SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76176; File No. SR–FINRA–2015–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Require an Indicator When a TRACE Report Does Not Reflect a Commission or Mark-up/Mark-down

October 16, 2015.

I. Introduction

On July 20, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6730, which governs the reporting of eligible transactions to its Trade Reporting and Compliance Engine (''TRACE''). The proposed rule change was published for comment in the **Federal Register** on August 7, 2015.[3] The Commission received two comment letters on the proposed rule change.[4] On September 10, 2015, the Commission extended the time to act on the proposal until November 5, 2015.[5] On October 6, 2015, FINRA filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this Notice and Order to solicit comment on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

FINRA Rule 6730 (Transaction Reporting) sets forth the requirements applicable to members reporting transactions in TRACE-Eligible Securities,[7] and provides the specific items of information that must be included in a TRACE trade report. Rules 6730(c) and (d) require a member firm to report the commission (total dollar amount) separately on the TRACE trade report for an agency transaction. FINRA combines the dollar amount that is reported as the commission with the amount that is reported in the price field, and disseminates to the market this aggregate amount as the transaction's price. For a principal transaction, Rule 6730(d)(1) provides that a firm must report a price that includes the mark-up/mark-down, and FINRA disseminates this price to the market. FINRA notes that the goal of these reporting requirements is to provide investors and market participants with pricing information that better reflects comparable prices for principal and agency trades in a TRACE-Eligible Security.

FINRA believes that the pricing information currently being disseminated might be incomplete and in some cases misleading, given that disseminated prices on transactions that do not include remuneration are not distinguished from transactions that do include a commission or mark-up/mark-down. This proposal is designed to provide more meaningful pricing transparency through TRACE by identifying any transaction where a commission or mark-up/mark-down was not charged or known at the time of TRACE reporting.

The proposal amends Rule 6730 to require a member firm to identify any transactions for which a commission or mark-up/mark-down is not reflected in the TRACE trade report because the firm does not charge, or does not know the amount of, the commission or mark-up/mark-down at the time of TRACE reporting. For example, a firm might assess a charge that is not transaction-based, as in the case of a ''fee-based account'' where remuneration is based upon assets under management (and individual commissions or mark-ups/mark-downs are not charged).[8] Thus, for such transactions, the price is not inclusive of a commission or mark-up/mark-down. In another case, a firm might charge a commission or mark-up/mark-down, but might not know the exact amount of that commission or mark-up/mark-down at the time that the TRACE transaction report is required to be submitted because of their remuneration structure (*e.g.,* a firm might not calculate a mark-up for a transaction on a trade-by-trade basis, but could nonetheless ultimately assess transaction remuneration pursuant to a monthly volume-based schedule).[9] The proposal requires a firm to identify all such trades for which the firm does not charge or does not know the amount of the commission or mark-up/market-down at the time of TRACE reporting. In addition, if a firm does not charge any remuneration associated with the trade (in any form), it would be required to identify the trade as one for which no remuneration was assessed to the transaction. FINRA will flag these disseminated transactions as not being inclusive of remuneration. Based on current rules, the disseminated TRACE feed will not explicitly distinguish between agency and principal transactions, and the ''no remuneration'' flag will apply to both principal and agency transactions.

FINRA believes that, in addition to improving transparency for disseminated prices, this proposal will enhance its regulatory audit trail and surveillance patterns. With this additional level of detail, surveillance patterns should yield fewer false positives regarding mark-up and best execution surveillance, reduce regulatory inquiries, and provide greater focus for FINRA's regulatory efforts. FINRA has represented, for example, that without the ''no remuneration'' designation FINRA's surveillance patterns for best execution might generate alerts for transactions whose prices reflect a commission or a mark-up as being outliers compared to transactions whose prices do not reflect a charge.[10]

FINRA plans to implement the proposal on May 23, 2016.

III. Summary of Comments and Amendment No. 1

As noted above, the Commission received two comment letters on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75588 (August 3, 2015), 80 FR 47546 (August 7, 2015) (''Notice'').

[4] *See* letter from Sean Davy, Managing Director, SIFMA, to Elizabeth M. Murphy, Secretary, Commission, dated August 27, 2015 (''SIFMA Letter''); letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, to Secretary, Commission, dated August 28, 2015 (''BDA Letter'').

[5] *See* Securities Exchange Act Release No. 75875, 80 FR 55671 (September 16, 2015).

[6] Amendment No. 1 revised the proposal to include three exceptions to the requirement that members append the ''no remuneration'' indicator to trade reports that do not reflect either a commission or mark-up/mark-down, for: (i) List or Fixed Offering Price Transactions, (ii) Takedown Transactions, and (iii) inter-dealer transactions. Amendment No. 1 is available in the public comment file for SR–FINRA–2015–026 on the Commission's Web site.

[7] See FINRA Rule 6710 (defining ''TRACE-Eligible Security''). Most transactions reported to TRACE are publicly disseminated immediately upon receipt of a transaction report.

[8] Another example of a fee structure that is not transaction-based is where an alternative trading system (''ATS'') charges subscribers a fixed fee for unlimited trading each month. *See* Notice, 80 FR at 47547.

[9] FINRA states that, as a practical matter, firms have difficulty complying with the current TRACE rules for these types of volume-based mark-up/mark-down arrangements, since they are unable to report accurately all the required information related to the transaction on a timely basis and would need to submit a cancel and replace to update the pricing information. In some cases, this information might not be known until the end of the month. *See id.*

[10] *See* Notice, 80 FR at 47548.

proposal.[11] The SIFMA Letter generally supports the proposal. However, SIFMA believes that the requirement to report trades involving no remuneration should be limited to customer trades and should not apply to dealer-to-dealer trades, consistent with SR–MSRB–2015–02.[12] The BDA Letter also supports the proposal but recommends that the proposed reporting requirement extend only to customer trades, consistent with MSRB Rule G–14.[13] The BDA Letter expresses concern with how the proposed requirement would affect smaller introducing dealers and dealers already having difficulty with trade reporting deadlines under current rules, particularly if the requirement applies to inter-dealer transactions.

In response to commenters' concerns, FINRA proposed in Amendment No. 1 to provide an exception to the proposed ''no remuneration'' requirement for inter-dealer transactions. FINRA notes that this change would further align the proposal with the comparable MSRB rule, as requested by the commenters.[14] FINRA believes that, given that inter-dealer transactions typically do not involve remuneration, excluding such transactions from the requirement better focuses the use of the indicator on the types of transactions that would provide the additional price transparency sought by the proposal, which are transactions between dealers and customers.

Also in Amendment No. 1, FINRA proposed to add exceptions from the ''no remuneration'' indicator requirement for List or Fixed Offering Price Transactions, as defined in FINRA Rule 6710(q), and Takedown Transactions, as defined in FINRA Rule 6710(r). These transactions are not currently subject to dissemination; FINRA believes, therefore, that applying the ''no remuneration'' indicator to these transactions would not provide additional transparency to the market.

IV. Discussion and Commission Findings

After careful review of the proposal and comments submitted, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA's rules 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. The Commission also finds the proposal consistent with Section 15A(b)(9) of the Act,[17] which requires that FINRA's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission notes that it previously has approved a similar proposed rule change of the MSRB.[18]

The Commission believes that the proposed rule change is reasonably designed to improve transparency of disseminated TRACE trade reports by requiring firms to indicate when the trade report does not include a commission or mark-up/mark-down. Use of a ''no remuneration'' indicator will make investors better able to assess disseminated transaction prices. Finally, the Commission believes that it is reasonable and consistent with the Act for FINRA to provide exceptions to this requirement for inter-dealer transactions, which do not typically have remuneration, and for List or Fixed Offering Price and Takedown Transactions, for which there currently is no TRACE dissemination of the transaction information.

Therefore, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

V. Accelerated Approval of Proposal, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act [19] 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**.

Amendment No. 1 revised the proposal to include limited exceptions to the proposed ''no remuneration'' indicator requirement. The Commission believes that Amendment No. 1 does not raise any novel regulatory issues because these exceptions are measured and do not appear to impose any undue burdens on affected persons.

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 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*. Please include File Number SR–FINRA–2015–026 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FINRA–2015–026. 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 such filing also will be available for inspection and copying at the principal offices 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

[11] *See supra* note 4.

[12] *See* SIFMA Letter at 1. *See also* Securities Exchange Act Release No. 75039 (May 22, 2015), 80 FR 31084 (June 1, 2015) (SR–MSRB–2015–02) (approving an MSRB proposal to, among other things, require dealers to include a new indicator on their trade reports that would be disseminated publicly to distinguish customer transactions that do not include a dealer compensation component and those that include a markup, mark-down, or a commission) (''MSRB Order'').

[13] *See* BDA Letter at 1.

[14] The MSRB's rule limits the use of its ''non-transaction-based compensation arrangement indicator'' to transactions with customers. *See* MSRB Order, 80 FR at 31085.

[15] 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).

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78o–3(b)(9).

[18] *See* MSRB Order, 80 FR at 31086–87.

[19] *See* 15 U.S.C. 78s(b)(2).

should refer to File Number SR–FINRA–2015–026, and should be submitted on or before November 12, 2015.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–FINRA–2015–026), 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.[21]

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76177; File No. SR–ISE–2015–31]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

October 16, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2015, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''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 Substance of the Proposed Rule Change

The ISE proposes to amend language in the Schedule of Fees related to excluding days from its average daily volume calculations when the market is not open for the entire trading day. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, 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 self-regulatory organization 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. The self-regulatory organization 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

Currently, for purposes of determining a member's average daily volume (''ADV''), any day that the regular or complex order books are not open for the entire trading day may be excluded from such calculation. The Exchange proposes to amend language in the Schedule of Fees related to excluding days from the ADV calculations used to determine applicable fee and rebate tiers. Specifically, the Exchange proposes to permit days to be excluded from its ADV calculations where the Exchange is technically open for the entire trading day, but has instructed members to route away due to a systems or other error that ultimately does not impact trading on the Exchange. Currently, the Exchange's ability to remove days from its ADV calculations is limited to days where the market is not open for the entire trading day. This allows the Exchange to exclude days, for example, where the Exchange declares a trading halt in all securities, honors a market-wide trading halt declared by another market, or closes early for holiday observance. Because these days generally have artificially lower trading volume, the Exchange believes that it is reasonable and equitable to not include such days in determining fee and rebate tiers. The Exchange notes, however, that if it has a systems issue in the morning before the market opens, it may instruct members to route away to other markets. If the systems issue continues into trading hours, the Exchange is permitted to exclude the day for all members that would have a lower ADV with the day included. If, however, the systems issue is resolved prior to the opening of trading, the Exchange is not permitted to exclude the day from its ADV calculations. This is the case regardless of the fact that many members would have already made arrangements to route away in accordance with the Exchange's instructions. To prevent this undesirable result, and preserve the Exchange's intent behind adopting volume-based pricing, the Exchange proposes to allow days to be excluded from its ADV calculation whenever all members are instructed, in writing, to route their orders to other markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that it is reasonable and equitable to exclude a day from its ADV calculations when members are instructed to route their orders to other markets as this preserves the Exchange's intent behind adopting volume-based pricing, and avoids penalizing members that follow this instruction. Without this change, members that route away in accordance with the Exchange's instructions may be negatively impacted, resulting in an effective cost increase for those members. The Exchange further believes that the proposed rule change is not unfairly discriminatory because it applies equally to all members and ADV calculations. As is the Exchange's current practice, the Exchange will inform members of any day to be excluded from its ADV calculations by sending members a notice and posting such notice on the Exchange's Web site.

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

In accordance with Section 6(b)(8) of the Act,[5] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed modifications to its ADV calculation are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(8).