disciplinary actions imposed by the SEC.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all municipal advisors. In particular, the MSRB believes that the amendments to Rule G–5 impose no regulatory burden on any municipal advisor because Section 15B(c) of the Act already permits the SEC to limit the activities of municipal advisors in the manner provided for in amended Rule G–5. Further, the MSRB believes that the amendment to Rule G–17 imposes no regulatory burden on any municipal advisor not necessary or appropriate in furtherance of the purposes of the Act since most municipal advisors already comport themselves in accordance with the standards of behavior required by Rule G–17 and no municipal advisor has a legitimate interest in engaging in behavior that is fraudulent or otherwise unfair.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 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 or disapprove 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.* Please include File Number SR–MSRB–2010–16 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–MSRB–2010–16. 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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the MSRB's offices. 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–MSRB–2010–16 and should be submitted on or before December 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[3]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29077 Filed 11–17–10; 8:45 am]

BILLING CODE 8011–01–P

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63311; File No. SR–FINRA–2010–044]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to the Expansion of the Order Audit Trail System to All NMS Stocks

November 12, 2010.

I. Introduction

On August 6, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change to amend its Order Audit Trail System rules to extend the recording and reporting requirements to all NMS stocks and to exclude certain firms that have limited trading activities. The proposed rule change was published for comment in the **Federal Register** on August 25, 2010.[2] The Commission received three comment letters on the proposed rule change.[3] FINRA responded to these comment letters in a letter dated October 28, 2010.[4] This order approves the proposed rule change.

II. Description of Proposal

FINRA Rules 7410 through 7470 (the "OATS Rules") impose obligations on FINRA members to record in electronic form and report to FINRA, on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in OTC equity securities and equity securities listed and traded on The Nasdaq Stock Market, Inc. ("Nasdaq").[5] This

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

[2] *See* Securities Exchange Act Release No. 62739 (August 18, 2010), 75 FR 52380.

[3] *See* letter from Steve Allread, Equity Trader, Cutter Company, to Commission, dated September 10, 2010 ("Cutter Letter"); letter from Joan Conley, Senior Vice President and Corporate Secretary, Nasdaq OMX Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 15, 2010 ("Nasdaq Letter"); and letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, Commission, dated September 17, 2010 ("FIF Letter").

[4] *See* letter from Brant K. Brown, Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated October 28, 2010 ("FINRA Response").

[5] As amended by SR–FINRA–2010–003, FINRA Rule 7410 defines an "OTC equity security" for purposes of the OATS Rules as an equity security that is not an NMS stock, except that the term does not include restricted equity securities and direct

Continued

information is used by FINRA staff to oversee the markets and to determine if members are complying with FINRA's rules.

FINRA is proposing to extend the OATS recording and reporting requirements to cover all NMS securities.[6] FINRA is also proposing to exclude from the definition of "Reporting Member" [7] in FINRA Rule 7410 certain firms that became FINRA members pursuant to NASD IM–1013–1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations), or NASD IM–1013–2 (Membership Waive-In Process for Certain NYSE Alternext US LLC [8] Member Organizations), and the rules of the NYSE,[9] and that engage in the floor activities permitted in NASD IM–1013–1 and IM–1013–2 and receive orders through systems operated and regulated by the NYSE or NYSE Amex.

III. Discussion of Comment Letters

The Commission received three comment letters on the proposed rule change and FINRA responded to these comments.[10] One commenter, FIF, supported the proposal, but specified a variety of terms and provisions that it believed should be incorporated by FINRA in its expansion of OATS.[11] Specifically, FIF suggested that FINRA ensure that the terms currently used in the Order Tracking System (OTS) Rules are harmonized with those used in the OATS Rule and noted, for example, that account types currently are treated differently by NYSE and FINRA. The commenter suggested using the "FIX" protocol to ensure standardization. FIF also requested that FINRA take into consideration that certain FINRA member firms do not have MPIDs, which are required for OATS reporting, and that FINRA configure OATS to accept symbols under the different Nasdaq and NYSE symbology plans.

FIF suggested that FINRA enhance its capacity and processing bandwidth to accommodate the millions of additional OATS reports it would receive under the proposed rule to ensure timely processing of files and error free testing. FIF also requested that FINRA extend the deadline to submit reports due to the additional volume of reports that would be required. FIF also requested an extension of the current time frame for members to repair and resubmit OATS rejections.[12]

FINRA responded to these comments by stating that it is currently reviewing OATS for potential efficiencies and will consider the issues raised with respect to revising its reporting and rejection repair and resubmission deadlines, as well as capacity limitations. FINRA believes that a phased-in approach for inclusion of NMS stocks in OATS is acceptable.

FIF also requested that FINRA adopt an exemption for, or provide additional time for inclusion in OATS of, convertible and non-convertible preferred stock listed on the NYSE explaining that these securities managed by firms' Fixed Income Desks and systems and may not be easily reportable on existing platforms.

FINRA responded that NYSE's current OTS rules do not contain an exemption for preferred stock, and therefore, members are already required to capture order information for these securities. Consequentially, FINRA does not believe that preferred stock should be exempted from OATS, or that it should provide additional time for implementation of the requirement.

Another commenter questioned the regulatory usage of the data that currently is required to be submitted to OATS.[13] In response, FINRA explained that it currently uses OATS data to conduct surveillance and investigations of its members, and that the expansion of this data to include NMS securities traded on other exchanges would enhance FINRA's ability to surveil its members' trading activity across multiple markets.

The third commenter, Nasdaq, argued that the timing of the OATS proposal, in light of the Commission's proposed consolidated audit trail, is an effort by FINRA to make OATS the default consolidated audit trail choice for the industry, and submitted questions for FINRA regarding the cost, timing and use of its proposal.[14] In response, FINRA stated that its proposal is not intended to replace the Commission's consolidated audit trail proposal, and that FINRA views it instead as an effort to improve its own regulatory oversight. It recognized that the proposal may impose costs on its members, but believes that most of those affected would already have in place the OTS infrastructure, which would allow them to adopt the proposed changes quickly.

IV. Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response to the comments, and finds that the proposed rule change 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, among other things, requires that FINRA 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 believes that the proposed rule change, by requiring members to record and report order information for all NMS stocks, not just those securities listed on Nasdaq or traded over-the-counter, will enhance FINRA's market surveillance and investigative capabilities. FINRA has stated that it is currently unable to view a complete order and transaction audit trail for all over-the-counter transactions in NMS stocks; thus, the proposed expansion of surveillance to NMS stocks listed on non-Nasdaq markets should enhance FINRA's oversight of the U.S. equity markets.

The Commission believes the proposed rule change is a positive step toward a cross-market audit trail. The Commission views FINRA's proposed expansion of OATS as an interim measure that will improve FINRA's regulatory capabilities by broadening its oversight. The Commission notes that FINRA's proposal will also remove redundancies, as FINRA has represented that OTS is expected to be retired by NYSE upon the expansion of OATS.

Additionally, the Commission agrees that FINRA's amendment to its definition of "Reporting Members" is

participation programs, as those terms are defined in FINRA Rule 6420. *See* Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (Order Approving File No. SR–FINRA–2010–003).

[6] Rule 600(b)(47) of Regulation NMS defines "NMS stock" as "any NMS security other than an option." 17 CFR 242.600(b)(47). An "NMS security" is defined 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." 17 CFR 242.600(b)(46).

[7] A "reporting member" is defined in FINRA Rule 7410(o) as a member that receives or originates an order and has an obligation to record and report information under Rules 7440 and 7450.

[8] In March 2009, NYSE Alternext US LLC changed its name to NYSE Amex LLC ("NYSE Amex"). *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009).

[9] *See* NYSE Rule 2.

[10] *See supra* notes 3 and 4.

[11] *See* FIF Letter, *supra* note 3.

[12] *See* FIF Letter, *supra* note 3.

[13] *See* Allread Letter, *supra* note 3.

[14] *See* Nasdaq Letter, *supra* note 3.

[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).

appropriate, as it excludes from the OATS recording and reporting requirements those members who conduct a floor business through NYSE and NYSE Amex and who are currently not subject to OTS, but to the requirements of NYSE Rule 123 and NYSE Amex Equities Rule 123 (Record of Orders).[17] By exempting these members from the OATS requirements, FINRA is not altering their current audit trail obligations.[18] The Commission believes that FINRA's proposed amendment to Rule 7410 is appropriate as these members would continue to be required to record and report information under NYSE Rule 123 and NYSE Amex Equities Rule 123, and would continue to be subject to FINRA regulation.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–FINRA–2010–044), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63313; File No. SR–MSRB–2010–14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amendments to Rule A–12, on Initial Fee, and Rule A–14, on Annual Fee

November 12, 2010.

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 November 9, 2010, the Municipal Securities Rulemaking Board ("Board" or "MSRB"), 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 MSRB. The MSRB has designated the proposed rule change as changing a fee applicable to municipal advisors pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with 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

The MSRB is filing a proposed rule change consisting of amendments to Rule A–12, on initial fee, and Rule A–14, on annual fee, to provide for the payment to the Board by municipal advisors of initial and annual fees. The proposed rule change is effective immediately upon filing.

The proposed rule change would apply to municipal advisors immediately; however, it will have a deferred compliance date of December 31, 2010. The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2010-Filings.aspx,* at the MSRB's principal office, 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 MSRB 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 MSRB 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

The purpose of the proposed rule change is to provide for the assessment of reasonable fees to defray a portion of the increased costs and expenses associated with the operation and administration of the Board attributable to the Board's regulation of municipal advisors, including an initial fee of $100 and an annual fee of $500. Except as described below, the proposed rule change applies the provisions of Rules A–12 and A–14 to municipal advisor firms in the same manner that they currently apply to brokers, dealers, and municipal securities dealers ("dealers"). Individuals will not be required to pay these fees unless they are sole proprietorships. Although the initial fee under Rule A–12 normally would be payable to the Board prior to a municipal advisor engaging in any municipal advisory activities, the proposed rule change would permit a municipal advisor firm to engage in such activities prior to January 1, 2011 so long as the initial fee is paid by January 1, 2011. Similarly, although the annual fee under Rule A–14 normally would be payable by October 31 of each fiscal year (or, for municipal advisor firms becoming subject to MSRB rules in the current fiscal year, simultaneously with the initial fee under Rule A–12), the proposed rule change would permit a municipal advisor firm to engage in such activities prior to January 1, 2011 so long as the annual fee for the current fiscal year of the Board is paid by January 1, 2011. Each firm subject to the rules of the Board shall be required to pay the initial fee only once, and the annual fee only once each fiscal year, even if a firm is both a dealer and a municipal advisor.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act, which provides that the Board's rules shall:

> Provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board.

The $100 initial fee imposed on municipal advisors by amended Rule A–12 and the $500 annual fee imposed on municipal advisors by amended Rule A–14 are reasonable. In its filing, the MSRB noted that the annual fee is comparable to the fees that municipal advisors must pay to State regulators if they must register as investment advisers. The initial fee is less than most States impose for the initial registration of investment advisers. The revenue resulting from these fees will defray only a small portion of the cost of MSRB regulation of municipal advisors.

[17] NYSE Rule 123 and NYSE Amex Equities Rule 123 pertain to orders or commitments or obligations to trade originated on or transmitted to the floor of each exchange.

[18] These members would be subject to FINRA's oversight, as FINRA assumed the market surveillance and enforcement functions of NYSE Regulation, Inc. in June 2010, pursuant to a multi-party regulatory services agreement with NYSE Regulation, Inc., NYSE, NYSE Amex, and NYSE Arca. *See* "FINRA and NYSE Euronext Complete Agreement for FINRA to Perform NYSE Regulation's Market Oversight Functions," FINRA News Release (June 14, 2010), available at *http://www.finra.org/Newsroom/NewsReleases/2010/P121622.*

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

[20] 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. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).