

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 004
Amendment No. 1

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☐	Amendment ☒	Withdrawal ☐	Section 19(b)(2) ☒	Section 19(b)(3)(A) ☐	Section 19(b)(3)(B) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1) ☐ 19b-4(f)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
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Exhibit 3 Sent As Paper Document
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Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Sharon Last Name Zackula
Title Associate Vice President and Associate General Counsel
E-mail sharon.zackula@finra.org
Telephone (202) 728-8985 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 04/09/2009

By Patrice Gliniecki
(Name)

Senior Vice President and Deputy General Counsel

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On February 11, 2009, 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”) proposed rule change SR-FINRA-2009-004 to amend Rule 6710(a), the definition of TRACE-eligible security, to broaden the definition by deleting (i) the requirement that a debt security be registered under the Securities Act of 1933 (“Securities Act”);¹ and (ii) with respect to “restricted securities” as that term is defined in Securities Act Rule 144(a)(3),² the requirement that such securities be issued pursuant to Securities Act Section 4(2)³ prior to being resold under Securities Act Rule 144A.⁴

The SEC published the proposed rule change for notice and comment on March 11, 2009.⁵ Two comment letters were received.⁶ In this Partial Amendment No. 1 to SR-FINRA-2009-004, FINRA responds to the comments and proposes minor amendments to the proposed rule change.

The two comment letters raise different issues and are addressed separately below. First, the SIFMA Letter requests that FINRA provide clarity regarding the operational issues of reporting certain Regulation S⁷ transactions that have not been assigned a CUSIP, and states that firms have not been able to gauge the scope of system changes that will be required relating to reporting such transactions, and therefore are unable to comment on what would be an appropriate implementation timeline. Second, the commenter requests that FINRA provide firms a reasonable grace period to report transactions in Regulation S securities and other securities that the member finds are not in the TRACE System at the time the member is required to report a transaction, and that FINRA develop a process for obtaining identifying information for such securities.

¹ 15 U.S.C. 77a et seq.

² 17 CFR 230.144(a)(3).

³ 15 U.S.C. 77d(2).

⁴ 17 CFR 230.144A.

⁵ Securities Exchange Act Release No. 59519 (March 5, 2009), 74 FR 10630 (March 11, 2009) (Notice of filing of SR-FINRA-2009-004).

⁶ See letter from Beth N. Lowson, The Nelson Law Firm, LLC, to Elizabeth M. Murphy, Secretary, SEC, dated March 31, 2009 (“Nelson Letter”); and letter from Sean C. Davey, Managing Director, Securities Industry and Financial Markets Association (“SIFMA”), to Elizabeth M. Murphy, Office of the Corporate Secretary, SEC, dated March 31, 2009 (“SIFMA Letter”).

⁷ 17 CFR 230.901-905.

In response to the first comment regarding the possible operational issues attached to reporting Regulation S transactions, the proposed rule change does not require members to report bona fide off-shore Regulation S transactions.⁸ If a security that was the subject of a Regulation S offering⁹ is subsequently part of a U.S. transaction that is a TRACE reportable transaction, staff believes that such securities generally are assigned CUSIPs. In addition, if certain TRACE-eligible securities have not been assigned a CUSIP by the CUSIP Service Bureau, FINRA will provide guidance regarding reporting in such circumstances. Finally, FINRA intends to establish an effective date that will provide firms sufficient time to make any minor operational enhancements needed to report the transactions discussed above, and FINRA does not believe that the proposal will cause operational burdens.

The commenter also requests that FINRA provide firms a reasonable grace period to report transactions in securities offered under Regulation S¹⁰ and other securities that a member finds are not in the TRACE System (*i.e.*, not in the TRACE Issue Master or TRACE Daily List) at the time the member is required to report a transaction. As FINRA has stated previously, members that are a party to a transaction in a TRACE-eligible security are required to report the transaction, and if the CUSIP for a TRACE-eligible security is not in the TRACE System, a member must notify FINRA Operations promptly, provide the CUSIP and other identifying information, and thereafter report the member's transaction. FINRA takes into account a delay in reporting that may occur if a member, upon trying to report a transaction, determines that the member first must notify FINRA Operations and provide the CUSIP and other identifying information for the security to be added to TRACE. FINRA does not propose to provide a standard grace period for the reporting of a member's transactions following notification. Instead, FINRA advises members to maintain a record of any notifications the member provides to FINRA Operations, which FINRA views as a mitigating factor in reviewing the transaction report(s) in such security of members providing notification. Absent other regulatory concerns, if a firm provides notification and reports as promptly as possible after the security is included in TRACE, FINRA generally has reviewed such transaction reports and the delay in reporting in the context of the member's notification and not included such trades in any regulatory inquiry directed to the firm. In addition, generally, it is unlikely that such late trades would form the factual basis for any formal or informal action, unless FINRA is addressing other regulatory concerns or violations with respect to such transactions. (FINRA notes, however, that providing notification to FINRA Operations would not be viewed as a mitigating factor or circumstance during any review of late trade reports, if FINRA determines that the member was obligated under Rule 6760 to provide notice to FINRA Operations at or prior to the initial issuance of the TRACE-eligible security.)

⁸ Id.

⁹ Id.

¹⁰ Id.

The Nelson Letter requests that the proposed rule change be amended to eliminate, in FINRA's dissemination protocols, the "volume caps" used when disseminating information on transactions in TRACE-eligible securities over a certain size.¹¹ FINRA declines to respond to the comments, which are not related to the proposed rule change.

FINRA also proposes to amend the proposed rule change as follows. First, in Form 19b-4, pages 5-6, and in Exhibit 1, pages 14-15, FINRA proposes to amend the sentence beginning with the words, "Generally, the definition is sufficiently broad . . ." by deleting the parenthetical -- "(i.e., they are freely tradable because they are not 'restricted securities' as defined in Securities Act Rule 144(a)(3))." As amended, the sentence reads as follows: "Generally, the definition is sufficiently broad to require the reporting of, and provide price transparency for, a substantial portion of corporate bonds that are eligible for public sale." In addition, FINRA proposes to delete, in Form 19b-4, page 6, footnote 9 and, in Exhibit 1, page 15, footnote 10.

Second, in Form 19b-4, page 9, and in Exhibit 1, page 18, in the paragraph beginning with the words, "FINRA believes that there is no compelling reason . . ." FINRA proposes to delete the following two sentences: "For example, in a global offering, some debt securities may be issued as part of a foreign tranche pursuant to Regulation S. Under the proposed amendment, U.S. resales of securities from that tranche effected as Rule 144A transactions would be required to be reported to TRACE." In addition, FINRA proposes to delete, in Form 19b-4, page 9, footnotes 28 and 29 and, in Exhibit 1, page 18, footnotes 29 and 30.

¹¹ Under the current protocols, if the volume of a transaction in an Investment Grade TRACE-eligible security exceeds \$5 million (par), when information is disseminated, the quantity of bonds is indicated as "\$5 million+"; similarly, information on the volume of transactions larger than \$1 million (par) is disseminated as "\$1 million+" for transactions in Non-Investment Grade TRACE-eligible securities. "Investment Grade" and "Non-Investment Grade" are defined in Rule 6710(h) and Rule 6710(i), respectively.