if member-reported yields are no longer reported nor disseminated and, instead, Standard yields are disseminated. Currently, there is no uniformity in the manner by which members calculate yield, as members use several different methods (and assumptions). For example, some firms begin the calculation based on Trade date, while others begin on T + 1. In addition, some firms include all miscellaneous fees and charges in their yield calculations, while others only include such fees and charges if they exceed a specified amount. Thus, it is possible for two firms to report contemporaneous transactions in the same bond at the

cash flow model. Currently, Standard yield is calculated, in a principal trade, on the reported price, which includes the mark-up/mark-down, and in an agency trade, on the reported price and reported commission. Standard yield does not include any fees or charges that are not included, in a principal trade, as part of the reported price, and in an agency trade, in the reported commission. Standard yield is calculated as the lower of yield to call (if the bond is callable) and yield to maturity, or so-called "yield-to-worst." All results are calculated using standards, rules or practices generally accepted in the industry (e.g., Standard yield is calculated using a day count of 30/360, which is standard for corporate bonds). Currently, Standard yield is calculated utilizing a calculation library that is widely used by professionals in the securities industry. See e-mail from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Michael Gaw, Assistant Director, and Geoffrey Pemble, Special Counsel, Division of Trading and Markets, Commission, dated July 25, 2008.

same price, charging the same miscellaneous fees, but report different yields because they use different methods or assumptions or include or omit certain charges or fees. The possible variance in member-reported yields in the same security executed at the same price makes such yields less valuable as a tool to improve corporate bond market transparency for market participants, especially individual investors.

In addition, the consistency achieved by FINRA's proposal to disseminate a Standard yield will enhance the usefulness of TRACE data to market participants. Disseminating Standard yields in TRACE data, which are calculated according to a single formula and a uniform set of assumptions, will provide more useful information, especially for customers other than market professionals, and will permit retail customers to compare yields of contemporaneous transactions in the same and similar securities more meaningfully.

Moreover, deleting member-reported yields from disseminated TRACE data and replacing them with Standard yields will not limit a customer's access to relevant yield information. Under SEC Rule 10b-10, a customer currently receives yield information in the customer's confirmation.<sup>9</sup> That yield is specifically calculated, reflecting the price and various fees the customer was charged by the member, as required in SEC Rule 10b-10.<sup>10</sup> The value of seeing both the Standard yield and the member-calculated yield may provide additional transparency to retail customers. For example, a customer could compare the yield calculated by the member in the SEC Rule 10b-10<sup>11</sup> confirmation with the Standard yield in the TRACE data and more readily determine the impact that fees specific to a corporate bond transaction or a member have on the customer's yield.

Finally, FINRA's assessment of a member's compliance with various provisions of the TRACE rules and the federal securities laws will continue to be achieved using the Standard yield calculated by TRACE. For example, FINRA currently uses member-reported yields to validate member-reported prices. However, by comparing member-reported prices to the Standard yield, FINRA will be able to continue performing basic price validation without requiring firms to provide yield as part of their trade reports.

*Vendors.* As part of FINRA's yield dissemination policy, FINRA will require that data vendors providing TRACE data to the market and to redistributors of such data display yield in real-time TRACE data. However, certain vendors desire to disseminate a yield calculated by the vendor, rather than use the Standard yield. FINRA proposes to permit this flexibility, provided that vendors that display a yield other than the Standard yield disclose that they are disseminating a yield other than the Standard yield provided by FINRA.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 90 days following publication of the *Regulatory Notice* announcing 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>12</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 amending the TRACE reporting provisions to reduce a reporting burden and to implement a dissemination policy to provide more standardized yield information to investors will increase transparency in the corporate bond markets, protect investors and is in the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

### *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 35 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 organization consents, the Commission will:

(A) By order approve 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-040 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2008-040. This file number should be included on the subject line if e-mail 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 inspection and copying 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

<sup>9</sup> 17 CFR 240.10b-10.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2008-040 and should be submitted on or before August 28, 2008.

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

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-18160 Filed 8-6-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58263; File No. SR-FINRA-2008-042]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Portfolio Margin

July 30, 2008.

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 July 25, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 substantially prepared by FINRA. FINRA has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to codify FINRA's interpretation of the portfolio margin program set forth in NASD Rule 2520(g)

and Incorporated NYSE Rule 431(g)<sup>5</sup> regarding (1) monitoring concentrated equity positions and (2) timing of day trading margin calls. The text of the proposed rule change is available at <http://www.finra.org>, the principal offices of FINRA, and 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

On February 12, 2007, FINRA (then known as NASD) filed SR-NASD-2007-013 for immediate effectiveness to establish a portfolio margin pilot program that permits member firms to elect to margin certain products according to a prescribed portfolio margin methodology.<sup>6</sup> The portfolio margin pilot program is substantially similar to margin rule amendments by the NYSE and the Chicago Board Options Exchange ("CBOE"), which were approved by the Commission.<sup>7</sup> Consistent with the amended NYSE and

<sup>5</sup> The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to members of both FINRA and the NYSE, referred to as Dual Members.

<sup>6</sup> See Exchange Act Release No. 55471 (March 14, 2007), 72 FR 13149 (March 20, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-013).

<sup>7</sup> See Exchange Act Release No. 54918 (December 12, 2006), 71 FR 75790 (December 18, 2006) (SR-NYSE-2006-13, relating to further amendments to the NYSE's portfolio margin pilot program); Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006) (SR-NYSE-2005-93, relating to amendments to the NYSE's portfolio margin pilot program); Exchange Act Release No. 52031 (July 14, 2005) 70 FR 42130 (July 21, 2005) (SR-NYSE-2002-19, relating to the NYSE's original portfolio margin pilot). See also Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006) (SR-CBOE-2006-14, relating to amendments to the CBOE's portfolio margin pilot); Exchange Act Release No. 52032 (July 14, 2005) 70 FR 42118 (July 21, 2005) (SR-CBOE-2002-03, relating to the CBOE's original portfolio margin pilot).

CBOE portfolio margin programs, the pilot, as proposed in SR-NASD-2007-013, started on April 2, 2007 and ended on July 31, 2007. The pilot program was extended for a one-year period to July 31, 2008, also consistent with the NYSE and CBOE portfolio margin programs.<sup>8</sup> Concurrently with this proposed rule change and consistent with the CBOE, FINRA proposes to make the portfolio margin pilot program contained in NASD Rule 2520(g) and Incorporated NYSE Rule 431(g) permanent.<sup>9</sup>

FINRA proposes to codify FINRA's interpretation of NASD Rule 2520(g) and Incorporated NYSE Rule 431(g) regarding (1) monitoring concentrated equity positions and (2) timing of day trading margin calls.

##### Concentrated Equity Positions

NASD Rule 2520(g)(1) and Incorporated NYSE Rule 431(g)(1) outline various procedural guidelines that firms are required to meet in order to offer portfolio margin to customers. FINRA has issued guidance in the form of frequently asked questions regarding its expectation that, among other things, firms develop reports that identify a concentration of any individual security in both individual portfolio margin accounts and across all portfolio margin accounts.<sup>10</sup> FINRA proposes to codify this requirement in NASD Rule 2520(g)(1)(I) and Incorporated NYSE Rule 431(g)(1)(I) because FINRA believes it is an essential component in monitoring the risk to broker-dealers that offer portfolio margin to customers. FINRA expects that firms impose a higher maintenance margin requirement on any identified concentrated positions.

##### Day Trading

NASD Rule 2520(g)(13) and Incorporated NYSE Rule 431(g)(13) require firms to monitor accounts that do not maintain \$5 million minimum equity to ensure that the day trading requirements pursuant to NASD Rule 2520(f)(8)(B) and Incorporated NYSE Rule 431(f)(8)(B) are applied. Pursuant

<sup>8</sup> See Exchange Act Release No. 56108 (July 19, 2007) 72 FR 41375 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-045). See also Exchange Act Release No. 56107 (July 19, 2007) 72 FR 41377 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-56, relating to extension of the NYSE portfolio margin pilot program to July 31, 2008) and Exchange Act Release No. 56109 (July 19, 2007) 72 FR 41365 (July 27, 2007) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2007-75, relating to extension of the CBOE portfolio margin pilot program to July 31, 2008).

<sup>9</sup> See SR-FINRA-2008-041 and SR-CBOE-2008-73.

<sup>10</sup> See <http://www.finra.org/RulesRegulation/PublicationsGuidance/p038849>.

<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.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).