

FICC–2013–08) be and hereby is approved.<sup>15</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70483; File No. SR–FINRA–2013–040]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Limited Waiver of the TRACE Professional Real-Time Data Display Fee Pilot

September 24, 2013.

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 17, 2013, the 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, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) 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 amend FINRA Rule 7730(c)(1)(A)(i) to extend the pilot program to November 7, 2014. The pilot program provides a limited waiver of the Professional Real-Time Data Display Fee of \$60 to access Real-Time Trade Reporting and Compliance Engine (“TRACE”) transaction data in

connection with certain free trials of data products.

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

Pursuant to FINRA Rule 7730(c)(1)(A), FINRA charges a Professional \$60 per month, per display application per Data Set<sup>5</sup> of Real-Time TRACE transaction data. The fee waiver pilot program in FINRA Rule 7730(c)(1)(A)(i) waives the \$60 fee for one month for a Professional to access Real-Time TRACE transaction data in connection with a vendor’s offer of a free trial of a data product that displays Real-Time TRACE transaction data.<sup>7</sup>

<sup>5</sup> FINRA makes Real-Time TRACE transaction data available in three Data Sets—the Corporate Bond Data Set, the Agency Data Set and the ABS Data Set. A fourth Data Set, the Rule 144A Data Set, will become available in 2014. See Securities Exchange Act Release No. 70345 (September 6, 2013), 78 FR 56251 (September 12, 2013) (Order Approving File No. SR–FINRA–2013–029) (SEC approves a proposed rule change to disseminate transactions in TRACE-Eligible Securities that are effected pursuant to Rule 144A (17 CFR 239.144A) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and to establish the Rule 144A Data Set).

<sup>6</sup> Real-Time is defined in FINRA Rule 7730(f)(3).  
<sup>7</sup> See Securities Exchange Act Release No. 68255 (November 19, 2012), 77 FR 70515 (November 26, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2012–049) (proposed rule change establishing the fee waiver pilot program).

In general, Real-Time TRACE transaction data is accessed not directly from FINRA but through a vendor, such as Bloomberg, L.P. and its Bloomberg display application, or other redistributors (collectively, “vendors”) of financial market data. Under this arrangement, a Professional pays the vendor for the license to use the vendor’s display application and if the display application displays Real-Time TRACE transaction data, the payment must include the applicable TRACE fee, which the vendor remits to FINRA. Vendors continually develop new products and offer free trials of such products to members and other Professional end

The fee waiver pilot program permits Professionals to access Real-Time TRACE transaction data on a free trial basis in connection, and concurrently, with the free trial of the vendor’s product. The pilot program will expire on November 8, 2013.

FINRA proposes to extend the fee waiver pilot program approximately one year to November 7, 2014 to permit more time to assess the effectiveness of the pilot program. All other terms and conditions of the fee waiver pilot program would remain the same. The FINRA fee waiver would continue to be limited to one month (*i.e.*, a period not longer than 31 days). In addition, the FINRA fee waiver would continue to be available to not more than four Professionals associated with, employed by, or otherwise affiliated with a member, employer or other person during one free trial period.<sup>8</sup> As is currently the case, once the Real-Time Data Display Fee had been waived, a Professional and the member, employer or other person whom the Professional is associated with, employed by, or otherwise affiliated with would not be eligible for the FINRA fee waiver again in connection with another free trial offered by the same vendor until 12 months had lapsed from the last day of the prior fee waiver.<sup>9</sup> However, a Professional and the member, employer or other person with whom the Professional is associated or otherwise affiliated would be eligible for a FINRA fee waiver in connection with a free trial offered by a different vendor regarding its data products.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be the date of filing.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that

users of market data. Such new products may display, among other data, Real-Time TRACE transaction data.

<sup>8</sup> The fee waiver pilot program is not applicable to Professionals associated with, employed by or otherwise affiliated with entities that obtain unlimited internal use of market data through any number of display applications by paying a flat fee of \$7,500 (per month per Data Set) under Rule 7730(c)(1)(A) (“enterprise fee”). The enterprise fee structure is inconsistent with the limitation that the fee waiver apply to not more than four Professionals per entity per trial period.

<sup>9</sup> For example, if a Professional were granted a waiver for one month beginning on November 15, 2013, the Professional would not be eligible for another waiver in connection with another free trial offered by the same vendor until December 15, 2014.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

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

<sup>16</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)(ii).

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

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, and Section 15A(b)(5) of the Act,<sup>11</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed extension of the pilot program, which encourages additional Professionals to test and use Real-Time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members, and may prevent fraudulent and manipulative acts and practices regarding pricing and valuations, for the protection of investors and the public interest.

FINRA believes that the extension of the pilot program providing for a limited waiver of the monthly fee per display application for access to Real-Time TRACE transaction data also results in reasonable fees and financial benefits from fee waivers that are equitably allocated. The financial benefit of the fee waiver would be available to all Professionals that accept an offer to test a vendor data product that includes Real-Time TRACE transaction data on a free trial basis. Any Professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, subject to the proscriptions against a Professional obtaining multiple free trials as previously described.

In addition, the financial benefit of the fee waiver would be available for a very limited period (*i.e.*, 31 days or less), such that Professionals not eligible for the fee waiver are not unfairly or inequitably affected. The proposed extension of the pilot period is reasonable because the waiver of a standard FINRA fee, and the financial benefit from such waiver, is of limited amount, duration (*i.e.*, one month) and application (*i.e.*, only four Professionals per member (or other end-user)), limited to concurrent free trials of data products offered by vendors, and subject to restrictions on re-use, and is being proposed to enhance a member's ability to access and test, among other things, the uses of Real-Time TRACE transaction data to determine if access to such Real-Time TRACE transaction data would further its business needs.

Finally, the proposed extension of the fee waiver pilot program does not unfairly discriminate between or among Professionals and members (or other end-users) in that the waiver would be available to any of such persons that accepts an offer to test a vendor data product that includes Real-Time TRACE transaction data on a free trial basis, subject to the limitations described above. The data vendor, rather than FINRA, would decide initially whether to offer a free trial of its data product to a particular Professional, member, or other end-user. FINRA's role is limited to refusing to extend a fee waiver to a particular person previously identified by the data vendor, due to the prohibition against extending multiple fee waivers to the same person.

#### *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. FINRA believes that the proposed extension of the fee waiver pilot program, which is designed to encourage additional Professionals to test and use Real-Time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members. Moreover, the extension of the pilot program would not place an unreasonable fee burden on members and other persons (*i.e.*, Professionals) that currently subscribe to receive Real-Time TRACE transaction data, nor confer an uncompetitive benefit to Professionals taking advantage of the pilot program, in that the fee waiver would be available for a very limited period (*i.e.*, 31 days or less), and the financial impact of such a pilot program on Professionals would be de minimis. In addition, the proposed rule change does not place a burden on competition in that the financial benefit of the fee waiver would be available in general to all Professionals. Any Professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, subject to the proscriptions against a Professional obtaining multiple free trials previously described.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>13</sup> At any time within 60 days of the filing of the 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 to determine whether the proposed rule 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-FINRA-2013-040 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-2013-040*. 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

<sup>11</sup> 15 U.S.C. 78o-3(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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 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-2013-040 and should be submitted on or before October 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70489; File No. SR-NASDAQ-2013-120]

**Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Chapter XV, at Section 2 Governing Pricing for NASDAQ Members Using the NASDAQ Options Market (“NOM”)**

September 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder,

notice is hereby given that on September 12, 2013, The NASDAQ Stock Market LLC (“NASDAQ” 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 NASDAQ. 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**

NASDAQ is proposing changes to modify Chapter XV, entitled “Options Pricing,” at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”).

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled “Options Pricing,” at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange proposes to (1) lower the Tier 6 volume threshold from 130,000 or more contracts per day in a month to 115,000 or more contracts per day in a month; (2) lower the Tier 7 volume threshold from 175,000 or more contracts per day in a month to 150,000 or more contracts per day in a month; and (3) include Non-Penny Pilot Options Customer and/or Professional volume that adds liquidity to compute the numerator in the calculation of percentage of total industry customer equity and ETF option average daily volume to qualify for certain tiers of the Customer or Professional Penny Pilot Options rebate program.

Today, the Exchange offers tiered Penny Pilot Options Rebates to Add Liquidity to Customers,<sup>3</sup> Professionals<sup>4</sup> and NOM Market Makers<sup>5</sup> and a \$0.10 per contract rebate in Penny Pilot Options to liquidity added by Firms,<sup>6</sup> Non-NOM Market Makers<sup>7</sup> and Broker-Dealers.<sup>8</sup> With respect to Customers and Professionals, the Exchange pays Penny Pilot Options Rebates to Add Liquidity based on various criteria with rebates currently ranging from \$0.25 to \$0.48 per contract as follows:

Monthly volume	Rebate to add liquidity
Tier 1 Participant adds Customer and/or Professional liquidity of up to 0.20% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day in a month .....	\$0.25
Tier 2 Participant adds Customer and/or Professional liquidity of 0.21% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month .....	0.40
Tier 3 Participant adds Customer and/or Professional liquidity of 0.31% to 0.49% of total industry customer equity and ETF option ADV contracts per day in a month .....	0.43
Tier 4 Participant adds Customer and/or Professional liquidity of 0.5% or more of total industry customer equity and ETF option ADV contracts per day in a month .....	0.45
Tier 5 Participant adds (1) Customer and/or Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ’s equity market .....	0.42

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The term “Customer” applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)).

<sup>4</sup> The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed

options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

<sup>5</sup> The term “NOM Market Maker” is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security. NOM Market Maker Rebates range from \$0.25 to \$0.38 per contract depending on various criteria.

<sup>6</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

<sup>7</sup> The term “Non-NOM Market Maker” or (“O”) is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

<sup>8</sup> The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.