

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copy Available*

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

*Extension:*

Form N-5, SEC File No. 270-172, OMB Control No. 3235-0169.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N-5 (17 CFR 239.24 and 274.5)—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) Form N-5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 ("Securities Act"), and to register as an investment company under section 8 of the Investment Company Act of 1940 ("Investment Company Act"). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N-5, the Commission would be unable to carry out the requirements of the Securities Act and the Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is one and the proposed

frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total annual burden of 352 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: October 13, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60807; File No. SR-FINRA-2009-064]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Publication of Certain Daily and Monthly Short Sale Data on the FINRA Web Site

October 9, 2009.

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 September 24, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by

FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously approving the proposed rule change on an accelerated basis.

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

FINRA is proposing a rule change relating to the publication of certain daily and monthly short sale data on the FINRA Web site. FINRA is not proposing any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of FINRA.

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

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

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

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

###### 1. Purpose

In coordination with SEC staff, FINRA is publishing on its Web site: (1) aggregate daily short sale volume data by security for NMS stocks<sup>3</sup> and OTC Equity Securities,<sup>4</sup> and (2) monthly short sale transaction data by security for NMS stocks.<sup>5</sup> Due to the more

<sup>3</sup> Rule 600 of SEC Regulation NMS defines "NMS stock" as any "NMS security" other than an option, and further defines "NMS security" as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

<sup>4</sup> FINRA Rule 6420 defines "OTC Equity Security" as any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.

<sup>5</sup> By letter dated July 2, 2009, and as discussed in subsequent conversations, SEC staff requested that FINRA publish on its Web site certain daily short sale volume files and monthly short sale transaction files. SEC staff stated that it believes that the publication of this data, and the resulting increased market transparency, may help bolster investor confidence and thereby help promote capital formation.

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

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

manual, member-driven reporting structure inherent in the over-the-counter market, FINRA notes that data imperfections may be more likely than with similar reporting by the exchanges. FINRA is filing this proposed rule change to describe the content and parameters of the short sale data files that will be made publicly available on the FINRA Web site.

*Daily Short Sale Volume File*

For each trading date, FINRA will post on its Web site the daily short sale volume file within a reasonable amount of time after the end of regular trading hours on that trading day.<sup>6</sup> As a general rule, aggregate short sale volume for equity securities executed and reported to any of the FINRA Facilities during regular trading hours will be included in the file.<sup>7</sup> The daily short sale volume file will provide information on the aggregate volume of short sales reported

to a consolidated tape out of the total volume of executed trades during regular trading hours on each trading day.<sup>8</sup>

FINRA expects to begin publishing the daily short sale volume file on a going forward basis in October 2009, but no later than the end of fourth quarter 2009.<sup>9</sup> Specifically, the Short Sale Volume File will include the following fields:<sup>10</sup>

Field name	Field description
Date .....	Trade date (YYYYMMDD).
Symbol .....	Trading symbol.
Short Volume .....	Aggregate reported share volume of executed short sale trades during regular trading hours.
Total Volume .....	Aggregate reported share volume of all executed trades during regular trading hours.
Market .....	CTA market identifier.

FINRA will not incorporate trading information into the daily short sale volume file that has not been executed and reported within the trading day.<sup>11</sup> Further, FINRA will not retroactively apply “as of” and “reversal” transactions to update the daily statistics.

*Monthly Short Sale Transaction File*

For each trading month, FINRA will post on its Web site a monthly short sale transaction file by no later than the last day of the following calendar month that includes, among other things, trade details including the transaction time, price and number of shares for every short sale transaction in an NMS stock. The monthly short sale transaction file request is similar to, but not the same as, the instructions for the Regulation SHO Pilot data.<sup>12</sup> FINRA began publishing the monthly short sale transaction, with the initial file for the month of August 2009 posted on September 30, 2009 (the last day of the following calendar month).

FINRA’s monthly short sale transaction file includes all short sales reported to a TRF or the ADF and reported by FINRA to a tape plan.<sup>13</sup> Unlike the daily short sale volume file, the monthly short sale transaction file includes short sale transactions that are reported both during regular trading hours as well as after-hours. While FINRA is not including reversals in the monthly short sale transaction file, the original reversed trade is included. FINRA is also including in each monthly transaction file any “as of” trades that were executed and reported within each given month.

The Monthly Short Sale Transaction files contain the following information:<sup>14</sup>

- Market center: As reported on the tape.<sup>15</sup>
- Ticker symbol: CT/CQ, TAQ, or symbols used for trading by the market center.
- Report Date: Date that the trade was reported to the tape.

- Reported Trade Time: In military time, Eastern Time.
- Size of the Trade: Number of shares in mixed or round lots as reported to the tape.
- Price of the Trade: Exactly as reported to the tape.

*Other Issues*

Once the Daily Short Sale Volume File is made publicly available at the end of each trading day, FINRA notes that users of such data should not expect the daily and monthly data to reconcile because, among other things, monthly transaction data will include reporting through the end of FINRA transaction reporting hours that terminate as late as 8 p.m., while daily volume reports will only include volume reported during regular trading hours.

Information relating to market maker or supplemental liquidity provider status is not currently included in the trade report submission; thus, FINRA currently is unable to separately identify

<sup>6</sup> See 17 CFR 242.600(b)(64) (defining “regular trading hours”).

<sup>7</sup> Transactions may be reported through the Alternative Display Facility (“ADF”), a Trade Reporting Facility (“TRF”), or through the OTC Reporting Facility (“ORF”). The ADF, TRFs and ORF are collectively referred to herein as the “FINRA Facilities.” Trades in certain classes of securities, such as Rule 144A securities, are reported to the ORF, but not disseminated. Non-disseminated securities will not be included in either the daily short sale volume file or the monthly short sale transaction file.

<sup>8</sup> Certain OTC transactions (e.g., riskless principal and agency transactions where one member is acting on behalf of another member) are reported to FINRA in related tape and non-tape reports. Tape reports are submitted to FINRA for public dissemination by the appropriate exclusive Securities Information Processor (“SIP”), while non-tape reports are submitted to FINRA, but are not submitted to the SIP for public dissemination. FINRA will not be including non-tape reports in

either the daily short sale volume file or the monthly short sale transaction file. Accordingly, in those instances where the short sale indicator is only included in the related non-tape report, the short sale data published in the daily and monthly files may be under-inclusive. Similarly, the published figures will not include odd lots since these transactions are not disseminated to the consolidated tape.

<sup>9</sup> While initial publication of the daily short sale volume file will not commence until fourth quarter 2009, once published, the data will include daily files from August 3rd, 2009. FINRA will retain one year of historical short sale data from the date of initial publication onward on a rolling basis.

<sup>10</sup> The filename will contain the trading date and the reporting SRO (EEEEshvolYYYYMMDD.txt where EEEE represents the reporting SRO and YYYYMMDD represents the date).

<sup>11</sup> While members generally are required to report trades in equity securities to FINRA within 90 seconds, a firm could improperly delay reporting of short sales until well after the close, which would

result in the under-reporting of over-the-counter short sale volume. Delaying the reporting of trades for such a purpose would be considered a violation of the applicable trade reporting rules and Rule 2010 (Standards of Commercial Honor and Principles of Trade).

<sup>12</sup> See Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (Aug. 6, 2004).

<sup>13</sup> See *supra* note 8.

<sup>14</sup> The data files will include a “link indicator” field, which would provide a market center defined character variable to flag records that may have been difficult to match to tape data. This indicator was intended to allow for the dissection of trades that are bulk-reported to the tape; however, because FINRA does not bulk report trades to the tape, this field is not applicable and, therefore, will be left blank.

<sup>15</sup> The ADF, NYSE TRF and NASDAQ TRF files are currently separately designated. FINRA intends at a later date to consolidate the TRF and ADF files in a user-friendly manner.

the trades of equity market makers and supplemental liquidity providers in the monthly short sale transaction file. Therefore, the "short type" field will include a value of "S" in all cases.

FINRA will retain on the FINRA Web site one year of historical monthly short sale transaction data beginning with the data published on September 30, 2009.

The proposed rule change will become effective upon 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>16</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 publication of the requested short sale data will result in increased market transparency, providing additional market information to investors and other interested parties.

### 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. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to Section 19(b)(2) of the Act,<sup>17</sup> the Commission may not approve any proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. FINRA also has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. For the Commission to approve a proposed rule change proposed by a national securities association (*i.e.*, FINRA), the proposed rule change must be consistent with the requirements of the Act, including Section 15A(b)(6) of the Act,<sup>18</sup> and the

rules and regulations thereunder. Section 15A(b)(6) of the Act 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, and, in general, to protect investors and the public interest.

After careful consideration, the Commission finds that FINRA's proposed rule change relating to the publication of certain daily and monthly short sale data on the FINRA Web site is consistent with the requirements of the Act,<sup>19</sup> including Section 15A(b)(6) of the Act.<sup>20</sup> In particular, the Commission finds that FINRA's proposed rule change is consistent with Section 15A(b)(6) of the Act<sup>21</sup> in that it is designed to protect investors and the public interest. The Commission notes that the proposed rule change will facilitate public access to short sale data, increase market transparency and thereby promote capital formation.

The Commission also finds that accelerated approval is appropriate. More specifically, accelerated approval will allow FINRA to facilitate public access to information related to short sale volume and transaction data, which many self-regulatory organizations are already publishing on their respective Web sites.

## 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-2009-064 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-2009-064. 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 should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-064 and should be submitted on or before November 9, 2009.

## V. Conclusion

For the foregoing reasons, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> the Commission finds good cause to approve the proposed rule change on an accelerated basis.

*It is hereby ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-FINRA-2009-064) be, and hereby is, approved on an accelerated basis. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

<sup>19</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78o-3(b)(6).

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).